

From Grief to Courage

Best Practices in Advocating
Legislation Against Enforced
Disappearances

AN INTER-REGIONAL CONFERENCE

ORCHID GARDEN SUITES,
620 PABLO OCAMPO ST.,

MALATE, METRO MANILA, PHILIPPINES

17-20 SEPTEMBER 2014



ASIAN FEDERATION
AGAINST
INVOLUNTARY
DISAPPEARANCES

*with the
support of*



and



From the Editor

No telenovela, movie or novel could duplicate the drama of “From Grief to Courage.” Can you imagine a young adult returning from Europe to Guatemala or Argentina or Timor to meet her parents, brothers and sisters for the first time? Or mothers in Beijing and Buenos Aires, week after week seeking for their loved ones amidst insults from passers-by in addition to pressures from “official sources?” I confess there were moments in reading the text that I had to put the transcript down to control my own emotions. Psychologists tell us that at some moment in every person’s life, one asks the question, “What shall I do with my life?” “From Grief to Courage” might have the best answer.

This book is both a significant legacy of past experiences of struggle across the world, as well as a useful tool for change for the future.

Too often, enforced disappearance is mistakenly seen as a scourge that affected just few Latin American States during the years of military dictatorships. Unfortunately, this is a misleading stereotype. Enforced disappearances continue to occur in all continents and even in democratic countries. In order to effectively eradicate this heinous crime, it is crucial to assess what has already been done, learn from good practices and past mistakes, and move forward to fully guarantee the rights to truth, justice and redress of relatives of disappeared people throughout the globe.

The strength of this book lies precisely in the wealth of first-hand knowledge shared in an outstanding exercise of international solidarity. Through the vivid voices of relatives of disappeared people, academics, and human rights defenders from many countries, one can understand the exceptional obstacles to be faced and the tireless work to be conducted, often over many years.

In these pages, there are histories of ongoing suffering, extraordinary valour, and encouraging victories. The conference which is at the origin of the publication represented a unique moment to share frustrations and worries but also to gain new vigour to continue the battle.

The strengthening of domestic legislation is pivotal to holding those responsible accountable and to prevent new cases of enforced disappearance, as well as the ratification of international treaties such as the International Convention for the Protection of All Persons from Enforced Disappearance, and the acceptance of the competence of the Committee on Enforced Disappearance to receive and examine communications.

Domestic judicial authorities can and must play a fundamental role in the establishment of the truth and in delivering justice and redress.

Very concrete measures must be taken to potentiate the search of disappeared persons, their localisation and identification and, in the case of thousands of disappeared children, to restore their real identity.

Much remains to be done but this book represents a solid roadmap.

I wish to congratulate AFAD for this important contribution and to express my sincere solidarity in the struggle for a world free from enforced disappearance.

Atty. Gabriella Citroni

Professor of International Human Rights Law at the University of Milano-Bicocca (Milan, Italy) and international legal advisor of the Latin American Federation of Associations of Relatives of Disappeared Persons (FEDEFAM) as well as of the NGO TRIAL (Track Impunity Always)

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We are not here by accident or coincidence. I believe we are here for a reason. I pray that the reason is that we would be instruments for a divine intervention for others.

This widow's mite is all that I can offer... yet it is asked of me, so I offer it... my voice, a hug, a tear. I embrace you all, victims, advocates, human right defenders and I am proud to stand side by side with you in our quest

for **justice,**

peace

and **love.**

~ *Edita Burgos*

Table of Contents

Foreword, **xii**

List of Acronyms, **xiv**

PART ONE - PUBLIC EVENT

Welcome Message, **3**

Keynote Speech, **5**

Inspirational Message: *I Offer My Voice, a Hug and a Tear: A Widow's Mite*, **8**

The Landscape of Enforced Disappearance in Asia, Latin America and some parts of Europe

Asia, **13**

Latin America, **17**

Europe, **20**

PART TWO - MAIN CONFERENCE

Directory of Conference Participants, **31**

Conference Background, **43**

SESSION 1: The Situation of Families of Victims of Enforced Disappearances in Asia and Latin America

Latin America, **48**

Asia, **54**

SESSION 2: The Value of Regional Human Rights Mechanisms in Addressing Enforced Disappearance

ASEAN Inter-governmental Commission on Human Rights: Potentials, Limitations, Ways Forward and the Role of NGOs, **67**

Regional Human Rights Mechanisms in Latin America: Best Practices, **72**

SESSION 3: Roles of Family Associations in Lobbying for the Signing and Ratification of the International Convention Against Enforced Disappearance

International Convention for the Protection of All Persons from Enforced Disappearance, **83**

Families of Victims as Active Participants in the Struggle Against Enforced Disappearance: the Indonesian Experience, **96**

The Euro-Mediterranean Federation Against Enforced Disappearances (FEMED), **100**

UNSILENCED: VIDEO PRESENTATION OF AFAD AND FIND, 104

SESSION 4: The Philippine Experience in Advocating for a Domestic Law against Enforced Disappearance

Experiences of Families of Victims of Involuntary Disappearance (FIND), **106**

Political Mapping as a Lobbying Strategy, **110**

AFAD Research on Legislative Advocacy, **116**

SESSION 5

The Value of Domestic Legislation Against Enforced Disappearance, **126**

Salient Features of RA 10368: The Human Rights Victims' Recognition and Reparation Act of 2013, **129**

Role of Documentation in Human Rights Advocacy, **145**

SESSION 6

Family Associations and NGOs and the International Convention for the Protection of All Persons from Enforced Disappearance, **156**

SESSION 7: Strategic Litigation, Successes and Difficulties

The Argentinean Experience, **164**

The Chilean Experience, **168**

Nepal: The Role of Civil Society in the Arrest and Prosecution of Col. Lama in the United Kingdom, **171**

SESSION 8: Public Awareness Campaign and International Solidarity

Belarus: 2013 Alternative Report of the Civil Society to the UN Human Rights Council, **179**

Philippines: Research on Level of Public Awareness on Enforced Disappearance, **185**

Kashmir: Research on Alleged Perpetrators, **193**

SESSION 9: The Search for Truth and Justice for Victims of Enforced Disappearances

The Chilean Experience, **197**

The Argentinean Experience, **201**

FOUND: THE STORY OF LUIS ALONSO OF EL SALVADOR, 209

SESSION 10: Search and Reunification of Disappeared Children, Difficulties, Successes and Challenges

The Experience of *Pro-Búsqueda*, El Salvador, **211**

The Experience of *Liga Guatemalteca de Higiene Mental*, Guatemala, **215**

The Experience of *Centro de Estudios Legales y Sociales* (CELS), Argentina, **219**

Workshop, 229

Approval and Signing of Conference Statement, 237

Epilogue, 242

Appendices

Index

Foreword

“**From Grief to Courage,**” this fifth book of the Asian Federation Against Involuntary Disappearances (AFAD) is launched on the occasion of AFAD’s 17th year as a Federation. A product of the conference on “*Best Practices in Advocating Legislation Against Enforced Disappearances,*” the book chronicles best practices in many of the countries represented in the conference, which went beyond advocating for legislation against enforced disappearances.

The book attempts to share the results of AFAD’s solidarity work at its best. It highlights the strength of the responses of the international community to the global phenomenon of enforced disappearances and the hard-earned fruits that have come to some realization in some regions and which we strive to replicate in our continent, where disappearances continue and where truth and justice remain elusive.

Every best practice is a concrete manifestation of the struggle of memory against forgetting. The evil of enforced disappearance is being equally responded to by the formidable strength of the families of the disappeared, whose role in the fight against this abominable crime is central. Hand in hand with the families is the indispensable support of civil society, as enforced disappearance is a social crime.

Rich experiences were shared that inspired us to continue struggling. The search for the disappeared children in Argentina, El Salvador, Guatemala and the process of knowing their historical identity and their reunification with their biological parents or grandparents was a humanly gratifying experience which is concretely useful in the search for disappeared children of Timor-Leste who were brought to Indonesia during the Indonesian occupation.

The struggle against the dictatorship of Pinochet in Chile, the documentation of every bit and piece of information of human rights violations, the accompaniment of the Catholic and other churches in toppling down the dictatorship, the importance of filing *hábeas corpus* cases, the value of international solidarity and the persevering work to get the various forms of reparation that the victims deserve are worthy of commendation and thus, have to be replicated in the context of the distinct situation of each of the countries where we work. The contradictory role of the Catholic Church in Argentina during the military dictatorship, during which, many of its members were subservient to the dictatorship and contributed to disappearances of people, is worth reflecting on.

In Asian countries with the significant presence of the Catholic Church, such as the Philippines, Timor-Leste and Sri Lanka, a deeper look at the perplexing role of the Catholic Church in both countries of South America is important if AFAD is to sharply formulate its strategies and attain concrete victories – big or small, in realizing its vision for a world without disappeared persons.

The International Convention for the Protection of All Persons from Enforced Disappearance would never have seen the light of day without the complementary role of the families' associations and the legal minds of international NGOs and members and experts of the United Nations.

At the national level, the law criminalizing enforced disappearances in the Philippines and the achievement of a pro-victims policy of recognizing 13 families of the disappeared in Indonesia; the signing of the Convention by Indonesia and Thailand – all these would never have been reached without the joint efforts of families' associations and other civil society organizations.

The grief turned into courage of the families, the human motivation to find their disappeared loved ones, complemented with the support of civil society are extremely important if we are to attain breakthroughs in this long and difficult journey for a world free from the malady of disappearances.

Empowering the families of the disappeared and accompanying them in playing their central role in the whole process of truth, justice, reparation, memory and guarantees of non-recurrence is an imperative so basic but may have been taken for granted by human rights defenders. The families of the disappeared are the subjects and not objects in this whole process of transitional justice, without whose participation, the correctness of our interventions could be jeopardized.

Let this book be one of the documents that can serve as a guiding light as we tread this path of searching for truth, finding justice and laying the groundwork for a better tomorrow – free from enforced disappearances and other forms of human rights violations.

Ms. Mary Aileen D. Bacalso
Secretary-General
Asian Federation Against Involuntary Disappearances

List of Acronyms

AED Bill – Anti-Enforced Disappearance bill
AFAD – Asian Federation Against Involuntary Disappearances
AF – Advocacy Forum (Nepal)
AFP – Armed Forces of the Philippines
AHRC – Asian Human Rights Commission (Hong Kong)
AHRC – Ateneo Human Rights Center (Philippines)
AICHR – ASEAN Intergovernmental Commission on Human Rights
ALDHU – Latin-American Human Rights Association
ALRC – Asian Legal Rights Center
APDP – Association of Parents of Disappeared Persons (Jammu and Kashmir, India)
ASEAN – Association of Southeast Asian Nations
ASC – ASEAN Sexual Orientation and Gender Identity/Expression Caucus
ASSO – Arrest, Search and Seizure Order
Asosiasaun HAK – Association for Law, Human Rights and Justice (Timor-Leste)
CAED – Coalition Against Enforced Disappearance
CAH – Crimes Against Humanity
CAID – Coalition Against Involuntary Disappearance
CED – Committee on Enforced Disappearance (abbrev. UN Committee on Enforced Disappearance)
CELS – *Centro de Estudios Legales y Sociales* -Argentina
CHDF – Civilian Home Defense Force
CHR - Commission on Human Rights (Philippines)
CHED – Commission on Higher Education (Philippines)
CLDH – Center for Human Rights (Lebanon)
CNB – National Search Commission (El Salvador)
CONADI – National Commission for the Right to Identity
CPA – Comprehensive Peace Agreement (Nepal)
CSO – Civil Society Organizations
CVSJ – Conflict Victims’ Society for Justice (Nepal)
Dep ED – Department of Education
DFA – Department of Foreign Affairs (Philippines)
DLSU – De La Salle University (Philippines)
DNA – Deoxyribonucleic acid
DOH – Department of Health (Philippines)
DOJ – Department of Justice (Philippines)
DPRK – Democratic People’s Republic of Korea
DSWD – Department of Social Welfare and Development (Philippines)
EULEX – European Union Rule of Law Mission
FEDEFAM – Latin American Federation of Associations of Relatives of Disappeared-Detainees
FEMED – Euro-Mediterranean Federation against Enforced Disappearance
FIND – Families of Victims of Involuntary Disappearance (Philippines)
FJBM – Free Jonas Burgos Movement (Philippines)
FLAG – Free Legal Assistance Group (Philippines)
FOD – Families of the Disappeared (Sri Lanka)
GRULAC – Latin American and Caribbean Group (United Nations Regional Group)

HIVOS – *Humanistisch Instituut voor Ontwikkelingssamenwerking* (Humanist Institute for Cooperation)

HRC – Human Rights Committee

HRV – Human Rights Violation

HRVV – Human Rights Violations Victims

HURIDOCS – Human Rights Information and Documentation Systems, International

ICC – International Criminal Court

ICCPR – International Covenant on Civil and Political Rights

ICJ – International Commission of Jurists -Southeast Asia

ICAED – International Coalition against Enforced Disappearance

IDD – International Day of the Disappeared

IDP – Internally Displaced Persons

IHRD – International Human Rights Day

IKOHI – Indonesian Association of Families of the Disappeared

INP – Integrated National Police

IPU – Inter-Parliamentary Assembly Union Geneva

IRR – Implementing Rules and Regulations

IWD – International Week of the Disappeared

JPF – Justice for Peace Foundation

KontraS – Commission for the Disappeared and Victims of Violence (Indonesia)

MAG – Medical Action Group (Philippines)

NED – National Endowment for Democracy -USA

NSO – National Statistics Office (Philippines)

OPAPP – Office of the Presidential Adviser on the Peace Process (Philippines)

OSCE – Organization for Security and Cooperation in Europe

PAHRA – Philippine Alliance of Human Rights Advocates

PACE – Parliamentary Assembly of the Council of Europe

PC – Philippine Constabulary

PCICC – Philippine Coalition for the International Criminal Court

PCO – Presidential Commitment Order

PDA – Preventive Detention Action

PHRC – Presidential Human Rights Committee

PCGG – Presidential Commission on Good Government (Philippines)

PICOP 6 – six workers of Paper Industries Corporation of the Philippines who disappeared on 14 October 2000

PLCPD – Philippine Legislators’ Committee on Population and Development Foundation, Inc.

POEA – Philippine Overseas Employment Administration

PhilRights – Philippine Human Rights Information Center

PRRM – Philippine Rural Reconstruction Movement

ROK – Republic of Korea

SAD – *Samahan ng mga Anak ng Desaparecidos* (Association of Children of the Disappeared) (Philippines)

SOBR – Special Rapid Response Unit

SOLIDA – Support of Lebanese Detained Arbitrarily

TESDA – Technical Education and Skills Development Authority (Philippines)

TFDP – Task Force Detainees of the Philippines
TRIAL – Track Impunity Always
TOR – Terms of Reference
UNDP – United Nations Development Program
UNHRC – United Nations Human Rights Council
USSR – Union of Soviet Socialist Republics
UNCED – United Nations Committee on Enforced Disappearances
UNICEF – United Nations Children’s Fund
UN WGEID – United Nations Working Group on Enforced or Involuntary Disappearances
UPR – Universal Periodic Review



PUBLIC EVENT

SPEAKERS



Welcome Message
MS. MARY AILEEN D. BACALSO
Secretary-General, AFAD



Keynote Speech
ATTY. LEAH ARMAMENTO
Undersecretary
Department of Justice-Philippines (DOJ)



Inspirational Message
DR. EDITA BURGOS
Desaparecidos and Free Jonas Burgos Move-
ment

The Landscape of Enforced Disappearance in Asia, Latin America and some parts of Europe



Asia

MR. MUGIYANTO
Chairperson, AFAD
IKOHI



Latin
America

ATTY. ROBERTO GARRETÓN
Former Member, UN Working Group
on Arbitrary Detention



Europe

DR. IRINA KRASOVSKAYA
We Remember Civil Initiative- Belarus



Open Forum



Welcome Message

MS. MARY AILEEN D. BACALSO

Secretary-General, AFAD

Department of Justice Undersecretary Leah Armamento, members of the diplomatic community from Chile, Argentina, Canada, Timor-Leste, Guatemala, and the European Union; our colleagues in civil society, conference participants, honored guests, families of the disappeared, friends, ladies, and gentlemen –

On 21 December 2012, the Anti-Enforced Disappearance Law was signed by the president amidst fears that the bill would lapse into a law without the president signing it. Nevertheless, President Benigno Aquino III signed the Philippine Anti-Enforced Disappearance Act of 2012 a few days before Christmas. The RA 10353, the now anti-disappearance law is the first anti-involuntary disappearance law in Asia, a region where enforced disappearances continue to be committed and where a huge number of cases has been and continue to be submitted to the UN Working Group on Enforced or Involuntary Disappearances.

This planned conference on sharing of best practices in advocating legislation against enforced disappearances first came about shortly after the euphoria of having the anti-

disappearance law and sharing this with other members of the Asian Federation Against Involuntary Disappearances. After all, it is worthy to share the 16 years of lobbying of families of the disappeared and human rights NGOs to many Asian countries where disappearances occur in huge numbers and where governments are repressive.

We then discussed the idea of this conference and expanded the sharing of experiences with other regions of the world. The success stories we heard from Latin America in finding disappeared children and reuniting them with their biological parents through DNA matching, the prosecution of perpetrators in a number of their countries, the need to achieve universal ratification of the UN Convention on Enforced Disappearances and most importantly the continuing phenomenon of enforced disappearances in Asia and many parts of the world; the intense persecution of human rights defenders and the existence of impunity – all these have encouraged us to convene a conference of this kind that would bring together practitioners and experts in the field of human rights, focusing on enforced disappearances. With the support of the National Endowment for Democracy, whose representative, Ms. Samlanchith Chanthavong is here with us today, this conference is made possible. HIVOS of the Netherlands contributed to making the presence of our Argentinean and Salvadoran guests possible.

As we open this conference, we thank our participants who came all the way from many parts of the world – from other parts of Asia, Europe, Latin America and the Euro Mediterranean region for having travelled from their countries to be in solidarity with us here in the Philippines and in Asia in this common fight against this scourge of enforced disappearances. Unfortunately, however, our participants from Kosovo and Algeria could not come for visa reasons. We hope that the rest of the expected participants who are late for one reason or another will be able to make it. Nevertheless, the composition of this conference is varied and the richness of the participants' experience and expertise will certainly go a long way towards the realization of the conference objectives. Let us make this inter-change of experiences of best practices contribute, in no small measure, to the attainment of our vision for a world without disappeared people. After all, as partners in attaining this vision, we are one in the same pain, in the same struggle and in the same victory in realizing our dream that no mother or father, brother or sister, son or daughter will ask the same question: "Where are you?"

Without much ado, in the name of the Asian Federation Against Involuntary Disappearances and in the name of all the disappeared, who are the very reason of our being here, let me welcome you all to Sharing of Best Practices in Advocating Legislation Against Enforced Disappearances – An Inter-Regional Conference.

•••••



Keynote

Speech

ATTY. LEAH TANODRA-ARMAMENTO

Undersecretary
Department of Justice-Philippines (DOJ)

The host of this Conference, Asian Federation Against Involuntary Disappearances or AFAD, the National Endowment for Democracy, HIVOS, the Diplomatic Corps, fellow workers in the government, distinguished guests, ladies and gentlemen, good morning!

At the outset, I wish to convey the warmest felicitations of the Justice Secretary Leila M. De Lima, who wishes to personally grace this important event if not for her previous commitments. Due to our busy schedule in the Department of Justice, we had to rearrange appointments for us to be able to attend this very important gathering of people to whom society owes a lot! It is due to your tenacity and patience that we have reached this level of protection for our human rights.

I am just a babe in the woods compared to your experience of advocating and even fighting for the protection of human rights especially against involuntary disappearance, not only in this country but even more in the international arena. I am in no position to speak for, and on your behalf, when it comes to your journey, your pain, your loss or your feeling of helplessness on behalf of your disappeared loved ones.

My initial experience on human rights issue was when I was a young lawyer. Friends called for help because their relatives had been the subject of a warrantless arrest. My being a prosecutor then came in handy in having them released from detention. Of course, my husband being a lawyer at that time of the Free Legal Assistance Group (FLAG) was very helpful.

My full time work on human rights, started when I was promoted as Undersecretary of Justice in August 2010. Secretary De Lima assigned me to human rights and social issues. When Republic Act No. 10353, the Anti-Enforced or Involuntary Disappearance Act of 2012 was enacted, I was assigned to Chair the working group that would craft its Implementing Rules and Regulations (IRR) together with, among others, the Families of Victims of Involuntary Disappearance (FIND) chaired by Ma'am Nilda Sevilla and *Desaparecidos* or Family of *Desaparecidos* for Justice represented by its Secretary-General Lorena Santos. We had a very fruitful collaboration and we beat the deadline of thirty (30) days imposed by law finalizing the IRR in twenty-seven (27) days, a record time in Philippine history so far.

This was my first collaboration with human rights advocates and it was a very good experience. Our exchange of views may be diverse considering that we have invited the state security forces but we listened to each other. We respected each other's view, were very courteous, and tried to understand what each was saying and trying to say. In fact, the security forces were very helpful and walked us through the nuances in their Department. FLAG volunteered and Atty. Glenda Bitong ably shared her legal insights with us.

It was during this engagement that we came to know that the passage of this law was not an easy task. It took almost two decades of legislative crusade by the victims, their families and friends, and supportive advocates. It is but fitting that we credit you with this trail blazing act of criminalizing enforced disappearance, which provided for a capital penalty of *reclusion perpetua* or thirty (30) years of imprisonment. WE SALUTE YOU, SIRS AND MADAMS!

Indeed, this is no mean feat, considering that we had been through the dark years of Martial Law where enforced or involuntary disappearance became a norm. Day in and day out, someone we knew or is known to someone we knew, was the subject of Arrest, Search and Seizure Order (ASSO) issued by the Executive branch of the government. It was a nightmare! You ended up either forever disappeared or "salvaged" because your body had been found. Those who looked for the disappeared became the subject of ASSO, as well!

Thus, when People Power put an end to this era of state-sanctioned lawlessness, WE, then realized, that as a people we can make a difference; we can make our government work for our common good – and the government responded.

With the constant engagement of the non-government organizations and civil society with our government, we were able to put several structures in place, to make sure that abuses of the past will not be repeated...NEVER AGAIN.

To name a few, we have:

- the independent Constitutional body, the Commission on Human Rights chaired by former Congresswoman Loretta Ann Rosales whom we fondly call "Ma'am Etta," also a victim of human rights violation

- the Philippine Human Rights Committee headed by the Executive Secretary under the Executive branch of the government which monitors our human rights performance and regularly submits a report to the United Nations body on the occasion of the Universal Periodic Review
- Administrative Order No. 35, which established an inter-agency committee focused on the investigation and prosecution of enforced disappearances, extra-judicial killing, among others
- the Judiciary, not to be left behind, provides for remedies under its rules namely, the *writ of amparo, hábeas data, hábeas corpus*, among others

As a feather in our cap, against human rights violations and violators, we bannered the recent arrest of retired Army Major General Jovito Palparan, Jr. who was identified by a survivor of enforced disappearance as the perpetrator in the disappearance of Sherlyn Cadapan and Karen Empeno. We know that his arrest is not a finished task. This is just a start of a long and arduous judicial battle. The prosecution has to beef up its evidence to secure a conviction. I say, we have to be vigilant!

Our work as human rights advocates is in the CONTINUUM. It will never be completed.

There will always be threats and we will always be on guard. Our government cannot do it alone, even if we are committed. WE WILL ALWAYS BE COUNTING ON YOU to make these rights real!

Thank you.

.....



Inspirational Message

I Offer My Voice, a Hug and a Tear: A Widow's Mite

DR. EDITA BURGOS

Desaparecidos and Free Jonas Burgos Movement

Background: The husband of Edita Burgos, a publisher of an opposition newspaper Malaya was incarcerated during the Martial Law years. Consequently, he was awarded as a human rights champion. Later, her son Jonas, who was an activist, was abducted at the Ever Gotesco Mall in broad daylight. In some way, he has become the poster boy for all disappeared victims. His mother, Edita has also become the symbol of all those who search, seemingly in vain for their loved ones. Edita is a retired professor and used the media and every form of communication tirelessly to symbolize her anguish for her son and all desaparecidos.

Good Morning!

We will never be short of 'living' heroes from whom we can draw inspiration especially from this kind of vocation to which we have dedicated our lives. In the past seven years, as I searched for my son, Jonas Joseph Burgos, abducted on 28 April 2007, one of the truths

I have discovered which has been affirmed time and time again, is that even in the most painful and dangerous and treacherous circumstance, people do rise up and selflessly give themselves for others.

There are two reactions, which I have observed to human rights violations and abuses, especially if you are a victim. The first is a very natural reaction – fear, paralysis, silence, and/or escape. The second is not so common – courage accompanied by catalysis to action.

Allow me to share the stories of these women from different Asian countries:

Shui Meng, Laos

In a recent AFAD conference in Manila, I had the good fortune of meeting Ms. Shui Meng, wife of Sombath Somphone, a victim of enforced disappearance. Sombath was a Ramon Magsaysay Awardee, respected, even revered in his country, Laos. Something beautiful Shui Meng shared about Sombath struck me – her husband's doctrine of Gross National Happiness. To me, this connotes that the well-being of each individual should be foremost in the priorities of a country. Shui Meng, kind-hearted, generous and gentle, a UNICEF worker who devoted the best years of her life to help children, now lives only for one thing: "to get her husband, Sombath, back alive and safe." A Singaporean married to a Laotian who has resided in Laos where Sombath was abducted more than 21 months ago, she continues to remain in the country even if it must be difficult. Without children, memories of Sombath must hound her in every corner of their beautiful house.

I wondered silently why she continued to stay in Laos, the fact that as a Singaporean, she could move to Singapore and be far from the unspoken threat from the government of Laos.

I did not have to ask her why. She was taking an active hand in the search (one does not look for a lost object outside one's house simply because the light is brighter there).

When I asked her if she feared that they would harm her, she answered: "What else can they do to me? They already took the one thing that mattered to me... my very reason for being. That is the worst thing that they can do, the worst thing which they already did..."

Today you hear her voice firm with conviction, reminding us that Sombath is still missing after 21 months and reminding his abductors to return Sombath, alive and well.

Shui Meng would not have been as courageous and tenacious in her appeal, if Sombath were not taken away from her.

In the short four days that we were able to exchange stories as roommates, it was easy to conclude that Shui Meng, whether she finds Sombath or not (God forbid), will be committed to the cause of human rights, a strength drawn from her love for Sombath and which benefits all human rights violations victims.

Ding Zilin, China

Another source of inspiration is Ding Zilin of China. Amidst the repression of a communist government, intent on muzzling the voices of its people, The Tiananmen Mothers Network

was born. At first, the Tiananmen Mothers hesitated to speak about the human rights violations in 1989 but another mother, Ding Zilin, whose 17 year old son, Jiang Jelan was killed in the massacre led the group to break their silence and tell the world. Ding witnessed her son beaten by the police, stripped, then pushed into a van and taken away. Nature has created a mother to protect her young. You can imagine the rage within as Ms. Zilin watched in horror but could not help and protect her son. For Ms. Ding Zilin, a mother's grief was transformed into courage and now expresses itself in her advocacy and activism. Her voice rings out loud: *I appeal for more attention to the fate of the June 4th missing persons...whose whereabouts are unknown and whose families have tried every means to find their missing loved ones and waited long for their return. All efforts, however, remain in vain. These June 4th missing persons... [were] also innocent victims of the bloody tragedy except that their fate was more sorrowful...and that their families experience greater agony and anguish* (Ding, 2004).”

Aasia Jeelani, Jammu and Kashmir

Aasia Jeelani is another courageous voice from a young and dedicated martyr. Writing a stirring and enlightening article about what it is like to be a wife of a victim of enforced disappearance in Kashmir, Aasia successfully explained to non-Kashmiris the tragic consequences of being a half widow. Sadly, Aasia was killed in a landmine explosion while monitoring elections on 24 April 2004.

Still in India, amidst repression and threats, Members of the Association of Parents of Disappeared Persons, consisting of mainly women and children (the men having been targeted and disappeared) continue mounting activities with the main goal of finding their missing loved ones. The initiative of the Public Commission on Human Rights, a constituent of Jammu Kashmir Coalition of Civil society, in the establishment of The People's Tribunal and its successful launching in 2008 speak of the brave souls among the conveners, lawyers, professionals, activists who speak of their share of harassment. Atty. Parvez Imroz, a main convener, was visited by armed men in his house but they failed to get him when he refused to open the door.

Do we not see persistence, courage, and hope in these actions?

Just recently, the Secretary-General of AFAD and focal person of ICAED, Aileen Bacalso, herself, was refused entry to India. She was detained at the airport for hours and sent back to the Philippines without providing her with any reason why she was sent back. It is easy to surmise that AFAD is doing its job and is effective, and the Indian government is now getting hurt.

Angkhana Neelapaijit, Thailand

Just as frail looking and refined as Shui Meng, is Angkhana Neelapaijit. I met her at the same conference where I met Shui Meng. Angkhana's husband, Somchai Neelapaijit, a prominent human rights lawyer, then chairman of Thailand's Muslim Lawyers Association and a vice-chairman of the Human Rights Committee of the Lawyers' Council of Thailand, was disappeared at a time when he was representing 5 persons accused of rebellion. Somchai alleged that the confession of his clients was extracted from them while they were being tortured, thus turning the tables against the police. The next day, he was disappeared.

Angkhana is now the Chairperson of the Justice for Peace Foundation. Her voice is heard clearly, *“I want the government to show concern for everyone and address this matter seriously. Our family members should not be forced in disappearance without accountability from the government (Neelaphaijit, 2008).”*

At that time when I saw her, she was more concerned about the wife of another victim of enforced disappearance in Thailand, who needed help because this woman had very young children and with the disappearance of her husband, had no visible means of support. Her generous heart embracing all other victims enhanced because her own husband was abducted.

Shui Meng of Laos, Ding Zilin of China, Aasia Jeelani of Jammu Kashmir, Angkhana Neelapaijit of Thailand and hundreds of others exhibit a common thread in their lives – their loved ones were abducted, disappeared, or are victims of human rights violations. They react with courage by harnessing their outrage, grief, and pain and transforming these into involvement in defending other victims and pursuing justice and peace.

I wonder, does the government not know that for every fallen victim, a hundred converts will replace him? Imagine my son Jonas was only one person but now after his abduction, the whole family, nay, clan numbering not less than 100 and our friends and companions in our various advocacies are all involved with us in our cause. This is not the way to win the hearts of the people. The government should realize this.

Transformation

It is amazing how, an injustice whether this be an extrajudicial killing, an enforced disappearance or torture gives birth to people who would have otherwise lived a different life to take up the cudgels for the killed, disappeared and the tortured.

There is something in a disappearance, an extra-judicial execution, or any kind of human rights violation that spurs a victim not only to seek justice for herself or her loved one but to see the human rights violation in a broader perspective. This perspective in turn sensitizes those who are ‘left behind’ to see the plight of other such victims and to extend a helping hand.

Jonas – My experience

It is not only from what I have observed among victims, relatives and advocates that makes me speak with confidence but also from my own experience in my personal journey.

When Jonas was abducted, I did not know where to start, what to do, how to go about looking for him. Only one thing alone was sure – I had to look for him. This certainty is still the dominant urging force that keeps me going. However, much things have changed.

Like the other victims I have cited, the Burgos family too is blessed with people who have the courage to remain faithful. Among these, first and foremost, is our lawyer who not only provides his services for free but also digs into his pocket when he senses that there is an urgent need to help. It is a great help that our lawyer is fanatical about the truth. His main goal is to find the truth. He and many other friends have extended themselves and this has brought hope during difficult moments.

Like these friends, your presence for each other would not only give each other a sense of security or a feeling of solidarity but would in fact empower the victims and the defenders to speak out from a higher moral ground. This would enable them to confront the perpetrators and stand their ground.

This conference that brings together representatives from various countries with unique experiences particular to each one's circumstance, culture and case, is one great source of optimism for us all.

You who are the voices of the silenced. I thank you for heeding Martin Luther King's advice that "*in the end, we will remember not the words of our enemies, but the silence of our friends.*"

We will always be dissatisfied. We will always be searching for that something that would make our hearts rest but somehow, that something we are searching for will be illusive. I found a more reflective understanding from Francis Thompson: "*I have searched for my soul, and I have not been able to see it. I have searched for my God, and he has escaped me. I have searched for my brother, and I have found all three.*"

We are not here by accident or coincidence. I believe we are here for a reason. I pray that the reason is that we would be instruments for a divine intervention for others.

This widow's mite is all that I can offer yet it is asked of me, so I offer it – my voice, a hug, a tear. I embrace you all, victims, advocates, human right defenders and I am proud to stand side by side with you in our quest for justice, peace, and love.

Thank you.

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A man with dark hair, wearing a pink and brown batik shirt and a yellow lanyard, is speaking into a silver microphone. He is shown in profile, facing left. The background is slightly blurred, showing what appears to be an indoor setting with a framed picture on the wall.

ASIA

The Situation of Enforced Disappearances in Asia and the Work of AFAD

MR. MUGIYANTO

Chairperson, AFAD
Chairperson, IKOHI

Good morning, everyone. It is a pleasure to stand here and share the situation of Asia and the work of AFAD. Today is a special day because IKOHI celebrates its 16th anniversary. IKOHI is a member organization of AFAD in Indonesia, which we founded after I resurfaced from disappearance and after the fall of Suharto's dictatorship in Indonesia.

I want to thank Dr. Edita Burgos, one of my inspirations to continue this struggle. She shared with us the effects of enforced disappearances in some parts of Asia. The fact that she is one of the women who bravely takes the front line to struggle against forced disappearances is indeed inspiring. In Latin America, this is also the situation; the associations of families of the disappeared are inspired and led by women.

Today in Indonesia, we have institutionalized the Thursday Afternoon Rally. Together with the families of the disappeared, we rally from 4-5 p.m. every Thursday in front of the Independence Palace (Presidential Palace of Indonesia). This Thursday afternoons will go on for weeks and even for years.

According to the UN Working Group on Enforced or Involuntary Disappearances (UN WGEID), Asia has submitted the highest number of cases of enforced disappearances. The crimes of forced disappearances are occurring in countries where AFAD has established its work and membership. These countries are Bangladesh, (Kashmir) India, Indonesia, Nepal, South Korea, Sri Lanka, Thailand, Timor-Leste and the Philippines. It is unfortunate that involuntary disappearances continue to occur in democratic countries such as of Indonesia and the Philippines.

Some of the high profile cases of forced disappearances in Asia:

1. disappearance of human rights lawyer Somchai Neelapaijit in Thailand (2004);
2. assassination of AFAD's former Chairperson Munir (2004). He was killed because of his work against forced disappearances in Indonesia. In addition, he was active in the negotiation for the ratification of Convention Against Disappearances at the UN level;
3. disappearance of activist Jonas Burgos in the Philippines (2007); and
4. disappearance of Sombath Somphone in Lao PDR (2012).

Reprisals and Harassment against AFAD Member-Organizations

Some of the AFAD member organizations, families of the disappeared and human rights advocates working on the issue of forced disappearances have been experiencing a series of harassments from the security forces of the government. Including the following cases:

1. arrest and repression of Odhikar leaders and members in Bangladesh such as the arrest and detention of Adilur Rahman Khan
2. harassment of APDP in Kashmir; one of its leaders was not given a permit to travel because of his involvement in the campaign against involuntary disappearances
3. banning of AFAD's Secretary-General, Mary Aileen Diez-Bacalso in India. She was denied entry to the country.
4. harassment of human rights defenders in Sri Lanka. Few days back, one of the officers of Families of the Disappeared (FOD) was excluded in the conference in Thailand because the Sri Lankan Government pressured the organizers to revoke their invitation to FoD.

Asia and the International Convention for the Protection of All Persons from Enforced Disappearance

There is a lack of security for human rights defenders who work against enforced disappearances in Asia. This is the region with the least number of ratifications. The Asian states parties to the Convention are Iraq, Japan, Kazakhstan, and Cambodia while the signatories are India, Thailand, Indonesia, Armenia, Azerbaijan, Cyprus, Lao PDR, Mongolia, and Thailand.

Thailand was in the process of ratification but its political instability disrupted the process. Today, activists in Thailand are vulnerable to human rights abuses. Generally in Asia, it is difficult to protect people from involuntary disappearances because most Asian governments have no legal framework or law that codifies disappearance as a crime.

In 2012, the Philippines endorsed the domestic law against enforced disappearance. It makes the Philippines the only country in Asia with a national legislation and Implementing Rules and Regulations against this crime. However, the Philippines is not yet a state party, it has yet to sign and ratify the Convention. The arrest of Major General Jovito Palparan, Jr. who is alleged of committing enforced disappearances and other crimes against human rights is a promising development.

Lao PDR is a signatory but it has not extended serious efforts to resolve the disappearance of Sombath Somphone, a recipient of international awards for his development work in Lao's countryside.

In 2013, Cambodia ratified the Convention, but this is not attributed to the work of AFAD as the federation has no member or active campaign in the country.

With the new government in Indonesia, AFAD is looking forward to the country's ratification. Although Indonesia is a party to the Rome Statute of the International Criminal Court, this instrument can only deal with enforced disappearance if it is committed in a widespread and systematic manner or if it is categorized as a crime against humanity, hence, it does not deal with individual cases. Indonesia was supposed to ratify in 2013 with the support of the former President Susilo Bambang Yudhoyono but the political parties in Parliament refused to cooperate. These uncooperative political parties in the Parliament belong to the military and the security force is not in favor of ratification because of the crimes they perpetrated in the past.

It is necessary to establish a bilateral body for Indonesia and Timor-Leste (Commission on Enforced Disappearances) to work on the cases of enforced disappearances in these two countries. The Indonesia-Timor-Leste Commission on Truth and Friendship recommended this. This proposed Commission on Enforced Disappearance must first prioritize the search of the children from Timor-Leste taken by the army during the war. Their whereabouts must be established. These disappeared children must be found and reunited with their remaining families. We have discussed this with friends from Latin America and they are supportive of the plan. Some organizations in Latin America are actively working on the search and reunification of the disappeared children. In Indonesia, we have hot spots for human rights violations such as the Provinces of Papua and Aceh. The human rights workers and members of the media are subjected to constant harassment and recently a human rights lawyer was attacked in Papua.

Our members in Nepal, the Advocacy Forum (AF) and Conflict Victims' Society for Justice (CVSJ) are working to make certain that their Truth Commission will comply with the international standards and assist the victims and their families.

In Asia, we have a regional instrument that centers on human rights issues, which is the ASEAN Intergovernmental Commission on Human Rights (AICHR). However, it is not

resolute enough in dealing with enforced disappearances in the region. AICHR needs more training for the body to implement a legal framework that will address the disappearances in Asia. Asia needs a reliable mechanism that is committed in dealing with the human rights violations in the region. We have good models such as the Inter-American Commission on Human Rights and Inter-American Court of Human Rights in Latin America and the European Commission of Human Rights and European Court of Human Rights in Europe.

There is much to do in Asia. Argentina has good examples of litigation. These days, members of the military junta are prosecuted for carrying enforced disappearances and other excesses during the Dirty War. This is a good example that must also be achieved by the Asian region.

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LATIN

AMERICA

Current Status of Enforced Disappearances in Latin America

ATTY. ROBERTO GARRETÓN

Former Member of the UN Working Group on Arbitrary Detention

Thank you for the opportunity to be here. It is a pleasure that I am given the chance to share with you the current situation in Latin America.

The disappearance of persons arrested or abducted by state agents due to political beliefs or activities was initially implemented in Latin America by the Brazilian dictatorship between 1964 and 1985. But it was during the military *coup* in Chile and the installation of a dictatorship from 1973 to 1990 that it was established as a genuine state policy aimed at the physical elimination of opponents. It was followed with even more violence during the dictatorship of Argentina from 1976 to 1983.

In the 1980s, it spread to many other countries in the region:

- Honduras between 1979 and 1982, about 200 disappeared-detainees, particularly since 1982 when civil inspired governed through military dictatorships under the doctrine of national security against subversion

- Bolivia recorded 150 disappeared prisoners in the various dictatorships between 1964 and 1982.
- Brazil, between 1964 and 1985, 475 victims disappeared
- Uruguay, between 1973 and 1985, 152 victims disappeared
- Peru with about 16,000 disappeared between 1980 and 2001, along with periods of democratic governments and the fierce dictatorship of Fujimori

The situation of enforced disappearance in Latin America ended when General Pinochet was indicted by a magistrate in Spain. That was a promise that impunity will also end. Few days after the indictment was made, Pinochet was arrested in London for the human rights violations he committed in Chile even if he was not exactly convicted. He died while under house arrest and at the same time as the prosecution of his cases was taking place. Other similar developments took place such as the death of the Uruguayan dictator Juan María Bordaberry. He died in his home while serving his sentence for committing murder. Peruvian dictator Fujimori was sentenced to 25 years for perpetrating human rights violations in Peru.

These are good news but in Central America impunity is still alive as in the past. The churches, the lawyers, and the defenders of human rights have not stopped in their struggles. There are new cases of enforced disappearance, these may not be that many but forced disappearance still exists.

Impunity as such is bad news. In Mexico and Central America, there are new cases of enforced disappearances committed by drug dealers and criminal organizations that prey on migrants who are looking for their promised land – the United States of America. When they travel across Central America, thousands of them are killed or enforcedly disappeared. These crimes are not directly carried out by the state but the governments are turning a blind eye to them. They are not doing anything to stop the killings and disappearances so they, too, are culprits. The states are responsible because they cannot evade their responsibilities to protect the civilians against being victimized by these crimes. The states are obligated to exercise responsibility to ascertain that criminals do not go scot-free.

Enforced disappearance is a criminal act and has elements which are always present:

1. The very act of abducting someone, without attributing to him, crime is filed and no legal bases are presented. We do not have any information about the person after the abduction.
2. Another element is lie and deceit, there is always a lie or series of lies. Those responsible will give reasons, “we did not detain this person,” “no one is detained here,” “he is hiding with other terrorists,” “his comrades might have killed him.”

What must we do and how do we do our tasks?

We only have one working tool and they have the whole arsenal, the whole state protecting them. The state controls the media but we have the truth. The ultimate soul is the truth. We do not have weapons, we do not lie, it is against our nature. The moment we lie, we have lost

our ascendancy, our credibility. That is what we have, we fight for the truth, and we fight against the police, the army, the navy, against the corrupt media. All we can hold on to is the truth. We have the valor and the courage against the cowards, but they have an army of cowardice, full of lies but we choose to continue with our struggle. We cannot quit.

As for me, I have not accepted a case for many years because I am working full time for human rights. This is a commitment; this is a passion. We work because we believe in the legitimacy of our struggle. We never lie and we never insult; we always rely on the law that we have. Even if we are confronted with challenges, we want change to take place and we always work within the boundaries of legality.

We must observe legality even if we face powerful opponents. There are positive developments in the southern part of Latin America; we have advanced the cases. Thousands of cases in Chile and Argentina are gradually resolved. Hundreds of military men are detained these days due to their crimes of committing enforced disappearances. We have never resorted to committing violence, we do our struggle because we are equipped with the truth, this is what makes a difference and this is what I want to share with you.

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EUROPE

Regional Situation on Enforced Disappearances in Europe

DR. IRINA KRASOVSKAYA
We Remember Civil Initiative-Belarus

Dear friends, I am very happy to be back in Manila again. I am happy to see my friends from the Philippines, Indonesia, Nepal, Chile, Argentina, Kashmir, El Salvador, and Guatemala and from many other places where disappearances have occurred in the past or continue until the present. It is a privilege to be among people who understand what disappearance is and how important unity and solidarity are in searching for truth and justice.

Enforced disappearances are not only a phenomena of Asia or Latin America. They have occurred in the past and are still happening in Europe. In Spain, the Balkans, in the Euro-Mediterranean region, and throughout the post-Soviet countries – we still have thousands of unsolved cases of disappearances.

There are very tragic parts of Europe where the disappearances in post Yugoslav countries during the Balkan wars are occurring. I am from another European region called post-Soviet countries. I am from Belarus, a country situated between Russia and Poland and which like other countries was a part of the Union of Soviet Socialist Republics (USSR).

Like other countries in this region, Belarus became independent after the disintegration of Soviet Union in 1991. Fifteen countries became independent but the problems that prompt disappearances did not vanish with the collapse of the Soviet Union. Ethnic and territorial conflicts, wars of aggression, and of course, undemocratic governments have all contributed to the continuation of disappearances.

In Russia there are thousands of disappeared in the republics of Ingushetia, Dagestan and Chechnya.

In Chechnya, human rights groups estimate that between 3,000 and 5,000 people have “disappeared” since the beginning of the conflict in 1999. Most of them are believed to be buried in several dozen mass graves. All of these people were civilians and unarmed when taken into custody.

In Ingushetia, my friend Magomed Mutsolgov set up his own human rights organization, Mashr (Peace) when his brother disappeared, and over the last few years has collected information about more than 230 cases of abduction and enforced disappearance, which have occurred since 2002. From his information, more than 7,000 people disappeared in South Caucuses since 1992.

In Dagestan, numerous young men were abducted between the late 1990s and now. A growing number of disappearances have raised concerns among human rights groups. The Russian Human Rights organization, Memorial, reported that instances of enforced disappearances, presumably linked to Russia’s efforts to improve security before the 2014 Sochi Winter Olympics, have increased since January 2013. Between January and October 2013, men in unmarked cars abducted fifty-eight people in Dagestan, 19 of whom have yet to resurface.

Ukraine is another country that concerns us due to its growing number of abductions and disappearances since the current conflict started in February 2014. Until this year, there was only the case of journalist Georgy Gongadse who disappeared in 2000. The new Ukrainian government tried to solve the case and the perpetrators were arrested but those who ordered the killing of the journalist is still unknown. Now in Ukraine, there are hundreds of victims. There is no exact information about disappeared people but in the report of the Office of High Commissioner, 717 military and civilians were reportedly abducted by paramilitary groups in East Ukraine in the span of four months this summer according to information from the Ministry of Interior of Ukraine. Everyone hopes that those people are still alive and will be released as soon as the conflict recedes.

I would also like to mention another post-soviet country, Turkmenistan (which is in the Asian part of the former Soviet Union). Dozens of former officials have been forcibly disappeared there, some for more than a decade. Most of the disappeared were sentenced to lengthy prison terms in several massive waves of arrests and unfair trials on trumped-up charges that took place at the end of the 1990s and early 2000s. In many cases, their families have never been able to learn anything about them from the government.

Many families of the disappeared simply do not know whether their loved ones are dead or alive. I met with the son of Boris Shikhmuradov, former ambassador and Minister of Foreign

Affairs who was sentenced to 25 years after a one-day trial in December 2002 and a few days later convicted to a life sentence through an extrajudicial decision of the National Council. Families of the disappeared have had no official information about the fate, whereabouts, or health of their loved ones since their arrest and trial. The authorities have allowed neither correspondence nor visits. In several cases, in a form of collective punishment, the authorities have arrested the relatives of the prisoners, had them fired from jobs, confiscated their property, or denied them permission to travel abroad.

Disappearances also occurred in the South Caucasus countries of Armenia, Azerbaijan, and Georgia. Again, this can be attributed to different conflicts: ethnic, territorial or war.

In Belarus we have a different situation. All disappearances have occurred because of the dictator's fear of losing power. The illegitimate president of Belarus has already been in power for 20 years even though the Constitution allows the President only two terms. This explains why there are political disappearances in Belarus.

All of these political disappearances happened just before the second presidential election. The election of 2001 became the turning point for democracy in Belarus. The political killings turned out to be the first step in establishing a dictatorship. Kidnapping and killing the most powerful politicians allowed the President to monopolize power and to turn what was a promising Belarus into the last dictatorship in Europe. If disappeared politicians were alive today, we would be living in a completely different Belarus.

One of the disappeared in Belarus was my husband. That was neither the first political disappearance in Belarus nor the last one. On 7 May 1999 Yuri Zakharenko, General and former Interior Minister, leader of opposition Unit of officers, was kidnapped while going home after parking his car. On 16 September, Victor Gonchar, former Vice Speaker of Parliament, former Chairman of Central election committee, and my husband Anatoly Krasovsky, a businessman who financed the opposition, were blocked in their car and taken away by unknown people. On 7 July 2000, Dmitry Zavadsky, a journalist and former private camera man of Belarusian president was kidnapped on his way to the airport.

For fifteen years, we have been trying to find the truth. In Belarus, legal instruments for justice in cases of enforced disappearances cannot be successful because there is no political will to solve those cases. The same people who are suspected in organizing the crime are still in power. The President's orders have more power than law. The main suspect in orchestrating this crime and a close ally of the President was appointed as the Head of Administration of the President after being a Prosecutor General. Then he was promoted to Secretary of Security Council of Belarus, then the Head of the Department of Presidential Affairs. The same people are in power for 20 years.

Anyway, with the help of our lawyers, we tried to use legal procedures inside the country. We sent hundreds and hundreds of requests, demands, and questions to the investigators and their supervisors. We received responses to all our papers but officials rejected our petitions, which were aimed to bring to life our procedural rights (including the criminal prosecution of the suspects) without any grounds. They did not carry out any of the investigation that we asked for in our petitions.

Today the Investigation Committee of Belarus finds new tactics, which allow them not to share any information about the investigation. Every three months, they send relatives a short letter saying that the period of investigations has been prolonged again for another three months. It means that by the law, they can hide behind the secrecy of investigation. This has been already going on for 15 years. The authorities in Belarus probably are waiting for the 15-year statute of limitations under Belarusian Law to close the case.

Some chance for justice might come from the UN Human Rights Committee but again not for Belarus. My daughter and I won the case against Belarus in the UN Human Rights Council, established under the International Covenant on Civil and Political Rights (ICCPR). In April 2012, the Human Rights Committee concluded that Belarus had violated its obligation to investigate properly and take appropriate remedial action regarding Mr. Krasovsky's disappearance (violations of Article 2, Paragraph 3, read in conjunction with Articles 6 and 7 of the Covenant.) HRC requested Belarus to provide the victims with an effective remedy, which should include a thorough and diligent investigation of the facts, the prosecution and punishment of the perpetrators, adequate information about the results of its inquiries, and adequate compensation to the authors. The State party should also take measures to ensure that such violations do not recur in the future.

The Belarus response was that *"... under the Optional Protocol, the states parties have no obligations on the recognition of the Committee's rules of procedure and its interpretation of the Protocol's provisions, which could only be efficient when done in accordance with Vienna Convention on the Law Treaties (1969)..."* This means that not a single judgment of UN Human Rights Council under International Covenant on Civil and Political Rights (ICCPR) has been won by citizens against Belarus.

Citizens of Russia have a better chance for justice in cases of disappearances. The European Court of Human Rights, which was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights has regularly found the Russian government guilty of violating the right to life and the prohibition of torture with respect to civilians who had died or been forcibly disappeared at the hands of Russia's federal troops during the course of the conflict in the Northern Caucasus.

Russia, Belarus, and Turkmenistan all have one thing in common – they did not sign and ratify the Convention for the Protection of All Persons from Enforced Disappearance.

Today is a very sad day of my life. My husband disappeared 15 years ago on September 16th. It is unlikely to believe that this can happen in the 21st century at the center of Europe but it happened to my husband, and it happened to me. It is already fifteen years of searching for truth and justice for my husband, my family, and myself. This maybe a short period in world history but is a huge and intolerable time for families; every day we pass from hope to despair. Every day is filled with emptiness, sadness and grief.

I do not want anybody else to experience this. This is why our organization of families of disappeared in Belarus which we call WE REMEMBER is working hard as a member of ICAED to call on all countries to sign and ratify the Convention on Enforced Disappearances. We all have to make greater efforts to achieve our common goal: to see a world without disappearances.

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OPEN FORUM

Mr. Antoine Gouzee de Harven (Representative of the European Union Delegation)

Thank you very much for this discussion. We know for a fact that Major General Palparan was arrested on charges of illegal detention and kidnapping. These are important advancements including the passage of the national law on enforced disappearance. The Philippine law is a strong signal to address forced disappearances in the country. This is more important than an ordinary law. I am wondering if there are cases filed under this law, we are interested in this development.

Another question – how about the Inter-Agency Committee¹ on Enforced Disappearance and other Human Rights Violations? We haven't heard any progress of late. We are interested, how the cases on human rights violations are being addressed?

¹ Administrative Order Number 35, of the Republic of the Philippines created the Inter-agency Committee on extra-legal killings, enforced disappearances, torture and other grave violations of the rights to life, liberty and security of persons (reference: <http://www.pcoo.gov.ph/issuances/issuances-ao/AO-35.pdf>)

Atty. Milagros Cristobal (Moderator-Philippines)

The crimes perpetrated by General Palparan were committed before the domestic law on enforced disappearance came into force. There are efforts to gather enough evidence and the problem is on finding the witnesses willingness to stand and support the complaints before the courts.

Ms. Nilda Lagman-Sevilla (FIND-Philippines)

But none yet. The existing cases filed are kidnapping and serious illegal detention, but not yet on case of enforced disappearance. The law is good only if implemented, but it requires sufficient training for implementers. What we do is conduct round table discussions with prosecutors and visit the military camps to orient the military officers, men and women in uniform, about human rights in general and in protecting the people from enforced disappearances. The anti-enforced disappearance law in the country is comprehensive. It does not only impose criminal, civil and administrative sanctions, it has preventive and reparative measures.

With respect to reparation, one of the points is the provision of psychosocial intervention and rehabilitation. The Department of Social Welfare and Development (DSWD) is in the process of drafting a comprehensive rehabilitation plan and they target to pilot it within this year. The Department of Justice (DOJ) Victims Compensation Program through the Board of Claims (created under Republic Act 7309), has been assisting some members of FIND for assisting some members as FIND in processing their applications for monetary compensation.

With regard to filing of criminal cases of enforced disappearances, we are not aware of any. We are waiting for the Burgos family to file a case of enforced disappearance. The Court of Appeals, and the Supreme Court have concrete findings that the case of Jonas Burgos is a case of enforced disappearance.

Dr. Edita Burgos (*Desaparecidos* and FJBM-Philippines)

The case of Jonas Burgos has been recently concluded as an enforced disappearance case, the resolution came in February of this year, within the month the Supreme Court ordered the Armed Forces of the Philippines to surface Jonas. It took a month before they answered, denying that Jonas was in their custody. Although in the course of investigation, it has been established that Jonas was abducted by the military. During the court hearing, one of the military officers who abducted Jonas was identified by a witness. That time the law was not yet passed, so we filed cases of kidnapping and illegal detention.

The military generals and Commanding Officers implicated in the case were not included in the court's resolution. Only one name of a military officer (a colonel) and other John Does have been taken into account by the court. So we filed cases of kidnapping and illegal detention against the colonel and other John Does before a Regional Trial Court but until

today nothing is happening to those cases filed. The hearing has always been postponed for various reasons.

We plan to file another case using the law against enforced disappearance. The lawyers are studying it to file the case. There is a request submitted to the Supreme Court to take legal action against those who have not surfaced Jonas. It has been proven that some military officers are involved, so we filed a petition to cite these authorities in contempt. In finding Jonas, we have reached the level of the Supreme Court. Today we are finding other avenues so we can continue with our case and we need help.

Atty. Gemma Parojinog (Representative of the Commission on Human Rights-Philippines)

We are part of the Technical Working Group of Executive Order 35 (that creates the Inter-agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and other Grave Violations of the Rights to Life, Liberty and Security of Persons). What we did is to submit cases that the Commission on Human Rights (CHR) is investigating and monitoring. We submitted cases to the Department of Justice (DOJ). These include enforced disappearances, extra-judicial killings, and torture. I cannot give the actual status because the CHR has an observer status. It is up to the DOJ to give updates on these cases. The CHR is endorsing the majority of cases for deliberation to the Inter-Agency Committee and under Executive Order 35, we monitor the progress of the case. The Department of Justice (DOJ) Prosecutors are part of the investigating teams and our objective is to achieve conviction.

Atty. Emerlynne Gil (ICJ-Southeast Asia)

Enforced disappearance is a continuing crime, a question for FIND. Is there consideration for FIND in filing cases using the new law against the perpetrators, even if enforced disappearance happened or was committed prior to passage of the law?

Ms. Nilda Lagman-Sevilla (FIND-Philippines)

No case has yet been filed before the courts so far. The law clearly defines this crime as a continuing offense, so long as the fate and whereabouts of victims are not established. In the event that the victim reappears alive, the prescription period will run from the date of reappearance (not date of disappearance) up to a period of 25 years.

There is no filing of enforced disappearance for those cases done by perpetrators years ago prior to the passage of the law. The problem for most families is the difficulty in gathering hard evidence that will stand up in court. The body is missing and there is a deliberate effort made by perpetrators to hide the whereabouts of victims. In cases where there are witnesses, the witnesses are afraid to identify those responsible. The judges and prosecutors must acknowledge that circumstantial evidence will suffice for the case to prosper.

There are cases with petitions for *writ of amparo*, where Philippine Courts refer to International Courts, citing the use of circumstantial evidence. We are advocating for the courts to rule in favor of the substance of circumstantial evidence in cases of enforced disappearances

Mr. Marco Antonio Garavito (*Liga Guatemaltica de Higiene Mental-Guatemala*)

As mentioned, there are elements of enforced disappearances: abduction, lie and deceit.

I want to add, enforced disappearance is a consequence of oppressive regimes and dictatorships. The fourth element common to all cases of forced disappearances is the attempt to silence society as a whole. Forced disappearance is a tool used by the state to prevent the advancement of democratic rights and freedom. There are so many people victimized by enforced disappearances, the truth of their whereabouts are not established. It is clear that we must continue our efforts to struggle for the sake of the disappeared. The next step is to ascertain the truth, 30 to 50 years after the crime is committed, our organizations must never forget. Those responsible wish the truth to disappear; they want us to forget.

Atty. Alejandro Rua (CELS-Argentina)

On the first question, on applying the current laws for the resolution of enforced disappearances, I want to mention the experience of Argentina. In the next days, I want to share the situation in South America. There are different cases even in the early stage of democracy between 1985 and 1986. In the current time, there are thousands of persons and officers accused of committing crime. They are facing prosecution these days, years after the crime of enforced disappearance is codified as abduction and kidnapping carried out by the state and its agents. These pieces of national legislation on forced disappearances have been passed subsequent to the UN's approval of the Convention against Forced Disappearances and after the states ratified the Convention.

There are frameworks that permit the prosecution of cases even without having a local law. These legal structures will address the crimes to make sure that pardon and amnesty will not be used to protect the perpetrators. The elements of kidnapping, deprivation of freedom and illegal detention can be considered to prosecute the responsible persons under the Penal Code. Therefore, prosecution is possible even in the absence of a law against enforced disappearance.

The approval of the Convention shows how society views a crime, maybe we can advance the Penal Code to prosecute the violators regardless of whether or not these are typified as forced disappearances. Even if we cannot apply the law on enforced disappearance, there should be elements covered by the traditional codes vis-à-vis abducting our loved ones.

Atty. Roberto Garretón (Chile)

Ninety percent (90%) of victims of human rights violations are journalists and human rights advocates. They are consistently prosecuted and harassed but there are cases of enforced disappearances in Guatemala. There are indigenous and ethnic communities victimized by the government but they are not combatants. They are not part of the armed struggle. They are targeted and discriminated because of their ethnicity. This is now a case of genocide because the government wants to kill the whole ethnic group. The government is employing the mass murder to save the so-called national interest but this is not exactly done for political reasons but for ethnic cleansing.

Mr. Sisto dos Santos (HAK Association-Timor-Leste)

Are you trying to say that enforced disappearance is also committed by other movements not only by states? Is that what you were saying in your country?

Atty. Roberto Garretón (Chile)

Enforced disappearance is not happening now in Chile. It was committed after the *coup* and during the reign of the dictatorship for the purpose of political repression

Mr. Sisto dos Santos (HAK Association-Timor-Leste)

In Timor-Leste, during the 20 years of Indonesian military occupation, the Commission on Truth and Reconciliation reported that both Indonesian Armed Forces and the Guerilla Army committed enforced disappearances in the past. Today, there is another challenge; the members of the former guerilla army are taking part in the drafting of the Memorial Law. They prefer to strengthen the relationship between the Governments of Timor-Leste and Indonesia but the guerilla members are also responsible for committing crime. Now they are supportive of the monetary compensation for victims. Do you agree with this?

Atty. Roberto Garretón (Chile)

I want to talk about Chile, which I am more familiar with. The opposition group never resorted to kidnapping. When I spoke about other agents of enforced disappearance, I was referring to those groups that perpetrate enforced disappearances in Central America today. Countries like Guatemala, El Salvador, Honduras and Mexico are beleaguered by criminal organizations. These criminal elements are victimizing those who are migrating to the US. The victims are abducted and extorted or victimized by human traffickers. These people leave El Salvador, Honduras and Mexico illegally. They cross the borders and some have disappeared. But the concerned states are not stopping these criminal groups. In this context, it is not the

state abducting anybody but the state is ignoring what is happening. The acquiescence of the state is questionable because they are not doing any concrete action to protect the people against these criminal groups. By turning a blind eye, they are now condoning the occurrence of enforced disappearances.

Previously, I met Xanana Gusmao in Timor-Leste, I was there with the UN Working Group on Enforced or Involuntary Disappearances and I had the chance of shaking hands with him.

Participant

I have a question related to advocacy against forced disappearance. Looking at the Asian situation, how can strategies be drawn from international laws such as the Convention against Enforced Disappearances and the Rome Statute of the International Criminal Court so the pieces of national legislation will be approved and implemented given that advocacy work was also initiated for the approval of the said international instruments.

Atty. Milagros Cristobal (Moderator-Philippines)

Let us park the questions here. These will be answered in the coming days of the conference.

Minister Monica Deregibus (Representative of the Embassy of Argentina)

I have been working on the human rights issues in this country together with the Philippines' Commission on Human Rights. Our country, Argentina has come a long way in the recognition of the effects of enforced disappearances in society and in seeking truth and justice; we say, never again to involuntary disappearances. From Latin America, we are open and we are willing to share the experiences we have with the Asian countries. Through Argentina's National Policy for the Defense of Human Rights, our country is giving the yearly Emilio Mignone Human Rights Award to those individuals who are serving for the promotion of human rights. Mary Aileen Bacalso was awarded last year (2013) in Argentina for this recognition. A year before, a non-government organization from Indonesia was the recipient of the said award and its representatives are here. This meeting is a way of linking the people, and the recognition makes the militants and activists the champions of human rights. They are positioned in the limelight and they shine so they can be seen by the greater public. That is the consequence of the award, I hope.

Argentina, actively participated in the negotiation of the Convention Against Enforced Disappearance with the cooperation of France. We were the second to sign and we were among those that made for early ratification. We think in a way that it is part of the justice that we have been seeking. For the issue of enforced disappearance, we want to see a universal recognition of the Convention. For this purpose, Argentina and France launched two years ago an international campaign asking the governments' non states parties to sign and ratify. We are active around the globe in this negotiation. The Philippines has been solicited, in that sense, we hope the Philippine Government will finally agree to ratify. For now, enforced

disappearance is a pending issue, and we hope to continue to help the human rights groups here in the Philippines in the future.

Atty. Cecilia Jimenez (Commission on Human Rights-Philippines)

I am inspired by the discussions. I want to cite quickly because it was not discussed earlier but for the future work against enforced disappearances, please take note that right now there is an on-going process for the Bangsamoro transitional justice and reconciliation issues. The issue of disappearances could be prominent in the future. I will take additional work on transitional justice in the Bangsamoro context.

Our friends from Argentina and around the world may take into consideration on how to extend their assistance for this process. Thank you very much.

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Directory of Conference Participants

ASIA



YATI ANDRIYANI is the Deputy Coordinator on Advocacy of the Commission for the Disappeared and Victims of Violence (*KontraS*) in Indonesia. She has been working on human rights issues and assistance to victims of human rights violations since 2002 and is a Member of the Indonesian Bar Association delivering legal services thru pro bono cases.

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JOSEFINA BERGSTEN is a Hong Kong-based Swedish film maker who has spent over 20 years in Asia. Josefina has been in association with the Asian Human Rights Commission (AHRC) for over a decade as photographer and film maker and currently heads the TV department. AHRC TV produces *Weekly Roundup*, a program that reports on a variety of human rights issues in Asia and also creates longer documentary films, interviews with human rights defenders and others, and educational videos relating to the work of the AHRC/ALRC. This can be viewed online.

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EDITA BURGOS is a mother of five, and a grandmother of nine. Her third child is Jonas Joseph Burgos, a victim of enforced disappearance. A retired educator-journalist, she holds a Doctor of Education degree and was General Manager of publications, *We Forum* and *Malaya*. These were opposition newspapers published by her husband, Jose G. Burgos, Jr. during the dictatorship. Upon the restoration of democracy she and her husband opted to leave the city and live as farmers but she gave up her quiet life after her son was abducted. Now as the head of the Free Jonas Burgos Movement and as a Board Member of *Desaparecidos*, she speaks out against human rights violations, filling in the prophetic dimension of her being a definitive professed member of the Secular Carmelite.

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SAMIA ISLAM graduated with a degree in law from BRAC University in 2010 and post-graduate degree in Criminology and Criminal Justice System from University of Dhaka, Bangladesh in 2012. She was a member of the Law Club in BRAC University. She passed the Bar Council's Examination and is a member of the Society for Bangladesh Criminology and Criminal Justice, Department of Criminology and Criminal Justice System, University of Dhaka. She works with Odhikar as Research Officer under the project titled 'Education on the Convention against Torture and OPCAT Awareness Programme in Bangladesh' funded by the European Union from 1 March 2012 to December 2012. She has been working as the research and documentation officer of Odhikar for AFAD programme since January 2013.

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SISTO DOS SANTOS is the Coordinator on Human Rights at HAK Association. He has been working with HAK since 2005. He is coordinator Board Member of the National Alliance of Timor-Leste for International Tribunal (ANTI). He is currently the Advocacy Coordinator of HAK, which is the Timor-Leste member of AFAD. He is immersed with the families of the disappeared in their advocacy through documentation of their stories, organizing commemorations, writing statements and mobilizing the media. He coordinates with the victims' associations and members of civil society to push the government to establish the Missing Persons Commission.

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RICARDO 'BOMBY' SUNGA III is an advocate and law professor. He holds a degree on LL.B from the University of the Philippines, and LL.M from the University of New South Wales. He has taught human rights law at the University of the Philippines College of Law and had been invited to teach international law at De La Salle University College of Law and San Beda Graduate School of Law. He has written and published in the area of international human rights law, in relation to enforced disappearances, including the landmark case of Esperon vs Manalo, which he litigated together with Dean Jose Manuel Diokno and Atty. Theodore Te. Formerly, the Director-Office-in-Charge of the University of the Philippines Institute of Human Rights, he continues to work as a Law Reform Specialist.

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CHITO GASCON is currently a Board Member of the Human Rights Claims Board. He has been involved in Philippine issues involving Democracy, Conflict Resolution, Human Rights and Transitional Justice for over 25 years.

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EMERLYNNE GIL is the International Legal Advisor for Southeast Asia of the International Commission of Jurists (ICJ) and leads the organization's work on the Association of Southeast Asian Nations (ASEAN), specifically on the ASEAN's current endeavor to develop a regional human rights mechanism. Prior to joining ICJ, she headed the Human Rights Defenders Department of the Asian Forum for Human Rights and Development (FORUM-ASIA), where she led advocacy initiatives at the regional and international levels for the protection of human rights defenders. At FORUM-ASIA, she initiated a protection plan, which offered financial and relocation assistance to human rights defenders at risk and led the Asian NGOs Network for National Human Rights Institutions (ANNI) as its coordinator. Ms. Gil served as a court attorney under Justice Adolfo S. Azcuna at the Supreme Court of the Philippines, as an associate lawyer for labor litigation and aviation law at the law firm Platon Martinez Flores San Pedro and Leaño, and as a lecturer at the University of the Philippines' Department of English and Comparative Literature.

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MUGIYANTO is currently the Chairperson of AFAD. He is also the Chairperson of IKOHI, an organization of families of the disappeared that he co-founded in 1998 in Indonesia. He is a survivor of disappearances in 1998 when he was a student activist. For the last ten years, he has done intensive lobby and advocacy both in national and international fronts on enforced disappearance and human rights.

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CECILIA "CEJ" JIMENEZ is a Philippine lawyer specializing in human rights and international humanitarian law for 25 years. As a senior trainer, lecturer and policy adviser, she has worked on issues of administration of justice with particular focus on detention and the prohibition of torture and enforced or arbitrary disappearance. One of her achievements was negotiating as an NGO advocate in the finalization of the draft of the UN Optional Protocol on the prevention of torture which includes prevention of enforced or arbitrary disappearances in its remit. Having worked as an international lawyer in Geneva, Switzerland for 17 years, Atty. Cej has provided many orientation sessions to AFAD within the context of the negotiations for the draft Convention against Disappearances and in AFAD's participation in the UN human rights system in Geneva and in New York. Currently based in Davao, Mindanao with her Philippine-Swiss family, Atty. Cej is currently National Manager of a special project with the Commission on Human Rights of the Philippines. She will soon be taking up additional work on transitional justice and reconciliation issues within the Bangsamoro context. Atty. Cej has a BS in Foreign Service (University of the Philippines), a Bachelor of Law degree (Ateneo de Manila), an LL.M. in Public International Law (King's College London) and an Advanced Diploma on Management Development (University of Geneva).

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MELISSA O'DONNELL has worked as a Human Rights Program Advisor with Asosiasaun HAK, AFAD's Timor-Leste member, since November 2012. Her role has been to strengthen the organizational capacity to engage in strategic human rights advocacy and monitoring, with an increasing focus on HAK's advocacy for justice for past human rights violations, including addressing the on-going issue of enforced disappearances. In the coming six months, she hopes to increase focus on this advocacy for justice and the return of missing children while combining this work as an advisor in UNDP's Access to Justice Program in Timor-Leste. Prior to joining HAK, she worked with several human rights organizations in the United Kingdom, like Freedom from Torture, Girls not Brides and The Elders where she focused particularly on advocacy related to Sri Lanka, Child Marriage and the conflict in Sudan and South Sudan. She started her career as a human rights lawyer with Legal Aid NSW in Sydney, Australia representing vulnerable prisoners and indigenous persons in discrimination and criminal deportation matters.

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KHURRAM PARVEZ is the Program Coordinator of Association of Parents of Disappeared Persons and also the Convener of Jammu and Kashmir Coalition of Civil Society based in the Indian Administered Jammu and Kashmir, which is one of the most militarized regions. Khurram has been an awardee of Reebok Human Rights Award in 2006 and is one of the well-known human rights activists in the disputed territory of Jammu and Kashmir.

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MARIZEN SANTOS is a consultant of HURIDOCs. Marizen has considerable experience in human rights advocacy particularly migrants rights and disability rights, social and action research, knowledge management and project management. She has previously worked with Migrant Forum in Asia, Inter-Agency Network for Education in Emergencies and disability rights organizations in New York. She studied anthropology at the University of the Philippines and obtained her Master's degree in Urban Affairs at Queens College, City University of New York and MA in International Affairs at the Graduate Institute of International and Development Studies, Geneva.

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NILDA LAGMAN-SEVILLA has been the Co-Chairperson of FIND since 2002. She served as one of the two Civil Society Organizations (CSO) representatives in the Presidential Human Rights Committee (PHRC) for four years. Ms. Sevilla was active in the teachers' movement when she was a faculty union president in the 1980s before she worked in the House of Representatives of the Congress in the Philippines (1987-2013). She was the legislative Chief of Staff of two lawmakers who both championed the enactment of the anti-enforced disappearance law and other landmark human rights legislation. Her inspiration for her human rights advocacy work comes from her brother Hermon C. Lagman, a labor and human rights lawyer, who was forcibly disappeared during Martial Law.

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CELIA LAGMAN SEVILLA graduated with a BA in Philosophy from the University of the Philippines Diliman where she also took up graduate studies in Reading Education. She worked with two NGOs: the Philippine Legislators Committee for Population and Development (PLCPD) and the Families of Victims of Involuntary Disappearance (FIND). As FIND's advocacy program officer, she participated as CSO representative in the final drafting of the Convention against Enforced Disappearance by the UN Intersessional Working Group to Draft a Legally-Binding Normative Instrument for the Protection of All Persons from Enforced Disappearances in Geneva. She also served as legislative staff member of the Partylist *Partido ng Manggagawa* (Labor Party), 2003-2004, and of the Office of Representative Edcel C. Lagman, 2007-2013, where she researched and prepared briefing materials on various human rights issues and concerns.

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VERONICA MAE YAN, J.D. graduated from the University of the Philippines Diliman with a degree of BS Business Administration in 2009. She continued her studies at the Ateneo de Manila University School of Law and was admitted to the Philippine Bar in May 2014. She is currently a program officer of the *Adhikain para sa Karapatang Pambata* (AKAP), the children's rights desk of the Ateneo Human Rights Center.

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EUROPE



GABRIELLA CITRONI, Ph.D. is a professor of International Human Rights Law at the University of Milano-Bicocca, Italy. She is lecturer at the Geneva Academy of Humanitarian Law and Human Rights, holding a course on “Enforced Disappearances in International Law” for LL.M. students in International Humanitarian Law and Human Rights. She acts as the international legal advisor for the Latin American Federation of Associations of Relatives of Disappeared-Detainees (FEDEFAM). Since 2008, she works as senior legal advisor for the Swiss NGO TRIAL (Track Impunity Always). From 2003 to 2005 she was a member, as legal advisor, of the Italian delegation at the United Nations during the negotiations of the International Convention for the Protection of All Persons from Enforced Disappearance. Gabriella researches on subjects related to international human rights law and she cooperates with a number of international NGOs providing legal assistance to victims of serious human rights violations and their relatives in different countries including Algeria, Bosnia and Herzegovina, Nepal, Morocco, Colombia, Peru, Iraq and Mexico. She has written a number of articles and books on international human rights law, among which is *The Struggle against Enforced Disappearance and the 2007 Convention* (Leiden: Martinus Nijhoff, 2007), with Professor Tullio Scovazzi as co-author.

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RAINER HUHLE is a political scientist based in Nuremberg, Germany. He is a founding member of the Nuremberg Human Rights Centre and vice-chair of the German Institute for Human Rights in Berlin. In May 2011, he was elected as member of the UN Committee on Enforced Disappearances (CED).

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IRINA KRASOVSKAYA is the Founder and President of “We Remember” (www.ciwr.org), a civic initiative that seeks justice for the disappeared and other victims of political repression in Belarus. “We Remember” has raised awareness in Europe, Russia, Canada and the United States of the plight of the Belarusian disappeared. Since 1999, Dr. Krasovskaya has campaigned on behalf of both the disappeared and political prisoners and in April 2003, helped to win support for a US-sponsored resolution at the United Nations Commission on Human Rights that urged Belarus to establish accountability for the disappeared.

Dr. Krasovskaya has participated in hearings on human rights in the Parliaments of Lithuania, Poland, Estonia, Russia and in the US Congress. She has testified before the European Parliament, Parliamentary Assembly of the Council of Europe, Organization for Security and Cooperation in Europe (OSCE), Inter-Parliamentary Union (IPU) and other organizations on issues of enforced disappearances. Together with other organizations of families of disappeared from Asia, Latin America and Europe, “We Remember” played an important role in the adoption of the UN Convention for the Protection all Persons from Enforced Disappearances and continues to work for the ratification and implementation of this important UN Convention as a member of the Steering Committee of the International Coalition against Enforced Disappearances (ICAED, www.icaed.org). Mrs. Krasovskaya was awarded White House Champion of Freedom in 2005.

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EURO-MEDITERRANEAN REGION

WADIH AL ASMAR is co-founder and Secretary-General of the movement Support of Lebanese Detained Arbitrarily (SOLIDA) created in 1996 in France and Lebanese Center for Human Rights (CLDH) created in 2006 in Lebanon. For over 20 years, he devoted most of his time to the defense of victims of human rights violations in Lebanon and the Mediterranean region. He is also co-founder and Secretary-General of the Euro-Mediterranean Federation against Enforced Disappearance (FEMED). His work on human rights at the regional level is mainly within the Euro-Mediterranean Human Rights Network (EMHRN), in which he is an honorary member.

The fight against enforced disappearance and the work on national reconciliation are his main areas of expertise to which he contributed through several articles and interventions in the context of national and international conferences.

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LATIN AMERICA



ROBERTO Garretón was a lawyer for the Committee of Peace Cooperation and for the Vicariate of Solidarity, the main institution for the defense of human rights during the military dictatorship in Chile from 1974-1990. He was also ambassador for the first constitutional government at the end of the dictatorship before the International Human Rights Organizations from 1990-1994; Vice President of the Commission on Human Rights of the United Nations in 1993 and Vice President of the World Conference on Human Rights in Vienna in 1993; lawyer in Chile for the UN High Commissioner for Refugees from 1996-2000 and representative for Latin America for the UN High Commissioner for Human Rights from 2001-2005; a member of the Advisory Council of the Secretary-General of the UN for the Prevention of Genocide in 2006 together with Desmond Tutu and Commissioner of the International Commission of Jurists with seat in Geneva in 2008. He has been a Director of the College of Lawyers of Chile for many years and also served as a member of the UN Working Group on Arbitrary Detention. His term ended in April 2014.

By dint of his exemplary work for human rights, he received the following awards:

- Monseñor Leonidas Proaño Award, for the defense of human rights, granted by the Latin-American Human Rights Association (ALDHU). The award was shared with Rigoberta Menchu, Guillermo Ungo, and Paulo Freire (1989).
- Ruth Pearce Award, granted by the International Service of Human Rights to the diplomat most engaged in the defense of human rights (1993).
- *Palme Nationale des Droit de l' Homme* Award, from the National Council on Human Rights in Islam, Kinshasa, Democratic Republic of Congo (1999).

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MARCO ANTONIO GARAVITO FERNANDEZ is Guatemalan and a professor on Social Psychology and Political Violence. He is the Director of the *Liga Guatemalteca de Higiene Mental* and Titular Professor of the University of San Carlos in Guatemala. Marco coordinates the program entitled “*Todos por el Reencuentro,*” a project of the search of disappeared children during the war in Guatemala. His organization is a member of the International Coalition against Enforced Disappearances. In 2008, he was nominated as the “Ambassador for Peace” by the Guatemalan government because of his work for the promotion and defense of human rights and peace.

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ALEJANDRO RUA is a lawyer and specialist in the Administration of Justice in the University of Buenos Aires, a litigator and consultant of the *Centro de Estudios Legales y Sociales* (CELS). He has brought before diverse courts many cases and has been successful in obtaining judicial condemnation with respect to massive human rights violations that occurred during the dictatorship in Argentina from 1976 to 1983. He is also an officer of the Judicial Power of the Nation; Coordinator of Investigations of the Anti-Corruption Office of the national state. As an expert on penal law, he gives classes in the *Derecho de la Universidades* of Buenos Aires and Palermo, which are both in Argentina. Alejandro was a scholar of the Inter-American Institute of Human Rights and received the award, *Fundejus de la Fundacion de Estudios Para la Justicia*.

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MARGARITA ZAMORA is originally from San Antonio Los Ranchos of the Department of Chalatenango. She is the third of nine sisters and brothers, two of whom were killed during the armed conflict in El Salvador.

From its foundation until 2013, she took part in the Zonal Committee and was later selected as a member of the Board of the Association from January 2013 until the present. She is a field investigator and the person in-charge for the northern zone of the country of the Departments of Chalatenango, Cabanas, Cuscatlan, Sta. Ana, La Libertad, and San Salvador. In the search of the children who disappeared during the war, she has helped resolve 50 cases. With this important work, she has been in many reunifications of encountered disappeared children with their biological parents and has been able to share their joy.

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NORTH AMERICA



SAM CHANTHAVONG is the senior program officer for Asia and Global programs at the National Endowment for Democracy (NED) based in Washington, DC. She manages grants to civil society organizations implementing projects in a variety of areas, including human rights, civic and political participation, democratic governance, and media freedom. Prior to joining the NED in 2006, she worked in the Asia division of the American Bar Association's rule of law initiative. She holds an MA in International Affairs from American University.

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CONFERENCE SECRETARIAT



MARY AILEEN DIEZ-BACALSO graduated with the degree of Bachelor of Arts major in Mass Communication in St. Theresa's College and is finishing her Masteral Degree in Philippine Studies major in Foreign Relations in the University of the Philippines. She is the Secretary-General of the Asian Federation Against Involuntary Disappearances (AFAD). A former Secretary-General and Co-Chairperson of the Families of Victims of Involuntary Disappearance (FIND), she led the formation of AFAD in 1997 and its coordination with the Latin American Federation of Associations of Relatives of Disappeared-Detainees (FEDEFAM). She consistently and actively participated in the drafting and negotiation process of the International Convention for the Protection of All Persons from Enforced Disappearance from 2003-2005. Her husband disappeared in Cebu City in 1988, two months after their marriage and was released by the military when another disappeared escaped. She is the current focal point of the International Coalition Against Enforced Disappearances (ICAED).

Aileen is a recipient of the Patrick Rice Human Rights Award bestowed upon her by the Torture Abolition and Survivors Support Coalition in June 2013 in Washington DC. She shared the award with Mr. Juan Mendez, UN Special Rapporteur on Torture. On 10 December 2013, in Buenos Aires, the Government of Argentina bestowed upon her the Emilio Mignone International Human Rights Prize.

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RON DE VERA is the Project Coordinator for the Philippines at the Asian Federation Against Involuntary Disappearances (AFAD). His father was abducted on Fathers' Day in 1990 and his mother was a torture victim during the Martial Law era. This aspect of his family background pushed him to work on human rights issues on a full time basis. Ron is actively involved in the LGBTQ rights work. Currently he serves as treasurer of the board of trustees at the ASEAN Sexual Orientation and Gender Identity/Expression Caucus (ASC).

In addition to human rights and LGBTQ rights work, Ron is an educator at heart. He started as a communication and culture trainer at Convergys Philippines and eventually headed its curriculum team. Before joining AFAD, he handled the Human Rights Education Program for the Philippines at Amnesty International.

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CAROLIZA TULOD-PETEROS is the Regional Campaign Officer of AFAD. She has been involved in the work of AFAD on short term projects as training coordinator, facilitator, documenter and events host such as its 10th anniversary celebration. Prior to AFAD, she worked with Balay Rehabilitation Center as Caseworker and later with Philippine Human Rights Information Center (PhilRights) as researcher-writer and later as coordinator of its Information and Publications Program.

She moved to peace and conflict resolution work as coordinator and later on as mediation specialist at Mediators Network for Sustainable Peace (MedNet) where she led a team of third party facilitators in public multi-party disputes concerning mostly of resource use conflicts. She briefly taught Alternative Dispute Resolution at the Ateneo de Manila University. She was motivated to work again with AFAD because of the memory of Fr. Rudy Romano, a Redemptorist priest who disappeared in 1985 and her role model in human rights work.

She is currently a student of Doctor of Social Development Program of the University of the Philippines, College of Social Work and Community Development where she obtained her MA in Women and Development. She sits as Board Member of the Alumni Association of this College.

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KEVIN A. MANDRILLA previously worked as the Philippine Project Coordinator for the Asian Federation Against Involuntary Disappearances (AFAD). He is now a full-time student pursuing a Master in Asian Studies at the Asian Center, University of the Philippines Diliman.

Kevin is an active youth leader and currently serves as a Regional Convener for the National Youth Parliament. He is also a graphic artist, writer and video editor.

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MARIA ELIZABETH GUZMAN RAMOS is the Finance Officer of the Asian Federation Against Involuntary Disappearances (AFAD). She is the sister of Manuel Mario Guzman, a political detainee during the Marcos dictatorship. Manuel was arrested in 1982, was missing for several days, and eventually surfaced in a detention center. He stayed in prison for three years. The experience prompted Maria Elizabeth to work with human rights and civil society organizations.

Maria Elizabeth Ramos was bookkeeper of the Medical Action Group (MAG) for ten years. She also became finance officer of the Families of Victims of Involuntary Disappearances (FIND) for another ten years. In 2013, she was the finance staff of the Freedom from Debt Coalition.

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TONI SERRANO-SORIANO is the proud daughter of Evelyn-Balais Serrano, the Executive Director of Asian Forum for Human Rights and Development (FORUM – Asia) and Isagani R. Serrano, the President of Philippine Rural Reconstruction Movement (PRRM). With these inspirations, after finishing Masteral of Development Communication at the University of the Philippines-Open University, she decided to work in a non-government organization from academe for several years and now the administrative officer of AFAD.

Her father was detained during the Marcos regime and she has been exposed to mother and colleagues' human rights work at an early age.

In completion of her master's degree, she submitted a research paper entitled, "*Factors in Mainstreaming NGOs Messages in the Big Media,*" which added to the interest of involvement to advocacy work.

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JOSEPH BENJAMIN ANGELES or JB as he is fondly called, is a graduate of Bachelor of Science in Community Development from the University of the Philippines Diliman. He has actively been engaging in political and human rights work as he actively sought for the resignation of Former President Joseph Estrada at the tender age of 8, and worked against the repressive regime of Former President Gloria Macapagal-Arroyo through Amnesty International – Philippines at the age of 17. Concurrently, he is taking up his Masters in Public Administration in the University of the Philippines while working as part of the Board of Trustees of Amnesty International – Philippines.

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CONFERENCE MODERATOR



MILABEL CRISTOBAL, simply Milabel to friends and colleagues; Atty. Milabel to clients and students. A human rights advocate, activist, teacher and mother. Her human rights advocacy focuses on issues relating to women, children, and gender issues, and on labor and migration. At present, he is a law professor at the De La Salle University, College of Law and the Director of its Legal Aid Clinic, Developmental Legal Advocacy Clinic. She is also a Presidential appointee to the Philippine Overseas Employment Administration (POEA) as Women's sector representative. The POEA is the government regulatory agency which is responsible for the government's overseas employment program and for the protection of the rights of migrant workers.

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CONFERENCE BACKGROUND

MS. CAROLIZA TULOD-PETEROS
AFAD Regional Campaign Officer

Why an inter-regional sharing of best practice experiences in advocating legislation against enforced disappearance?

1. Continued occurrence of enforced disappearance in many parts of the world
2. Asia is one of the continents with the most number of documented cases as reported to the UN WGEID with the highest in Sri Lanka with 12,000 cases; Nepal and Philippines with 600 cases.
3. The 2012 Anti-Enforced Disappearance Law has been enacted in the Philippines, the first in Asia, but the endorsement is made possible partly because the associations of relatives of the disappeared campaigned for it for 16 years.
4. There are 93 new cases of forced disappearances reported in 21 countries (14 of these states are in Asia) based on the report made by the UN WGEID in August 2014. These countries are Bahrain, Bangladesh, Cambodia, India, Indonesia, Iraq,

Nepal, Pakistan, Saudi Arabia, Syria, Tajikistan, Thailand, United Arab Emirates and Yemen.

5. Precarious situation in the Euro-Mediterranean region particularly in Syria, Egypt and Libya. The Euro-Mediterranean Federation Against Enforced Disappearance (FEMED) continues to report and monitor the situation.
 - Sharing of experiences is important to strengthen their capacity, build international solidarity
 - Helping make the situation visible before the international community can contribute to the eventual eradication of the crime of enforced disappearances

There are some good news in a number of Latin American countries:

1. Full harmonization of their domestic laws with international norms make enforced disappearance a separate criminal offense in many countries
2. Emblematic cases resulted into policy changes and greater public awareness
3. There are valuable experiences of the Latin American Federation of Associations of Relatives of Disappeared-Detainees (FEDEFAM) and their member organizations which can serve as examples for many countries in Asia and other regions.

What this conference hopes to achieve?

1. Opportunity to share lessons from countries who were able to domestically criminalize enforced disappearance as a separate offence
2. A platform to share proven strategies
3. Facilitating multi-level collaboration and cooperation in solving the lack or absence of domestic legislation
4. Facilitate the formulation of comprehensive civil society action plans to strengthen legal norms at the national, regional, and international levels
5. Generate important inputs for a training module on effective campaigning for domestic legislation against enforced disappearance

Overview of Four-Day Conference

Review of the program - 17-20 September 2014

1. Day 1 (17 September 2014) Morning session of the first day is the public event, graced by members of the diplomatic community, government agencies, members of the civil society, members of the associations of relatives of the disappeared, members of the media, and some human rights non-government organizations.
2. Day 1 (17 September 2014) The conference proper starts in the afternoon of the first day until the fourth day

- discussion of the situation in Latin America and Asia
3. Day 2 (18 September 2014)
- Roles of Family Associations in Lobbying for the Signing and Ratification of the Convention against Disappearances
 - The Philippine Experience in Advocating for a Domestic Law against Enforced Disappearance
 - The Value of Domestic Legislation Against Enforced Disappearance
 - The Reparation Law in the Philippines: Brief history, implementation and challenges
 - Role of Documentation in Advocacy and Human Rights Work
 - Cultural presentation evening
4. Day 3 (19 September 2014)
- Family Associations and NGOs and the International Convention for the Protection of All Persons from Enforced Disappearance
 - Strategic Litigation, Successes and Difficulties (Experience of Argentina, Chile and Nepal)
 - Public Awareness Campaign and International Solidarity (Experience of Kashmir, Philippines and Belarus)
 - The Search for Truth and Justice for Victims of Enforced Disappearances (Experience of Chile and Argentina)
5. Day 4 (20 September 2014)
- Search and Reunification of Disappeared Children, Difficulties, Successes and Challenges (Experience of El Salvador, Guatemala, and Argentina)
 - Action Planning
 - Drafting and approval of the conference statement
 - All are invited to an awareness of lessons and highlights, to give suggestions to collaborate and seek we can do for our respective countries.
 - Participation is highly encouraged especially in small group sharing/workshops and planning on the last day
 - Take note of the possible action plans that can be done. After the sharing we look forward to what we can do together. We hope to draft a training module to be shared by the members of this body.

Funding partners:

This conference is made possible through the financial grants of the National Endowment for Democracy and HIVOS.

House Rules and Administrative Announcements:

1. Orchid Garden Suites has a 10 o'clock rule
2. Use of laptops and mobile phones while the conference is on-going
3. Battery charging in your rooms
4. Simultaneous translation (equipment)
5. No morning snacks, but heavy dinner will be served
6. Conference venue starting from 2nd day onwards is at Waling-waling Conference Room
7. Cultural program and solidarity night on the 18th, immediately after dinner until 10:00 P.M.
8. Dinner out on the 19 September 2014 at a historical place

Contents of Conference Kit:

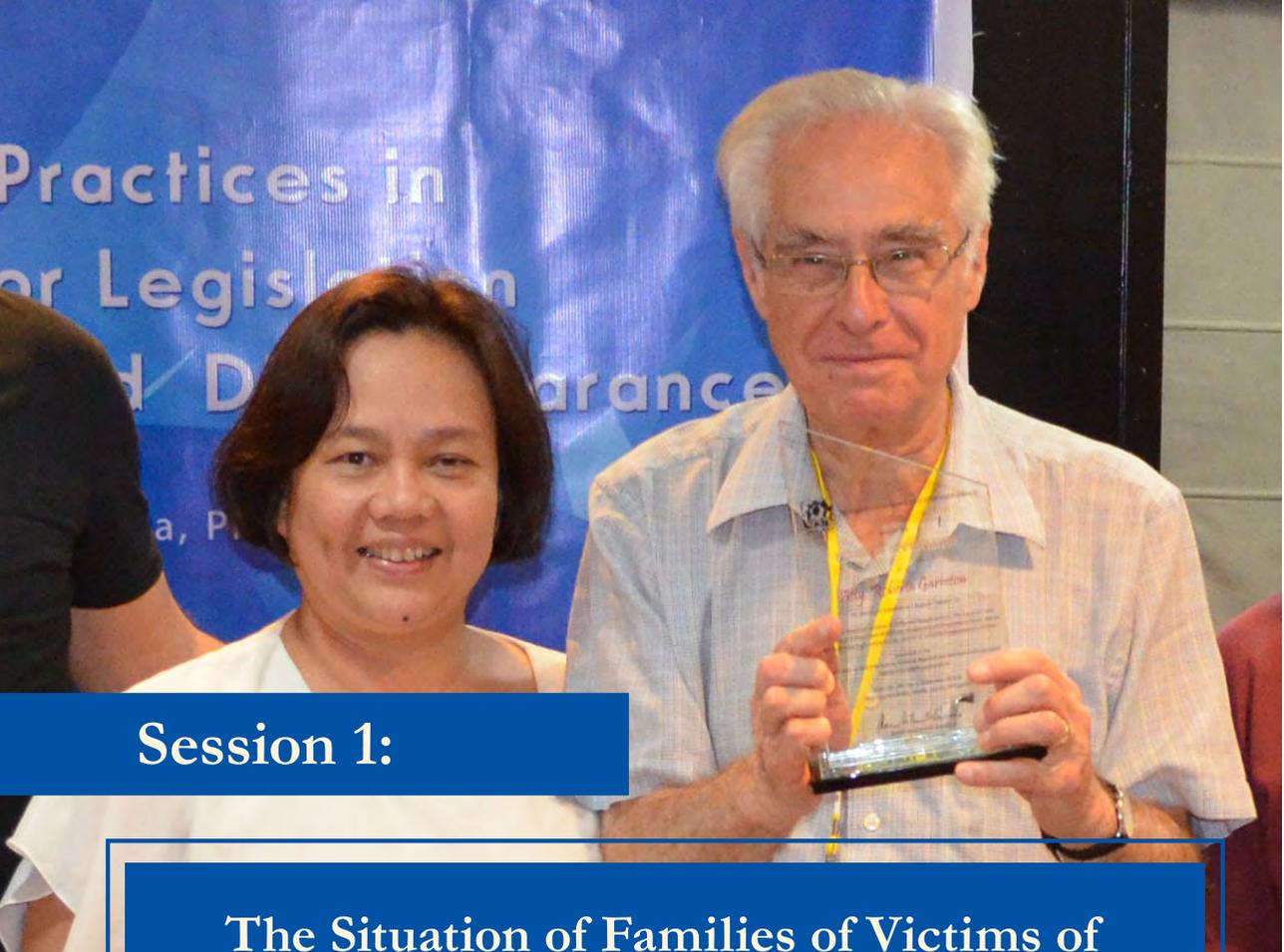
1. Presentation files
2. AFAD conference bag
3. AFAD ID and key chain
4. Map of the Philippines and Intramuros for foreign delegates

Secretariat Support:

1. Mabeth – finance
2. Toni – coordination with hotel
3. JB – presentation
4. Carol – program
5. Ron and Kevin – video, miscellaneous support needs
6. Gay - documentation

Interpreters from English-Spanish-English:

1. Mr. Chaco Molina
2. Mrs. Rosa Alonso



Session 1:

The Situation of Families of Victims of Enforced Disappearances in Asia and Latin America

SPEAKERS



Situation in Latin America

Atty. Roberto Garretón

Former Member of the UN Working Group on Arbitrary Detention



Situation in Asia

Ms. Mary Aileen Diez-Bacalso

Secretary-General, AFAD



LATIN AMERICA

Situation in Latin America

ATTY. ROBERTO Garretón

Former Member of the UN Working Group on Arbitrary Detention

There was a system of enforced disappearance during the dictatorship in Chile based on the doctrine of national security known as Operation Condor imposed by United States. All Latin American countries were subjected to repression as the US feared the success of “Cuban Revolution.” They strengthened their armies followed by tyranny left and right. Chile never experienced being under a dictatorship for hundreds of years, the experience they had under Pinochet was the most ferocious.

Then the system of enforced disappearances occurred in Argentina, Brazil, Bolivia, Chile, Uruguay and Paraguay. Hundreds of cases were perpetrated following the first day of the *coup* in Chile. Like wildfire, forced disappearances spread throughout Guatemala, El Salvador, Nicaragua, Colombia, and Peru. In all of these countries, the system of forced disappearance took place; it took us by surprise. We did not know the meaning of the word enforcedly disappeared but we knew that prisoners vanished in their prison cells. The prisoners are under the watch of the judge and the state. How is it possible for the prisoners to disappear? That was the time when we started our work for human rights. We searched for the disappeared

persons and prisoners, without knowing the enormity of the difficulties imposed on us.

The *comp* started on 11 September 1973. As early as October 6th of same year, the Committee on Cooperation for Peace in Chile was formed by the Catholic Church, Evangelical Lutheran, Methodist, Baptist, Pentecostal English, Orthodox, and the Chief Rabbinate of Chile. That kind of solidarity was something that did not happen before. These Churches were far apart but they came together and agreed to work for the defense of human rights. It was indeed a blessing. After that, the Committee was dissolved, and in 1976 replaced by the Vicariate of Solidarity. I was part of the Vicariate along with the other members including the masons, the communists, and different people who took part in it. The problem of enforced disappearance was approached by the solidarity of the people involved.

What happened in Chile and in other Latin American countries was not an isolated case. It was a criminal policy of cleaning the society by eradicating its citizens – that cleansing and disappearances were committed in a systematic, institutionalized and massive manner. Everything was planned and organized with the participation of every government's branch. It was also integral, as all civil, cultural, economic, political, and social human rights were violated. As the crimes occurred daily from the first to the last day of the respective dictatorships, it was permanent.

The criminal policy was institutionalized in the military, the local government, the universities, the police, and in all government offices. Pinochet personally appointed all officers in the government and the Congress was dissolved. Some reports hinted that days before the *comp*, some crimes of killings and disappearances had already been committed.

After the dictatorship, the army continued to perpetrate human rights violations. The environment of impunity has not been totally addressed in the last 24 years of transition. Even in the judicial chambers, some judges are not as responsible in promoting human rights and addressing impunity.

Impunity is the brutal aftermath and it has four dimensions:

1. legal impunity (lack of punishment of crimes that were evidently considered crimes against humanity)
2. political impunity (military and civilians who committed crimes against humanity are ministers, judges, ambassadors, professors, mayors, parliamentarians like any other normal person). With this kind of impunity, it is worth quoting one of the key recommendations of the Truth Commission of El Salvador: “establish policies that disqualify persons involved in violations of human rights and humanitarian law, for a period of not less than ten years.” Today, the impunity in Guatemala and other countries is very serious. The officers elected by the people were part of the previous dictatorship. They have been recycled and elected.
3. moral impunity (perpetrators proclaimed themselves as saviors of the country and declared that they have no regrets). The low ranking officers can carry out disappearances and killings and are assured that the country will be thankful to them. The generals who ordered these crimes were even declared as patriots.

4. historical impunity (what is intended is that the facts be kept forever recorded with the lies that were presented). In Chile, we are trying to knock down the statutes imposed by dictators and generals. Pinochet named the streets, hospitals, schools using the name of criminals. All of these are part of democratic cleansing. It is not enough to put them behind bars; they must become social outcasts.

During the first eight years of the legal proceedings, not one of these criminals was convicted. I have records because we legally fought cases of human rights violations. We filed cases, appeals and motions but we never won even a single case. However, we cannot quit; this is our powerful weapon – the truth. We have to confront the cannons, aircrafts, corrupt judges, military, and crooked newspapers that are licensed to lie on behalf of the government. We always lose, until the great day came when we thought we lost our hope.

The start of a new period was when Pinochet was arrested in London. Since then, some of the perpetrators have been penalized. In South Latin America, there are reports of progress. A new type of judges has emerged but we have to convince them of our cases. I never won a case but one case in Spain, Judge Baltasar Garzón pinned down Pinochet and issued his warrant of arrest. We have been using this development as the basis of the legal actions that we are doing. Despite our losses, we are not bad lawyers. We are the defenders of human rights. We can continue despite the adversity. Eventually, cultural shift will occur because we act to put an end to enforced disappearances.

Starting in Latin America, the moral, political, and historical impunity were attacked by commissions generically called Truth, Truth and Reconciliation, Peace, National Truth, etc. In recent years, legal or criminal impunity has been handled successfully. Victims' movements, better understanding of the political and moral phenomenon of human rights, and generational replacement of judges opened important spaces to break legal or criminal impunity.

Thus, in Argentina where the first genocide occurred, General Rafael Videla, who was sentenced to life imprisonment, died in prison. There are also a hundred high profile perpetrators given sentences with grave punishments, another 300 are still in process, and 2,400 cases are investigated in trials.

In Chile, General Pinochet died accused but not convicted. There are over 1,500 cases against almost 500 perpetrators, some of whom have been sentenced to over 400 years in prison for multiple offenses.

In Peru, the former dictator Alberto Fujimori was tried and sentenced to 25 years in prison. There are about 1,700 cases (including cases of enforced disappearance) against hundreds of human rights violators; some of which have already been closed. However, in terms of acquitted defendants versus convicted, it is worth noting that there are more who were acquitted than convicted.

In Uruguay, investigations for crimes against humanity began with a long delay – almost 20 years after the end of the dictatorship. The first few attempts were ended due to the application of a law called the Law of Forgiveness, or the “Expiry of the Punitive Claims of the State.” The Supreme Court, several years ago struck down a law that made the Law

of Forgiveness illegitimate and has sanctioned judges and prosecutors who have brought proceedings for such crimes against humanity, including enforced disappearances.

However, about three years ago, judges have been applying the rules of international law and punishing perpetrators. Even President Juan Maria Bordaberry, who was democratically elected and considered the mastermind of the 1973 military *coup* died in 2010 having been sentenced to 30 years in prison for violating the Constitution and for several murders and enforced disappearances during his administration (1973-1976).

Finally, Brazil created the Commission in 2012, 22 years after the dictatorship ended.

All this is valid only for the southern zone of Latin America. The situation in Central America is completely different.

There were about 40,000 cases of enforced disappearances in Guatemala, a country afflicted by war between 1954 and 1993. Enforced disappearance was as a practical policy of extermination. The Commission for Historical Clarification of 1999 stated that only one victim has been identified (Fernando García, kidnapped in 1984) but the crime remains unpunished. Although remains have been found, no one has been identified. Injustice is absolute: nobody has been convicted for committing the crime of enforced disappearance.

In El Salvador, the political practice of enforced disappearance was used systematically even before the war of 1980 to 1992, having recorded over 8,000 victims (and executed more than 70,000). There were kidnapped children who were sometimes killed, sometimes given to families or delivered to the International Committee of the Red Cross (ICRC). There were cases of children torn from the hands of their mothers who were killed and others remained in the custody of the military. There were some cases of child abductions committed by the Farabundo Martí National Liberation Front (FMLN) guerrillas.

Imposed by the peace agreements in the framework of the United Nations, the Truth Commission recommended the prosecution of perpetrators of crimes under international law to end impunity and reform the judiciary, among other measures. However, five days after the report, the Government adopted an amnesty law for all crimes “for the consolidation of peace,” in flagrant violation of the recommendations of the Commission.

In that country, absolute impunity continues to prevail but there is no new systematic disappearances attributed to the State. Similar to the situation in Guatemala and Honduras, there have only been violent deaths in El Salvador that the authorities explain as “social violence.” In Guatemala, in the last three years, more than 50 leaders of the social movement, the security forces and others have killed mostly indigenous peoples, sometimes directly by hit men of those in power but no enforced disappearances have been recorded.

So far:

1. In the southern part of South America, there are neither new systematic enforced disappearances;
2. Nor are there in Central America;

3. In South America today, there is significant progress against systematic impunity, granting no value to the impunity laws and there is application of international law of human rights;
4. In Central America, impunity continues in full force.

New enforced disappearances in Mexico and Central America

A new phenomenon of enforced disappearances is happening in Mexico and Central America. These are not acts committed as a public policy of extermination by the States but kidnappings committed by individuals: traffickers, weapons, drugs, which exclude people with criminal intent. They neither are agents of the state nor are they associated with the state, but the state's responsibility is inescapable.

As the UN WGEID said, these are 'kidnappings and crimes similar to enforced disappearances' committed by organized crime groups but adding that there are facts that 'state involvement in enforced disappearances is also present in the country.' There is also concrete and detailed information on the state's participation in 'cases of forced disappearances carried out by public authorities or by private criminal groups or acting with the direct or indirect support of some public officials.' "Euphemistically," these events are called kidnappings, missing or lost persons and generally not investigated and remain unpunished.

The Working Group said that NGOs informed them that more than 3,000 persons have been disappeared in the country since 2006 and that "some of them would qualify as enforced disappearances due to the direct or indirect participation of state agents." Every so often, there are large amounts of unidentified bodies, but nothing is done to identify them.

It is generally known that many of the disappeared are actually people from Guatemala, Honduras and El Salvador interested in leaving poverty in their countries. They believe that they will find a better life in the United States but are attacked by organized crime gangs. The situation is aggravated because those who are looking for employment and better living conditions in other countries often travel without documentation, making it difficult to identify their remains.

The failure of all investigations done in migrant producing countries and transit countries (especially Mexico) is not due to legal or technical barriers. In fact, non-governmental organizations conduct certain studies that allow some progress in this area. Failure can only be explained by the lack of interest in finding the victims and the terrible police forces who, far worse, militarized themselves abandoning the victims. Abandoning their role as guarantors of public safety, the police forces militarized the area. In order to achieve social acceptance, everything is justified by the easy excuse of saying that the victims are drug dealers or people who want to demobilize any human rights or humanitarian policy to put an end to the tragedy of thousands of persons. In Mexico, the situation worsened in 2006 when the government imposed a policy of militarization of public security to implement a "war against organized crime," which had left thousands dead.

The states of Mexico and Central America have not complied with the fundamental obligations laid down by international conventions on the rights of migrant workers. It has

neither complied with the United Nations and the Organization of American states' treaties on enforced disappearances. They have not also established strong and effective public policies, including specific judicial procedures to save lives and protect human rights.

The situation of those seeking migration has not led to multilateral public policies among the countries concerned. In these cases, the disappearance is only the result of multiple violations of human rights, such as the lack of decent work in the country of origin; obstacles to freedom of movement; the absence of judicial mechanisms to report illegal entities and stop their operations; and lack of protection and safety for the complainant and witnesses. All of which ultimately affect the human right to life.

The conclusion is obvious: the responsibility for these disappearances rests upon the State or States involved.

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ASIA

Situation in Asia

MS. MARY AILEEN DIEZ-BACALSO
Secretary-General, AFAD

General Situation:

1. In an alarming manner, Asia has presented the highest number of cases of enforced disappearance before the United Nations in recent years.
2. Based on the report of the UN WGEID, there are 53, 986 cases from 87 countries, 24 of which are from the Asian region.
3. Asia does not have legal regional mechanisms that guarantee truth, justice, reparation, and memory.
4. Only the Philippines has a law criminalizing enforced disappearance. In the Philippines, there are still outstanding cases of forced disappearances despite the enactment of the national law in 2012. No case of disappearance has been filed in the local courts yet. There is a challenge in implementing this law.

5. There is widespread impunity. The perpetrators are free and are promoted to higher positions.
6. The families suffer from the devastating consequences. Kashmir has half-widows; they are not certain if their husbands are still alive. They suffer from economic devastation due to the disappearance of their husbands.
7. Enforced disappearances in Asian countries stem from poverty and social injustice. Those who fight against injustice are considered as enemies of the state.
8. Cases were committed to stifle dissent in countries that underwent dictatorships and under repressive regimes, e.g. Indonesia, Philippines, Thailand, Bangladesh.
9. Many cases were committed in the context of struggle for independence, e.g. Kashmir, Timor-Leste.
10. Internal conflicts in Nepal and Sri Lanka brought about enforced disappearances.
11. Since the inception of UN WGEID in 1980, a total of 53,986 has been presented to the treaty body. Of these cases, 79% are active, 1% are clarified and 20% are closed. There are problems of underreporting; some cases are not reported due to state repression while some families have no access to communicate their cases to WGEID. Most cases are still active but in the process of clarification. If families will not answer for some reason, then the investigation will not prosper.
12. The Convention against enforced disappearances entered into force in 2010 and more than 90 countries have outstanding cases of disappearances. Based on geographical classification, the highest number of ratifications is in Latin America. Asia has a very low rate of ratifications compared with other regional areas. So far, there are 43 states parties to the Convention, 56 signatories but 98 countries have not taken any action.
13. In Asia the signatories are, Armenia, Azerbaijan, Cyprus, India, Indonesia, Japan, Lao, Lebanon, Mongolia and Thailand. The states parties are, Cambodia, Iraq, Japan and Kazakhstan, and Japan. Japan recognizes the competence of the Committee only on inter-state complaints and not on individual complaints. While Philippines is the only country with a domestic law codifying involuntary disappearance as a crime, it has yet to sign and ratify the Convention.

Situation of Countries with Presence of AFAD:

1. Bangladesh

- In Bangladesh, there is an increasing political polarization and there is an alarming increase in cases of enforced disappearance in the context of a climate of terror among the people.
- Twenty-four (24) persons disappeared in 2012 by the Rapid Action Battalion and six (6) by the Police Detective Branch, one case by the Industrial Police, and 5 by unidentified persons.

- Seventy-seven (77) cases occurred between January 2009 and February 2013.
- The penal code in Bangladesh has not codified the offense of enforced disappearance.
- In August 2013 until the present, the member-organization of AFAD (Odhikar) suffers attacks on its office and on its leadership. These attacks have intensified after the national elections.

2. Indonesia

- Massacres were perpetrated against the alleged members of the Communist Party of Indonesia between 1965 and 1967; many were subjected to enforced disappearances. The surviving families are stigmatized because of their relationship to those who were massacred.
- Just before the fall of Suharto, 13 students were made to disappear.
- The National Commission of Human Rights has published a report on the anti-communist massacre that occurred in the country between 1965-1967. About 500,000 are believed to have disappeared involuntarily, many were tortured and millions of people were killed during the campaign against the Communist Party of Indonesia by the Indonesian soldiers under the leadership of Suharto.
- One modest gain in the struggle of the families of the victims was the distribution of official certificates on the status of families of victims of enforced disappearance. These were presented to 13 families of the disappeared students in 1998.
- There is no justice for the case of Munir, former President of AFAD, who was arsenic poisoned by agents of the intelligence in a Garuda flight from Jakarta to Amsterdam via Singapore. There is impunity in this crime because even if the direct perpetrator is punished, the mastermind, General Muchdi was acquitted.
- Another development is the initiative of the families of the disappeared, inspired by the *Madres de Plaza de Mayo*, who stage a rally every Thursday afternoon in front of the Presidential Palace.

3. Kashmir

- As mentioned, I was deported by the Indian government three weeks ago. Upon my arrival, I was taken to an office and nine persons came. They completed a form with a note “refusal to land,” and I was told to go back to Manila. When I asked for the reason, I was told that I am banned for bad things I did in my previous visits.
- Our council member Parvez, has not travelled for eleven years. He can only travel to Nepal due to the open border rule. He was supposed to receive a human rights award in France but since he has no passport, his wife received the award on his behalf.

- Half widows have a low status in society. If they go for work, they are called prostitutes. Disappearance causes disintegration in the family due to conflict as a result of the disappearance of the breadwinners.
- These families are very poor. We had a scholarship of \$10 per child that the communities had to divide among 3 children.
- In the disputed state of Jammu and Kashmir, there are 8,000 cases of disappearances, which have been recorded. Only 2,305 of which have been admitted by the Chief Minister in October 2012.
- There is a phenomenon of mass graves as stated in the report of the Association of Parents of Disappeared Persons (APDP), Buried Evidence and Facts Underground.

4. Nepal

- Nepal, a small South Asian country sandwiched between India and China, is currently passing through a complex and unpredictable political process. After a ten-year bloody conflict, Nepal's political transition began officially after the signing of the Comprehensive Peace Agreement (CPA) between the Maoist Party and the major political party in May 2006. The signing of the CPA signaled the end of a 10-year long armed conflict which cost the country an estimated 17,265 lives and 1,327 cases of enforced disappearances.
- In 2003 and 2004, Nepal attained the reprehensible distinction of recording the highest number of enforced disappearances in the world reported to the WGEID.
- Nepal continues to undergo a political transition but the government has no diligence to serve justice to victims, including investigation. There have been attempts twice to merge the truth commission and the body working for enforced disappearance, but these were blocked by civil society organizations.
- In most cases, the people tagged as Maoists were disappeared, but Maoists also disappeared non-active members of security forces. All of those who are responsible are now part of the government. Most of the victims express their anger during meetings like this, even if it has been years after the conflict ended. They are still waiting for the government to address these cases.
- The ten years of civil war (1996- 2006) in Nepal resulted in an immense number of cases of enforced disappearance. With the signing of the Peace Accord, Nepal is in its transition to a democratic system.
- However, Nepal has not done justice to the victims of the conflict, including investigation and justice in order to clarify and resolve cases of enforced disappearances.
- Nepal does not have a substantive law in prevention, investigation and

prosecution of enforced disappearances. However, it has been implicitly recognizing disappearance as a crime since 1990; the formation of a probe committee after the restoration of democracy in 1990 and the subsequent efforts to find out the whereabouts of the disappeared throughout the period of conflict attest to this. Especially, the government's commitment to the implementation of Human Rights and International Humanitarian Law announced on 26 March 2004, issued on the eve of the visit by UN WGEID, contains a host of promises including prevention of arbitrary arrests and enforced disappearances and prosecuting those who are responsible for such acts.

- In the past seven years, the frequent changes in the government which have been mostly coalition of several parties have chiefly contributed to the collapse of good governance. There has been rhetoric by politicians about peace and reconciliation, social justice, human rights and the rule of law. However, there is a wide gap between their precepts and the practices. Human rights abuses and violations still continue and the victims of violence and abuses committed during the conflict are still in a long way from receiving justice and reparation. To most of these victims, the rhetoric of politicians to ensure that their rights are not abused is seen as hollow promises.

5. Philippines

- The Philippines is a country which has experienced more than 10 years of dictatorship by the Marcos regime from 1972 -1986.
- The dictatorship resulted in gross human rights violations, e.g. political detentions, killings, extrajudicial executions, and enforced disappearances.
- Statistics of victims according to age: 1-11 months (1); 2-15 years old (59); 16-25 years old (500); 26-35 years old (431); 36-45 years old (205); 46-55 years old (205); 46-55 years old (97); 56-69 years old (37)
- Statistics according to perpetrators: Armed Forces of the Philippines (1091); Philippine Constabulary/Integrated National Police (239); Citizen Armed Force Geographical Unit (57); Integrated Civilian Home Defense Forces (155); Vigilante/Fanatic Group (43); National Bureau of Investigation (2); unidentified state agents (191); Philippine National Police (73); Other government officials (3)
- 1973 had the highest number of cases recorded
- The Philippines has passed the Anti-Enforced Disappearances (ED) Law.
 - The law adopts the definition of enforced disappearance in the Convention.
 - It distinguishes enforced disappearance from the crime of kidnapping and serious illegal detention.
 - Considers enforced disappearance as a non-derogable right

- Enforced disappearance is imprescriptible.
- The law considers a public official directly involved in enforced disappearance criminally responsible including the superior.
- The law considers enforced disappearance as a continuing crime.
- It provides the punishment of *reclusion perpetua* or life imprisonment to perpetrators.
- It provides restorative justice, pecuniary compensation, restitution of honor and psychological rehabilitation for victims and offenders.
- Families of Victims of Involuntary Disappearance (FIND), formed the organization of the children of the disappeared, SAD (*Samahan ng mga Anak ng Desaparecidos*).

6. South Korea

- 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 the Democratic People's Republic of Korea¹ (DPRK). The rest were sent back within one year of their abduction, with the exception of eight abductees, who escaped the DPRK decades after their abduction.²
- The majority of the abductees who remain in the DPRK are fishermen who were 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 POWs wrongly repatriated to the DPRK; and at least one government inspector. In almost all these cases, guns or the threat of guns were used by DPRK forces to abduct ROK citizens.

7. Sri Lanka

- Sri Lanka is in a situation of post conflict, but until now, it continues to commit massive enforced disappearances. These are being committed on a massive scale. The government does not take responsibility of past and present cases.
- 60,000 cases of enforced disappearances occurred in the late 90s and more cases are occurring with each passing day.
- Civil society campaigned for the exclusion of Sri Lanka in the UN HRC.
- The University of Sydney hosted a conference in Thailand, but the organizers

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

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

were pressured by the Sri Lankan Government to cancel their invitation to Families of the Disappeared (FOD). AFAD participants protested against the action. The Justice for Peace Foundation-Thailand, through Angkhana Neelaphajit and the Asian Human Rights Commission (AHRC) issued a letter supporting FOD and later withdrew their participation.

- Every October, the families and relatives commemorate the memory of their loved ones in the monument they constructed (in the absence of tombs).

8. Thailand

- In Thailand, there are more or less 200 cases of enforced disappearances during the massacre of 1992 as documented by the May 1992 Heroes and Justice for Peace Foundation (JPF).
- There are recent cases in the South of the country and one of these cases is the enforced disappearance of human rights lawyer, Somchai Neelaphajit.
- The government of Thailand is giving compensation to families of the victims because it has not worked on the issue of punishment of the perpetrators.

9. Timor-Leste

- During the occupation of Indonesia in 1975 until its brutal end, about 186,000 to 250,000 persons were estimated to have died and others disappeared (30% of the population of Timor-Leste).
- After independence, the government established a Commission for Truth and Reconciliation. After the interviews with more than 10,000 persons, the people are waiting for justice that never came.
- Former President Jose Ramos Horta, a brother of 2 disappeared, did not succeed in getting justice for the victims.
- Several children have been disappeared during the Indonesian occupation.
- It is believed that they were taken to Indonesia by Indonesian soldiers and have been denied their historical identity.
- There is a challenge to find these disappeared children and facilitate their reunification with their biological parents. The reunification is a chance for these children to know their historical identity.

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OPEN FORUM

Atty. Yati Andriyani (KontraS-Indonesia)

On enforced disappearance advocacy in Indonesia, we often refer to the experience of Latin America in carrying out our own campaigns. Have you explored more in convincing the Christian community to influence the government to address cases of forced disappearances? In Indonesia, it is too hard for us to achieve the participation of the churches. Do you think we must do a political or cultural approach in working with church people? The Latin American countries have good experiences on how to make religious communities become aware of disappearances. In Indonesia, the religious community is part of the obstacle to end this problem. The religious community poses as an obstacle when the families tried to seek for a legal resolution.

Mr. Mugiyo (IKOHI-Indonesia)

On the situation of Chile and Latin America and in relation to the involvement of the United States, Indonesia and Chile have some similarities. Oplan Jakarta was used in Chile. I want to know more of your advocacy approach. Do you also talk about the accountability of the US regarding what they did to your country and to the region? Is there an accountability or possibly of corporate accountability?

Atty. Roberto Garretón (Chile)

You have just touched on a passionate issue for me. I take pride in the role of the churches in Latin America, although their participation is very different from one country to another. I take pride in the Catholic Church, Evangelical Lutheran, Methodist, Baptist, Pentecostal English, Orthodox, and the Chief Rabbinate of Chile. They all have agreed to create the Committee on Cooperation for Peace in Chile in a matter of 10 to 15 days. They all agreed to defend human rights.

But my Argentine friend here (referring to Alejandro Rúa) talked about how the Argentine Churches cooperated in the dictatorship. The churches firmly believed in the dictatorship. That situation was the opposite in Chile.

In Brazil, the participation of the church depends on the location of the Diocese of the Catholic Church and the Bishop. In the North of Brazil, there were 3 bishops who were not shocked by Communism; they are democratic bishops. But in other parts, some bishops supported the dictatorship, too.

In Guatemala, Monsignor Gerardi was a great progressive leader. He was a Roman Catholic Bishop who worked with the Mayan people and was attacked and killed after he released the report of abuses committed against the civilians during the civil war in Guatemala.

In El Salvador, the people considered one of their bishops as a hero. Today, they want to declare him a saint. That bishop helped the people to work against excesses of the state while the other bishops were nowhere to be found.

We have a diverse map in terms of cooperation of the churches. But in our advocacy, we lobby with the government and at the same time, we criticize the government for their excessive action and inaction.

In the current situation, why don't we meet with the bishops and tell them to make a stand? It might unsettle them, not that we kill or beat them but we can expose the role of the churches for those who don't care and those who don't cooperate. When there is a crisis, those who don't take a stand are considered as collaborators. The silence is condoning the practice. Martin Luther King said, *"do not fear our enemies when they speak, let's be fearful if our friends remain silent."* We have to force our silent friends not to be silent and be counted to take a step forward to combat injustice.

No single religion justifies injustice. If the protagonists turn a blind eye, then we convince them to join us. In Chile, we have no Muslim religion. If there is, the population may not be significant but they are welcome to join. Personally, I am not aware if there is an Islam religion. If there is anything in Islam that says that Ulama's must be defenders of human rights and if they are silent, then we have to trigger them to make a stand.

In all countries, we can find individuals who are respected by everybody – intellectuals, poets and writers. The National Commission on the Disappearance of Persons in Argentina (CONADEP) was headed by a writer, the late Ernesto Sabato. We can always find someone, great persons, artists, pianists, which we can ask to be on our side. We can lobby with the government; we can find other allies. Let us not be too focused on the state, we must make individuals in the society to take a stand. That requires skills in advocacy and negotiation, we must appeal to NGOs, religious leaders and other personalities. There must be changes of the paradigm and it is important that we have to trigger that change.

We have a lot of work, but more must be done. We have to find new allies, we must resort to regional mechanisms, at the international level, we have to know the strategies in doing this. If there is no international participation, then we lobby with the state members. You can go to an Ambassador of a friendly country. Have some allies that will change the position of the target UN Agency, we can't acquire additional gains, until more countries and organizations will take a stand, so that they will advance our causes.

I think Chile was very fortunate because when the conservative people of the government deposed a leftist president and a communist, President Salvador Allende, a conservative Ambassador of General Francisco Franco criticized Pinochet since the first day of his rule. The Ambassador took our side. Then we started to create alliances, do not leave one quarter of the society, there are always honest people. In the media, you can find one journalist who is patient, talk to him. He can write a quote, and then more will follow. We can come up with a snowball effect. We have to understand. I said this many times, we could make it happen or not.

Thank you to our good friend from Indonesia, when he reminds us of Oplan Indonesia

in Chile. Before the *coup* in Santiago, we heard about all these talks that “Jakarta is coming,” “Jakarta will arrive,” we did not know what on earth that was. But we knew what happened in the 1960s in Jakarta. There were series of massacres committed against the Communists. Indeed, I did not know there was a connection, they used that password, like using a synonym. It was their way of saying, “*we are strong, we have the capacity to annihilate a Leftist Government, such as the leftist Government of Allende.*”

That was true, we democrats were weak to stand at that moment but kept our attitude and we believed the dawn would arrive. In advocacy, do not leave a stone unturned, fight on all quarters. You may fail, once, twice, thrice, but soon you will start to taste victory. You may say he is not a loony and he is right after all.

The responsibility of the USA, this is a big issue. The US wrote the script of the *coup*. When Allende was elected, the US said, “*We can’t afford that because of stupidity of a country, we will have a situation that is damaging to the state.*” The US did not want a leftist or communist president. The *coup* in Chile was remotely controlled by the US. The success of the Cuban revolution is the biggest defeat of the US. That little country with 7 or 8 million inhabitants that is 90 kilometers away from Miami, the revolution turned it into a communist country. That led other Latin American countries to follow; we can also do as what Cuba did.

The US activated the dictatorships in Latin America, just to avoid a second Cuba. In Chile a military government took over. We had one dictatorship and it was bloody. There were other dictatorships in Argentina, Paraguay and Bolivia. We have progressive governments in the region and they knocked down the dictatorships, but if we talk about blueprint, the entire plan was from the US.

In the case of Pinochet, there was a point in history when the US could not showcase that boy called Pinochet anymore. Many NGOs, the Human Rights Watch, lawyers for human rights, and other NGOs, started to have solidarity with Chile and pressured the USA and Capitol Hill. We did not miss that opportunity.

The USA is full of open-minded and progressive individuals. We have to feed them the information on the situation of human rights in our countries. In feeding, you will succeed. I am a firm believer in the movement of human rights. We can do much more, if we establish alliances, bring to our side the eminent figures, religious authorities – we will win, we can prevail. As I’ve said, I lost all the court battles we had in 20 years but one day came and we started to taste victory.

Atty. Alejandro Rua (CELS-Argentina)

I would like to add, regarding the participation of churches and the USA, as Roberto mentioned, the hierarchy of the church had a collaborationist role. They were one of the tactical forces that aligned with the US and dictatorships. They blessed all the forces that opposed the Pope. But during the dictatorship, many individual parish priests were committed in the struggle. The members of *Madres de Plaza de Mayo* were born from those years.

Hundreds of people disappeared daily and the families cannot find answers. The Ministry of Interior Government or the officers of military camps claimed the mothers or fathers knew

the whereabouts of their missing kids. To search for these individuals, the families started their first meetings at the churches. Later, there were series of massacres and repression carried out against the progressive nuns and priests. The human rights movement of Argentina was an ecumenical movement, that is a powerful movement for me.

The complexity of the church hierarchy facilitated the repressive role of the USA in the region. There was coordination among and between the countries in carrying out enforced disappearances. That is the Operation Condor, unveiled in Paraguay. The Governments of Chile, Paraguay, Uruguay, Argentina and Brazil, to exchange information about their victims or target victims, did the coordination and communication among intelligence agencies. It was a mechanism to verify if there were people in their areas of responsibility hunted down by the intelligence agencies in their respective countries.

In Argentina, there were hundreds of clandestine detention centers maintained by the government. Some intelligence agents from other countries were also operating in these undisclosed jails. Such as what happened in Paraguay, intelligence officers from the USA were present in all those interrogation sessions. All these years, we have been able to declassify confidential papers. These reports chronicle the involvement, tolerance or how much these military spy networks coordinated the work among the military agencies in various countries.

I had cases regarding the Condor Operation in Paraguay, Uruguay and Chile. The documentation demonstrates the cross border cooperation of the intelligence groups and the importance of the USA's roles in the massacres in Latin America.

Mr. Marco Antonio Garavito (*Liga Guatemalteca de Higiene Mental-Guatemala*)

It is true, the USA has a repressive role in the Latin America's situation. The USA's intervention has been documented and they took part on enforced disappearances, not only in Latin America but in all parts of the globe. In Guatemala, we experience it since 1954. The US officers were there in our country and they intervened in the democratic space. In Chile, there was never a dictatorship until Pinochet. The dictatorship in Chile spilled all over Latin America and national security became the most important agenda of every state.

I want to ask the opinion of Roberto on the memory of our work and struggle. It is a counterproductive reality that many times we are forgetting the importance of the achievements in the past and we fail to relate that to what is happening today. The role of the USA in the tragedies of our countries is indisputable. Our memory is vulnerable but we have to understand the USA has the funds for the truth and reconciliation process. I am not saying that we don't avail of that opportunity, we must always demand for our participation.

But are we too forgiving? I'm saying that we must not forget, I am careful with this issue because I do not want to polarize our struggle for truth. Fighting for the truth is a basic need for our work, but in the process, we are letting the US go scot-free, wittingly or unwittingly. Should we observe caution? In Guatemala, things are getting messy, what do we do with the role of USA in the past? Is it not occurring now also? I want to hear the thoughts of Roberto on this issue.

Atty. Roberto Garretón (Chile)

I couldn't agree more and I do not contradict what you've shared. The USA is behind all the *coups*. Later, when President Carter was elected, many considered him as game changer. Many political detainees were released in the South America such as what happened in Chile and Argentina. I have no idea on the situation in Central America. In Chile, Pinochet and his henchmen attempted the assassination of President Allende, 500 meters away from Washington (the White House). They were supposed to kill President Allende before the *coup*. We exploited that plan against Pinochet. Later on, we got the sympathy of some personalities from the US.

Then President Reagan assumed office, his era was similar in the old days. Disappearances and other crimes were back. In my view, whatever happens in Latin America depends on who is in the White House – some were too repressive but some were condoning. There have been so many books published that reflect the role of the USA in the aggression in Latin America. This is a good development to remember the historical memory.

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Session 2:

The Value of Regional Human Rights Mechanisms in Addressing Enforced Disappearance

SPEAKERS



ASEAN Inter-Governmental Commission on Human Rights: Potentials, Limitations, Ways Forward and the Role of NGOs

Atty. Emerlynne Gil

International Commission of Jurists, Asia and Pacific Regional Office



Regional Human Rights Mechanisms in Latin America: Best Practices

Ms. Margarita Zamora

Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos-El Salvador



ASEAN Inter-Governmental Commission on Human Rights: Potentials, Limitations, Ways Forward and the Role of NGOs

ATTY. EMERLYNNE GIL

International Commission of Jurists, Asia and Pacific Regional Office

The ASEAN Regional Human Rights System

I want to thank AFAD for inviting the International Commission of Jurists (ICJ) to this event.

Dr. Edita Burgos mentioned earlier, for every disappeared person, there will emerge several people determined to work for human rights. This is true based on my work experience, I have seen people who become inspired to work for human rights because of the disappeared. For instance, Carol of AFAD, has been inspired by a priest from Cebu who disappeared, his name is Father Rudy Romano. When I was 8 or 9 years old, he went to our school every Thursday and he used to hear our confessions (a religious practice among Roman Catholics). I remember him, he was the coolest among the Redemptorist priests and he would show off to us his flip-up glasses with interchangeable lens. As children, we were so impressed. One Thursday, he did not make it to our school. That was the first time his disappearance was explained to us. I want to tell his story since he has no child or wife who can share this

anecdote. Today, his room is still maintained in the priests' convent and his motorcycle is also there. That was how I was introduced to the issue of enforced disappearance and that inspired me to work for human rights.

My work with ICJ is looking at ASEAN and how it is developing the Regional Human Rights Mechanism and the accompanying legal instrument. For the longest time, Asia was the only global region without a human rights mechanism.

It was only in 2008, that the ASEAN adopted its Charter, thereby giving it a legal basis for its existence and a legal framework. Article 14 of the ASEAN Charter provides that a human rights body shall be established as one of the mechanisms by which ASEAN member states can pursue closer interaction and cooperation to forge shared norms and create common mechanisms to achieve ASEAN's goals and objectives in the political and security fields.

It took two years for the ASEAN to put together this human rights body. In 2009, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was established. Unfortunately, the AICHR is given a weak mandate, and its Terms of Reference (TOR) is primarily concerned with promotion of human rights, but it has no protection mandate to effectively address the human rights issues in the region.

One of its tasks was to sign a Human Rights Declaration. It was subsequently adopted by the Member States of the ASEAN. When it was officially published, the ICJ together with other human rights organizations rejected the Declaration. It falls below and it undermines international human rights law and standards.

I want to refer you the document of the ICJ on this Declaration, it explains why this Declaration falls below international standards. The said document is available on the ICJ's website.

This year the TOR of the AICHR is being reviewed and ASEAN is receiving recommendations from various NGOs to improve the AICHR's directive so it can serve the human rights needs in the region.

There are several issues that surround AICHR. I want to discuss the "Principle of Non-Interference" because it directly impacts how the region's human rights issues, particularly the issue of enforced disappearances are addressed. ICJ has issued a memorandum. It acts as recommendation on how the functions of the AICHR can be improved in line with the international standards.

Paragraph 2.1(a) of the TOR provides that the AICHR shall have as one of its guiding principles the "non-interference in the internal affairs of ASEAN Member States." This is a great challenge for human rights NGOs. This principle has been interpreted in the ASEAN context that states are prohibited on commenting on domestic affairs of the other member states. This principle has been invoked very often by ASEAN Member States to prevent discussion of country-specific human rights situations including laws and policies, that negatively impact human rights protection. The ICJ is now urging the ASEAN to remove this principle from the TOR of AICHR.

We have been attending several consultations with the AICHR, and have carried out bilateral meetings with representatives from the various Foreign Ministries of ASEAN Member States together with the AICHR representatives.

We see that there is a clear resistance even within the AICHR. This may be due to misunderstanding the nature of human rights or the refusal to understand. In International Human Rights Law, there is no place for this principle because of the universal nature of human rights.

We emphasize, the protection and realization of human rights are not exclusively a matter of internal affairs of the state. The international community has a legal interest in the realization of human rights. This premise has been accepted by the international community, including the ASEAN Member States.

We note in Paragraph 4 of the Vienna Declaration and Program of Action, “the protection of all human rights is a legitimate concern of the international community.”

To give you an example on how the Principle of Non-Interference is used within the AICHR, I want to cite the disappearance case of Sombath Somphone from Laos. The case is not being discussed by the ASEAN Representatives. When Sombath Somphone disappeared in 2012, a lot of groups including the ICJ, called on the AICHR to tackle this issue and ensure the safety and well-being of Sombath Somphone. The ICJ issued a statement regarding this case of enforced disappearance, pointing out the TOR of AICHR has the mandate on this case. Within the TOR, common approaches and position on human rights matters and interest can be developed by the ASEAN.

I remember the conversation we had with the Thailand Representative to the AICHR and I referred to this mandate.

During the workshop in June 2013 organized by the ASEAN Working Group, and participated in by representatives of AICHR, other NGOs and ICJ, ICJ raised the case of Sombath Somphone and suggested that AICHR must take on the case. In that discussion, the Philippine Representative said that she will not respond to that issue and we can instead ask the Lao Representative. Then the Representative of Laos took the floor and stated that the Government of Laos will consider any discussion on enforced disappearances, even without mentioning a specific country, as constituting interference of their internal affairs and AICHR operates following the non-interference theme. That shut down the issue.

For ICJ, it is critical that AICHR addresses enforced disappearances in the region. Interestingly, representatives of Indonesia, Thailand, Philippines – countries with high cases of enforced disappearances have shown interest in continuing this discussion.

We also note that next year is the start of ASEAN Economic Community. This implies free flow of capital and labor and it becomes more necessary for a regional mechanism to address cross border issues of enforced disappearance. There might be cases, such as some Cambodian Nationals who are migrant workers in Thailand who will be disappeared by state actors or non-state actors from Cambodia or Laos, then who will be accountable, is it the State of Thailand? There should be a regional mechanism that will look into these cases and make standards that would effectively address human rights violations.

OPEN FORUM

Dr. Edita Burgos (*Desaparecidos* and FJBM-Philippines)

We realize that we are at the end of the line for the case of Jonas (Burgos), together with our lawyers, we are looking very seriously to bring the case of Jonas to the International Court or an international body where we can pursue it. We have brought the case to WGEID. It acted on it and they wrote to then President Gloria Arroyo but she did not reply.

May I know what steps do I have to take, granted that we are denied a petition to condemn those responsible for the disappearance of my son? What else can I do and what body must I approach to keep on looking for him?

Atty. Emerlynne Gil (ICJ-Asia and Pacific Regional Office)

Using AICHR mechanism is useless at this point. I don't think you will get anything much if you go to the Regional Mechanism now, but ICJ is pushing the AICHR to do more.

For instance, the secretariat of AICHR was asked, how many cases of human rights violations they have received during the past year. The officer could not answer, saying she did not take notes. Documenting these cases and recognizing reports of the families of the victims are ways to acknowledge and show their respect for the victims. Their lack of action is a willful decision not to act on human rights cases. The Regional Mechanism in Southeast Asia is very far from what we have in Europe and Latin America.

Aside from going to an international mechanism which may be helpful in the case of Jonas, there is not much alternative in the region because of the current challenges. Nationally, the Philippines lacks capacity on how to decide on these cases.

Dr. Edita Burgos (*Desaparecidos* and FJBM-Philippines)

Thank you for the answer but it is not very promising at the ASEAN level, but we have the Divine Intervention. I can always pray. I have a follow up question, how about the international courts, although the Philippines is not yet a signatory of the Convention or how about the ICC?

Atty. Emerlynne Gil (ICJ-Asia and Pacific Regional Office)

Individual cases are not allowed to go to ICC. There is no mechanism yet for this. We are working to have a mechanism similar to the Inter-American Court that can adjudicate cases like this.

Ms. Mary Aileen D. Bacalso (AFAD-Philippines)

Many Southeast Asian countries are not states parties to the Convention. Last year, Cambodia ratified the Convention but some UN Committee on Enforced Disappearances members joked that maybe Cambodia may not even know that it signed the Convention.

AFAD has this campaign in encouraging states to ratify. If we compare ASEAN with GRULAC (Latin American and Caribbean Group, a United Nations Regional Group) , it is unequal because GRULAC members were united in the position for a new treaty to address enforced disappearances and for an independent monitoring body, that is the Committee on Enforced Disappearance. What advise can you give to AFAD and ICAED? How can we approach ASEAN countries and ASEAN as a regional body in convincing them to ratify the Convention?

Atty. Emerlynne Gil (ICJ-Asia and Pacific Regional Office)

In the case of Laos, the state signed the Convention in 2009 before the first Universal Periodic Review (UPR) of Laos. The country was so proud that it signed it, but immediately after the UPR, Sombath Somphone disappeared.

A possible step is to convince AICHR to give a statement on enforced disappearances in Southeast Asia. When Sombath Somphone disappeared, they did not release a statement since Laos said it is an encroachment on their internal affairs.

Thailand proposed to have a discussion how member states can take steps to ratify the Convention. The mandate is clearly spelled out in the TOR that AICHR must encourage the Member States to ratify key human rights instruments. Thailand raised a point and asked how is it possible for the members to discuss cases of enforced disappearances. Laos commented that if such discussion is considered, then that can be counted as intervention into internal affairs.

It depends on the human rights movement in the country itself to make the grounds fertile for AICHR to take these issues, and to make Member States ratify the Convention. ASEAN and AICHR must change the selection process, human rights experts must sit in the AICHR and not Government Representatives. The human rights experts and defenders must have democratic space for them to take these positions and exercise their mandate. The situation of human rights in the Southeast Asia is challenged and it is manifested in the regional body.

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Regional Human Rights Mechanisms in Latin America: Best Practices

MS. MARGARITA ZAMORA

Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos-El Salvador

El Salvador is a country in Central America that suffered from enforced disappearances of young boys and girls and adults as well. I want to express our gratitude to Father Jon de Cortina, the late founder of our organization, *Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos*. Archbishop Arnulfo Romero was another religious figure who rose up for the struggle of human rights and against social injustice. Archbishop Romero is considered as a saint in Latin America for his audacity when he spoke against human rights abuses in the region. For us, in *Pro-Búsqueda*, it is important to represent the victims, they are human beings that must be recognized.

I. Enforced Disappearances of Children: Success Stories

A. Argentina: *Abuelas de la Plaza de Mayo (Madres de Plaza de Mayo)*

We have similarities in our work in Argentina and Guatemala and I'll make mention of some important developments. The *Madres de Plaza de Mayo* and the

National Commission for the Right to Identity (CONADI), found the 115th disappeared grandchild. The efforts of the *Madres de Plaza de Mayo* were intended to search, to fight for the truth and to identify those young children who disappeared and who grew up in foster homes. The Committee (CONADI), the representative of the Government of Argentina together with the *Madres de Plaza de Mayo* does not simply represent the families of the disappeared but also, it is doing actions to guarantee that the commitments of the government are done and completed.

In August 2003, the Law 25.779 nullified and voided the Due Obedience Law and Full Stop Law. Thus, Law 25.779 opens the possibilities for conviction for those who committed genocide, the culprits of human rights violations, the responsible people for committing abduction, those who collaborated and concealed the information regarding the abductions, and those parents who illegally adopted the children be held accountable.

In July 2012, Jorge Videla was convicted because of his responsibility in the systematic appropriation of children during the dictatorship in Argentina.

The creation of the National Bank for Genetic Samples opens the possibility to identify those children who did not grow up with their biological families. The identification of the 115 children, who grew up with foster families, a number of whom came from the ranks of military, is a great achievement that we must celebrate. The reunification of Stella Carlotto with her grandchild, Guido, is a historical accomplishment.

I want to add, one of the important achievements made by the *Abuelas de Plaza de Mayo* in the establishment of the Genetic Bank, is the accessibility of getting DNA samples for testing. The DNA samples can be obtained through the assistance of the courts; there is legal support. Even if the young people of interest are not willing to volunteer their DNA samples, they can be obligated by the local courts in Argentina to cooperate in the DNA sampling process. This is a legal mechanism that we do not have in our country.

B. Guatemala

1. *Liga Guatemalteca Higiene Mental (Todos por el Reencuentro)*

For us in El Salvador, it is important that other organizations practice the reunification program. In Guatemala, around 5,000 children were disappeared during the armed conflict between 1960 and 1996. The *Liga Guatemalteca Higiene Mental* has been investigating about 1,300 cases of enforced disappearances of children. We know they have accomplished 400 cases of reunifications. There have been great achievements in terms of investigations, social accompaniment, and promotion of justice in Guatemala.

2. *Fundación de Antropología Forense*

The *Fundación de Antropología Forense* is an important association because they have working groups that center on the exhumation process, preservation of evidence and reports of forensic investigations. These are necessary for the legal cases and reparation. Their Forensic Genetics Laboratory is recognized worldwide for their work and we know that much more must be done in forensic work.

In Guatemala, exhumation is important because it is a process that literally unearths the truth, in the case of those who were disappeared, killed and buried.

The association is also working to lobby for non-repetition. Moreover, it has been actively disseminating the results of their investigation so that the people in Latin America will know about what happened. These facts must be made known so enforced disappearances will not happen again.

3. Access to Justice

It is important to acknowledge the work of Guatemalans, who are responsible in the legal battle against former General Efraín Ríos Montt. In May 2013, he was convicted of genocide. For us in El Salvador, it is important that for the first time in Central America, the law is implemented and justice is served in Guatemala.

II. Enforced Disappearance of Children in El Salvador

A. The Work of *Pro-Búsqueda* and the Phenomenon of Disappeared Children in El Salvador

Pro-Búsqueda was founded in 1994 by a Jesuit priest, Father Jon de Cortina and a group of families who searched for their children. *Pro-Búsqueda* is a movement of the disappeared children's parents and relatives.

The phenomenon of disappearances of children was a systematic practice of the state, a strategy against the insurgency to deprive the fish of water.

Some 7,000 persons, both young and adults suffered from enforced disappearance in the 80s, during the civil war. The disappearances of children were perpetrated by the police, national guards, armed forces, as well as the elite forces trained in the USA, in the military school of the Americas. These were manifestations of how the US supported the war in Latin American countries. The US spent millions of dollars to maintain the war in El Salvador. If this was not the case, there would be no enforced disappearances in our country.

Due to the initiatives of five families of the disappeared children and Father Jon Cortina, *Pro-Búsqueda* was established in 1994, after the signing of the Peace Agreement.

The members of our association are families of the disappeared children and some survivors of disappearances. We started our work in 1994, and as of 2014, there are 934 cases reported of which 392 are resolved. After the investigations we conducted in El Salvador, we established that 55 children were killed when they were disappeared and 92 cases are pending for reunification, while 245 children are reunited with their biological families.

The creation of the National Search Commission (CNB), is an achievement of the legal proceedings of the Serrano Cruz sisters' case. The sisters Ernestina and Erlinda Serrano Cruz, 7 and 3 years of age respectively, disappeared in a military operation known as "*Guinda de Mayo*," which occurred in 1982 in the Department of Chalatenango.

General Situation of Access to Justice

There are 19 pending cases before the Attorney General's Office but nothing has been done to investigate these cases. We have a class suit for the massacre of La Quesera. We have not gone very far with our cases filed before the Supreme Court of Justice. There are 29 *hábeas corpus* cases out of the 39 disappeared children. Many of these cases of *hábeas corpus* are denied due to lack of birth certificates. It is very difficult to come up with these certificates, even if the witnesses attested to the pregnancies of the mothers of the disappeared and these mothers eventually gave birth. The birth certificates must be provided with the affidavit. Some of those people who knew of the birth of these disappeared children have passed away. We demand to know why do we have to provide the birth certificates of the children, we don't even have baptismal certificates, or other documents confirming the birth of these children. Despite our efforts, we have not achieved much. The prosecutors have not exhausted all possible means to resolve the cases and to initiate the identification process of those who committed the abductions.

We need a whole team of properly equipped human rights lawyers to investigate enforced disappearances, massacres and the illegal adoptions done in the 80s. These adoptions were coordinated at the national level of the government, but the investigations conducted by the Department of Justice and the Prosecutors are not exhaustive to locate the perpetrators and sanction them. All actors who possibly participated in the illegal adoption must be investigated, including lawyers who assisted in the adoption process, Red Cross Volunteers, government employees who worked at the military bases, and personnel of the orphanages.

It is important to recognize the shortcomings committed by the state in the work for justice. The state must fulfill the recommendations mandated by the Inter-American Court of Human Rights. We must have a special group of prosecutors to investigate the cases of the disappeared children. It is important for the state to carry out programs, such as conducting DNA tests to identify the remains of the disappeared. The state has to have a bank of genetic profiles to identify both adults and children victims.

Hábeas corpus: Puntos de Inflexión

With the process of *hábeas corpus*, *Pro-Búsqueda* reached the turning point in the case of *Guinda de Mayo*. One of the more serious violations by the armed forces is in Chalatenango where more kids disappeared. There are 11 processes of *hábeas corpus*. These prove the pattern of enforced disappearances of children due to the role played by the armed forces.

The Supreme Court accepted the report based on the investigations conducted by *Pro-Búsqueda*. In that report, it detailed the systematic practice of enforced disappearances carried out by the armed forces. As a consequence, a court gave orders to secure the military archives and confiscate the documents. Until today, this order remains a promise. *Pro-Búsqueda* together with the civil society and human rights advocates, has been demanding that all military archives be made public.

For the first time in El Salvador, we heard the testimony of one of the victims who witnessed the disappearances of his/her son and other kids. We are able to advance the case and the judge showed some interest in the pattern that demonstrates how the armed forces conducted the forced disappearances of children and the adult victims.

Access of the Victims to the Inter-American Justice

We decided to appeal to the Inter-American Court of Human Rights. The said court filed the cases of:

- Serrano Cruz sisters in 1995
- Contreras brothers
- Rochac et al.

Pro-Búsqueda is still waiting for the court to decide and we hope this will happen.

The case of Serrano Cruz sisters in 1995, the sisters, ages 7 and 3 years old disappeared after the *Oplan Guinda de Mayo* started in 1994. *Pro-Búsqueda* has been heading the filing of this case but in the earlier period of the legal proceeding, the court did not recognize the legal rights of the victims. When positive developments took place, it was the first ruling in El Salvador that recognizes the pieces of evidence gathered by *Pro-Búsqueda* and the witness was heard for the first time.

The internal judicial process started in 1994. The sentence of the Inter-American Court of Human Rights was obtained in 2005. The Court (IDH) recognized the violation of rights to judicial guarantees and the judicial protection of the Serrano Cruz sisters. It was the first sentence condemning the state of El Salvador that was sanctioned by the International Court of Human Rights.

The conviction established measures for reparation of which one was the creation of the CNB. There is still so much to be done.

Pro-Búsqueda, together with the civil society of El Salvador, made recommendations to make the state answerable as far as reparation and public accountability are concerned. In the earlier years, the El Salvadorean government was rightist in its perspective. Instead of apologizing to the victims, it ridiculed the relatives and families, particularly the family of Serrano Cruz sisters. When the favorable ruling was made public, the 29th of March became a commemorative date to remember the children who were enforcedly disappeared during the armed conflict. The reparation or indemnification of moral and material damages is integral in giving justice to families but the money does not come from the pockets of the government officers. In effect, this money comes from the people because they pay their taxes to the government. The reparation may also be provided in the form of medical assistance and psychosocial attention. The implementation of these services is still a work in progress.

The search conducted by the National Search Commission remains unfinished. Since the court mandated the creation of the Search Commission with an interagency nature, *Pro-Búsqueda* continues to participate in this cooperation but we demand that this Commission must be mandated by legislative action. Now, it exists through the executive mandate and there is a risk that the work of the Commission will be forgotten.

In terms of reparation measures and prosecution of those who are responsible, the parents are struggling to find the Serrano Cruz sisters. The government has not done any serious action to find them. The creation of the DNA Bank is still pending. *Pro-Búsqueda* has been providing all interventions and recommendations but the government has yet to grant a meaningful action.

Decision of the Inter-American Court of Human Rights:

Six children disappeared including the three Contreras siblings. Two of these kids have yet to be found.

- The 3 Contreras siblings were taken by the military in 1982.
- The two Mejía sisters disappeared in 1981 and Rubén Rivera disappeared in 1983.

The case was received by the Inter-American Court in 2002 and the sentence of the Court was obtained in 2011.

Pro-Búsqueda found the eldest of the Contreras siblings in Guatemala. El Salvador's new President is in favor of the call for reunification and reparation measures for the victims and their families. He recognizes the accountability of the government and the systematic implementation of enforced disappearances and made a public apology for the repressive action of the state and for disappearances of children.

Based on the decision of the Inter-American Court of Human Rights, further initiatives must be put in place to find the rest of the disappeared children. Economic reparation has been implemented by the state but we are still waiting for psychosocial assistance, further investigation and prosecution of the perpetrators, the tracing of the still missing Mejia and Rivera children. *Pro-Búsqueda* also demanded for the state to detail and make public the disappearances of children during the armed conflict. A consolidated audio-video files of all the cases must be produced by the state.

Inter-American Court of Human Rights: Pending Cases

Another case was filed by *Pro-Búsqueda* involving the disappearances of five children:

- José Adrián Rochac, 5 years old
- Santos Ernesto Salinas, 5 years old
- Emelinda Lorena Hernández, 11 months
- Ricardo Ayala Abarca, 8 years old
- Manuel Ernesto Bonilla, 12 years

The National Search Commission has found one of the children but the reunification has yet to take place. The other cases are still pending and we are still waiting for conviction. We hope this will take place before 2014 ends. The Salvadorean Government is responsible, *Pro-Búsqueda* proved that damage has been done beyond the current generation. The future generations will also suffer the disappearance of their relatives because this is an emotional loss.

The Inter-American Human Rights Court, recognized this as an exemplary case. Enforced disappearance must be addressed including the psychosocial support for the next generations.

Inter-American Commission of Human Rights: The Rivas et. al Case

This case was filed in 2011 to the Inter-American Court of Human Rights. In August 1982, members of the armed forces carried out a massacre against the residents of Conacastada, San Vicente. The surviving adults fled but some of the children were left behind. The armed men kidnapped the children and transported them to another place using military helicopters. One of the colonels of the armed forces has been identified as part of that genocide.

***Pro-Búsqueda* and Political Lobbying**

The state of *Pro-Búsqueda* presented proposals for laws to the Legislative Assembly, including the following:

- Creation of the National Search Commission (1999)

- Law of Reparation for disappeared children (2004)
- Law for the search of disappeared children during the internal conflict (2008)
- Reform of the crime of enforced disappearance(2010)
- Reparation law for victims of enforced disappearance (2013)

But we have been urging the government to pass a law that will enact the creation of the National Search Committee because what we have is a body mandated through an executive order. Our organization and the civil society deem the legislation more powerful compared with the administrative authorization.

To commemorate the disappearances of children, *Pro-Búsqueda* is partly responsible for declaring March 29 as a national holiday to honor the disappeared children.

What Must Be Done

Despite the efforts of *Pro-Búsqueda* in influencing the government to ratify the Convention, still the Legislative Assembly is not paying attention to our call. The executive branch, through the President, has cooperated with us but the process of ratification requires the endorsement of the Congress. Majority of our legislators are conservative and allies of the armed forces who perpetrated the crimes.

El Salvador has an Amnesty Law that grants blanket protection to government officers and members of the armed forces who are responsible for the disappearances of children. *Pro-Búsqueda* is working for the revocation of this law to enable access to justice. It is not possible to advance the prosecution of cases if the government will not repeal this law.

National and International Networks

Pro-Búsqueda is part of human rights associations and networks in Latin America and in other regions. These networks include:

1. *Pro Historical Memory Commission of El Salvador*
2. *Mesa de la Niñez de la Procuraduría para la Defensa de los DDHH*
3. *Red para la Infancia y la adolescencia (RIA)*
4. *Federación Latinoamericana de Asociaciones de Familiares de Detenidos-Desaparecidos (FEDEFAM)*
5. *CEJIL (Centro por el Derecho y la Justicia Internacional)*
6. *IDHUCA (Instituto de DDHH de la Universidad Centroamericana)*

7. *Amnistía Internacional*
8. *Médicos por los Derechos Humanos*
9. *Centro de DDHH de la Universidad de California*
10. *Alianza de Científicos Forenses para los Derechos Humanos*
11. *Comisión Internacional de Personas Desaparecidas (ICMP), Bosnia-Herzegovina*
12. *Equipo Argentino de Antropología Forense*
13. *Fundación de Antropología Forense de Guatemala*
14. *Federación Asiática contra las Desapariciones Forzadas (AFAD)*
15. *Coalición Internacional Contra la Desaparición Forzada (ICAED)*

OPEN FORUM

Atty. Melissa O'Donnell (HAK Association-Timor-Leste)

On the Commission of the Missing Persons, being a non-government organization doing this line of work, is there a conflict in terms of mandate between the entities and the work against enforced disappearance? It is a reality that the relationship is not easy all the time because of different viewpoints.

Ms. Margarita Zamora (Pro-Búsqueda-El Salvador)

The associations of relatives and victims and the National Commission have been able to coordinate initiatives. We are doing the same thing from different viewpoints. We reached an agreement to promote the interest of victims and not to divide our stand. We recognize the value of being an organization. The National Search Commission is an heir of our tradition, it is a product based on the recommendations of the Inter-American Court of Justice. For us, this a process, it is not a relationship. These days, we lobby for a law that will mandate the establishment of the National Search Commission because what we have has been created through an executive order. The National Commission must be a product of legislative act to respond to the needs of the relatives still waiting for their children to be found.

Ms. Mary Aileen D. Bacalso (AFAD-Philippines)

The founder of *Pro-Búsqueda*, Father Jon Cortina came here in 1997 and helped us in FIND when we conceptualized the creation of AFAD. He was the one who encouraged us to form an Asian group. Fr. Jon facilitated our cooperation with the Latin American Federation of Associations of Relatives of Disappeared-Detainees (FEDEFAM).

Atty. Yati Andriyani (*KontraS-Indonesia*)

It is an inspiring experience from El Salvador. When you are doing a justice mechanism, is there resistance from perpetrators or political parties and other elements? In Indonesia, we have so many resistance from the political parties and the influential perpetrators. The judicial process in Indonesia cannot proceed without recommendations from the parliament and recommendations of politicians from political parties.

Ms. Margarita Zamora (*Pro-Búsqueda-El Salvador*)

The opposition against our work is strong. There are people who want to maintain the status quo. It has been very difficult for us to fight for our rights because it is opening the wound to talk about the past. It is painful, if we stop, there is no chance to heal, no chance to find our disappeared loved ones. The opposition force is always against us.

There is some level of progress that has come about. The leftist government has advanced in some areas such as in some cases of enforced disappearances. Not all issues are resolved but this is a beginning.

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Session 3:

Roles of Family Associations in Lobbying for the Signing and Ratification of the International Convention Against Enforced Disappearance

SPEAKERS



International Convention for the Protection of All Persons from Enforced Disappearance
Atty. Ricardo A. Sunga III
University of the Philippines



Families of Victims as Active Participants in the Struggle Against Enforced Disappearance: the Indonesian Experience
Mr. Mugiyanto
Chairperson, AFAD and IKOHI



The Euro-Mediterranean Federation Against Enforced Disappearances (FEMED)
Mr. Wadih Al Asmar
Secretary-General and Co-Founder of FEMED



International Convention for the Protection of All Persons from Enforced Disappearance

ATTY. RICARDO A. SUNGA III
University of the Philippines

I. Introduction

This article provides an introduction to the violation that the enforced disappearance constitutes, and an exposition on the relevant international law, including the International Convention for the Protection of All Persons from Enforced Disappearance.¹ It suggests, as a way forward, the ratification of this Disappearances Convention.

Section II of this paper provides an introduction to the violation known as the enforced disappearance. Section III examines and analyzes the provisions of the Disappearances Convention. Section IV, by way of conclusion, asserts the need

¹ International Convention for the Protection of All Persons from Enforced Disappearance 2006, GA Res 61/177, 20 December 2006, UN Doc A/RES/61/177 (2006), 14 IHRR 582 (2007), opened for signature 6 February 2007, entered into force 23 December 2010 (Disappearances Convention).

to take steps to increase the level of international legal protection from enforced disappearance, through the ratification of the Disappearances Convention.

II. Enforced Disappearance

This section provides an introduction to the violation known as enforced disappearance and explores its nature. For the response of the law to a human rights violation to be adequate, it must fully comprehend and reflect the nature of the violation. A deeper understanding of the violation that enforced disappearance constitutes is important for its victims to come to terms with their experiences and to translate this knowledge into legal form.² The law must wholly take into account the suffering that families have endured from not knowing the truth about their disappeared relatives.

Enforced disappearance is a human rights violation with a nature like no other.³ Enforced disappearance is defined in the UN Declaration for the Protection of All Persons from Enforced Disappearance,⁴ the Inter-American Convention on Forced Disappearance of Persons,⁵ the Rome Statute on the International Criminal Court,⁶ and the Disappearances Convention.⁷ The definitions in these international instruments are similar in that they have three common elements:

- involvement of government officials;
- deprivation of liberty; and
- refusal by the government to acknowledge the deprivation of liberty.

Enforced disappearances are generally carried out by specialized units that

2 For a similar analysis applied to a gender-infused theory of harm, see Fionnuala Ní Aoláin, 'Exploring a Feminist Theory of Harm in the Context of Conflicted and Post-Conflict Societies' (2009) 35 Queen's Law Journal 219, 222.

3 For further discussion on this matter, see Ricardo A. Sunga III, On Locating the Rights of the Lost, LLM Thesis, University of New South Wales, June 2011. <http://unsworks.unsw.edu.au/fapi/datastream/unsworks:9845/SOURCE02> viewed 31 July 2012, and Ricardo A. Sunga III, *International Convention for the Protection of All Persons from Enforced Disappearance: Prospects and Challenges*, February 2012, Policy Paper, Institute of Human Rights, University of the Philippines Law Center.

4 Declaration on the Protection of All Persons from Enforced Disappearance, GA Res 47/133 of 18 December 1992, 47th session, UN Doc A/RES/47/133, preamble, 'persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.'

5 Inter-American Convention on Forced Disappearance of Persons, adopted 9 June 1994, OAS Doc OEA/Ser.P/AG/Doc 3114/94, entered into force 28 March 1996, art II, 'forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.'

6 Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 3, entered into force 1 July 2002 (Rome Statute), art 7(2), 'the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period.'

7 Disappearances Convention, art 2, 'the arrest, detention, abduction or other form of deprivation of liberty committed 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 place such a person outside the protection of the law.'

make up highly secret bodies within the armed or security forces.⁸ Méndez and Vivanco believe that they have their own chain of command that directs them, with the ability to avoid any interference from other governmental bodies. These authorities arrest the victims and interrogate and torture them at secret detention centers free from judicial or other intervention. Some victims survive, but most do not. As soon as victims stop providing intelligence, the authorities kill them and dispose of the corpse in a way to ensure continued deniability.⁹ Cassese observes that enforced disappearances are often associated with ‘the pursuit of power by terror and elimination of political opposition.’¹⁰ Brody and González explain that disappeared persons are generally political opponents and members of grass-roots organizations who, as a consequence of the enforced disappearance, become subject to the whim of their captors.¹¹

The recognition of the right not to be subjected to enforced disappearance has steadily grown. In Resolution No. 33/173 entitled ‘Disappeared Persons’ adopted on 20 December 1978, the UN General Assembly stated that it was ‘deeply moved by the anguish and sorrow’ of disappeared persons’ relatives and ‘deeply concerned by reports from various parts of the world’ of enforced disappearances.¹² In characterizing enforced disappearance, the UN Declaration on the Protection of All Persons from Enforced Disappearance states ‘that enforced disappearance undermines the deepest values of any society committed to respect the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity.’¹³

Just as much victims as disappeared persons are their family members who are denied the truth about their relatives. There is a growing body of scientific literature on how an enforced disappearance complicates the mourning process of disappeared persons’ family members and causes a greater incidence of affective disorders, pathological depressive and non-depressive grief, anxiety, post-traumatic stress disorder and greater degrees of unconscious emotional disturbance over an extended period.¹⁴

8 Juan Méndez and Jose Miguel Vivanco (1990). ‘Disappearances and the Inter-American Court, Reflections on a Litigation Experience.’ *Hamline Law Review*, 13, 508, 511.

9 Ibid.

10 Antonio Cassese (1999). ‘The Statute of the International Criminal Court: Some Preliminary Reflections.’ *European Journal of International Law*, 10, 144, 150.

11 Reed Brody and Felipe González (1997), ‘Nunca Más: An Analysis of International Instruments on “Disappearances.”’ *Human Rights Quarterly* 19(2), 365-366.

12 Disappeared Persons, GA Res 33/173 of 20 December 1978, 33rd session, 90th plenary meeting, preamble.

13 Declaration on the Protection of All Persons from Enforced Disappearance, preamble.

14 For example, Luis Fondebrider (2002), ‘Reflections on the Scientific Documentation of Human Rights Violations’ *International Review of the Red Cross*, 84, 885, 885; Margriet Blaauw and Virpee Lahteenmaki (2002). ‘Denial and Silence or Acknowledgement and Disclosure’ . *International Review of the Red Cross*, 84, 767, 770; A Hussain, Z Wani, Y Rather, M Khan and H Mushtaq (2010). ‘Complicated grief in families of enforced disappearances.’ 25 (Supplement 1); Gregory Quirk and Leonel Casco (1994). ‘Stress Disorders of Families of the Disappeared: A Controlled Study in Honduras.’ *Social Science and Medicine*, 39(12), 1674; Pau Pérez-Sales, Teresa Durán-Pérez and Roberta Bacic Herzfeld (2000). ‘Long-term psychosocial consequences in first - degree relatives of people detained - disappeared or executed for political reasons in Chile. A study in Mapuce and Non-Mapuce persons.’ *Psicothema Supplement*, 12, 109, 114-115; and Deborah Munczek and Steven Tuber (1988). ‘Political Repression and Its Psychological

Enforced disappearance is a violation of a depth and complexity like no other. It is widely regarded as one of the cruelest forms of human rights violation. International and domestic laws should capture fully the depth and complexity of this violation.¹⁵

III. Disappearances Convention

This section explores the provisions of the Disappearances Convention. It is an international human rights treaty that contains a range of provisions meant to address enforced disappearances.¹⁶ The absolute prohibition of enforced disappearances is at the core of this Convention. Without qualification, it states: ‘No one shall be subjected to enforced disappearance.’¹⁷ It goes on to provide for the non-derogability of the right not to be subjected to enforced disappearance with these words: ‘No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.’¹⁸ It proceeds to define the enforced disappearance 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 place such a person outside the protection of the law*¹⁹

The Disappearances Convention requires states parties to criminalize the enforced disappearance. It obliges states parties to ‘ensure that enforced disappearance constitutes an offence under its criminal law.’²⁰ It also recognizes that the widespread or systematic practice of enforced disappearance constitutes a crime against humanity.²¹

The Disappearances Convention identifies conditions necessary to prevent the occurrence of enforced disappearances and to stop those that have already started. It requires states parties to conduct a thorough and impartial investigation without

Effects on Honduran Children.’ *Social Science & Medicine*, 47(11) 1699, 1712.

15 Brody and González, above n 14, 366.

16 For further discussion on this matter, see Ricardo A. Sunga III, On Locating the Rights of the Lost, LLM Thesis, University of New South Wales, June 2011. <http://unsworks.unsw.edu.au/fapi/datastream/unsworks:9845/SOURCE02> viewed 31 July 2012, and Ricardo A. Sunga III, *International Convention for the Protection of All Persons from Enforced Disappearance: Prospects and Challenges*, February 2012, Policy Paper, Institute of Human Rights, University of the Philippines Law Center.

17 Disappearances Convention, art 1(1).

18 Ibid, art 1(2).

19 Ibid, art 2.

20 Ibid, art 4.

21 Ibid, art 5.

delay into enforced disappearances,²² prohibits secret detention and requires states parties to compile and maintain up-to-date official registers or records of persons deprived of liberty,²³ guarantees freedom of information and obliges states parties to take appropriate measures to protect persons with a legitimate interest in information and persons participating in an investigation,²⁴ guarantees the right to a prompt and effective judicial remedy²⁵ and requires states parties to take measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification.²⁶

Furthermore, the Disappearances Convention guarantees the right to know the truth,²⁷ obliges states parties to take all appropriate measures to search for, locate and release disappeared persons, and, in the event of the disappeared persons' death, to locate, respect and return their remains,²⁸ guarantees the right to obtain reparation and prompt, fair and adequate compensation,²⁹ requires states parties to take appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives,³⁰ and requires states parties to prevent and punish under its criminal law the wrongful removal of children.³¹

To supervise its implementation, the Disappearances Convention establishes the Committee on Enforced Disappearances. The Committee consists of ten experts of high moral character and recognized competence in the field of human rights. They serve in their personal capacity, are expected to be independent and impartial and are elected by the states parties according to equitable geographical distribution, with due account taken of relevant legal experience and of balanced gender representation.³²

The Disappearances Convention equips the Committee on Enforced Disappearances with a variety of monitoring procedures. These include a reporting procedure in which states parties are obliged to submit reports on the measures taken to give effect to obligations under the Convention,³³ an individual communications procedure requiring a separate declaration by a State party recognizing the

22 Ibid, art 12.

23 Ibid, art 17.

24 Ibid, art 18.

25 Ibid, art 20(2).

26 Ibid, art 21.

27 Ibid, art 24(2)

28 Ibid, art 24(3).

29 Ibid, art 24(4).

30 Ibid, art 24(6).

31 Ibid, art 25.

32 Ibid, art 26.

33 Ibid, art 29.

competence of the Committee to receive communications from individuals claiming to be victims of violations of provisions of the Convention,³⁴ and an inter-State communications procedure similarly requiring a separate declaration by a State party recognizing the competence of the Committee to receive communications in which a State party claims non-fulfillment by another State party of its obligations under the Convention.³⁵

The Disappearances Convention also provides procedures with novel elements, such as an urgent procedure making possible requests that a disappeared person be sought and found,³⁶ a visit procedure in cases of reliable information indicating that a State party is seriously violating the provisions of the Convention,³⁷ and a referral procedure to the UN General Assembly of well-founded indications that enforced disappearance is being practiced on a widespread or systematic basis in the territory under the jurisdiction of a State party.³⁸

In the effort to end enforced disappearances, the Disappearances Convention goes beyond the protection, that other human rights treaties, like the International Covenant on Civil and Political Rights,³⁹ and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁴⁰ are able to provide. The latter are general human rights treaties. They do not expressly guarantee the right not to be subjected to enforced disappearance. But they embody rights that are compromised and placed at risk of violation, when an enforced disappearance happens.

For example, the ICCPR expressly guarantees the right to life at article 6, and the right to liberty and security of person at article 9. A body called the UN Human Rights Committee supervises the implementation of the ICCPR through a reporting procedure,⁴¹ individual communications procedure⁴² and inter-State communications procedure.⁴³ With its individual communications procedure, this Committee has built case law, through its individual communications procedure,

34 Ibid, art 31.

35 Ibid, art 32.

36 Ibid, art 30.

37 Ibid, art 33.

38 Ibid, art 34.

39 International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171, entered into force 23 March 1976 (ICCPR).

40 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Opened for signature 10 December 1984, 1465 UNTS 85, entered into force 26 June 1987 (Convention against Torture).

41 ICCPR, art 40.

42 First Optional Protocol to the International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171, 301, entered into force 23 March 1976 (Optional Protocol).

43 ICCPR, art 41.

giving effect to the right not to be subjected to enforced disappearance.⁴⁴

For its part, the Convention against Torture expressly guarantees the right not to be subjected to torture at article 1. The body that supervises its implementation is called the UN Committee against Torture. It does so through a reporting procedure,⁴⁵ individual communications procedure,⁴⁶ inter-State communications procedure⁴⁷ and confidential inquiry procedure.⁴⁸ In its Concluding Observations on various State reports, this Committee has considered the enforced disappearance as a form of prohibited torture.⁴⁹

In their own way, even without any provision dealing directly with the enforced disappearance, the ICCPR and Convention against Torture contributes to safeguarding the right not to be subjected to enforced disappearance. The treaty bodies supervising their implementation are able to make creative use of their provisions to help address the serious violation known as the enforced disappearance.

But ratification of the Disappearances Convention would demonstrate a higher level of commitment to end enforced disappearances. Despite their apparent experiences with enforced disappearances, some States have not ratified it. To respond adequately to the violation that the enforced disappearance constitutes, international human rights treaty law must fully reflect an appreciation of its depth and complexity. For some, international human rights treaty law in force is limited to the ICCPR and Convention against Torture. Though these general human rights treaties do not provide for a right not to be subjected to enforced disappearance, they embody a variety of other rights, which various courts and tribunals have interpreted, in a manner that gives effect to the right not to be subjected to enforced disappearance.

Neither the ICCPR nor the Convention against Torture treats the right not to be subjected to enforced disappearance in a thorough manner. They fail to detail

44 See, for example, *Quinteros v Uruguay*, UN Human Rights Committee, Comm. No. 107/1981, UN Doc CCPR/C/19/D/107/1981, 21 July 1983, and *Sarma v Sri Lanka*, UN Human Rights Committee, Comm. No. 950/2000, UN Doc CCPR/C/78/D/950/2000, 31 July 2003. But see *Cifuentes Elgueta v Chile*, UN Human Rights Committee, Comm. No. 1536/2006, UN Doc CPR/C/96/D/1536/2006, 7 September 2009, para 8.5; *Acuña Inostroza et al. v Chile*, UN Human Rights Committee, Comm. No. 717/1996, UN Doc CCPR/C/66/D/717/1996, 23 July 1999, para 6.4; and *Yurich v. Chile*, UN Human Rights Committee, Comm. No. 1078/2002, UN Doc CCPR/C/85/D/1078/2002, 2 November 2005, para. 6.4

45 Convention against torture, art 19.

46 *Ibid*, art 22.

47 *Ibid*, art 21.

48 *Ibid*, art 20.

49 Committee against Torture, Conclusions and Recommendations of the Committee against Torture: United States of America, UN Doc CAT/C/USA/CO/2 (2006) para 18. For a similar finding that the enforced disappearance is a violation of the Convention against Torture, see Committee against Torture, Concluding Observations of the Committee against Torture: El Salvador, UN Doc CAT/C/SLV/CO/2 (2009) 4, and Committee against Torture, Concluding Observations of the Committee against Torture: Syrian Arab Republic, UN Doc CAT/C/SYR/CO/1 (2010) 8. See also Committee against Torture, Summary Record of the First Part (Public) of the 870th Meeting, UN Doc CAT/C/SR.870 (2009) 8. For the Concluding Observations on Chad, see Committee against Torture, Concluding Observations of the Committee against Torture: Chad, UN Doc CAT/C/TCD/CO/1 (2009).

the nature and scope of the right, clarify its individual and social dimensions, and provide for measures of protection to address the harm that the disappeared and their families have experienced. Borrowing Bennett's ideas, the existing provisions are scattered and disorganized and are found in a number of unrelated treaties, often buried, without any clear indication of the subject matter. These conditions hinder the establishment of an international consensus and understanding, and indicate the need for a universal treaty provision that can explicitly organize and clarify the right not to be subjected to enforced disappearance.⁵⁰ An express guarantee can capture the harm experienced by the disappeared and their families, and, at the same time, can raise the status and visibility of the right not to be subjected to enforced disappearance.

IV. Conclusion

There is a need to raise the level of international legal protection from enforced disappearance. There are limitations to the international legal protection that the ICCPR and the Convention against Torture are able to provide. They do not fully reflect an appreciation of the depth and complexity of this form of human rights violation. These general human rights treaties do not provide for a right not to be subjected to enforced disappearance, but simply embody a variety of other rights that various courts and tribunals have interpreted in a manner that gives effect to the right not to be subjected to enforced disappearance.

States should consider going beyond the ICCPR and Convention against Torture, and should explore the potential of an international human rights treaty, that treats the right not to be subjected to enforced disappearance in a thorough manner, details the nature and scope of this right, clarifies its individual and social dimensions, and provides for measures of protection to address the harm that the families of the disappeared have experienced. The Disappearances Convention has the potential to raise considerably the level of international legal protection from enforced disappearance. An express guarantee of the right not to be subjected to the enforced disappearance can capture the harm experienced by the disappeared and their families more fully, and, at the same time, can raise the status and visibility of the right not to be subjected to enforced disappearance.

OPEN FORUM

Atty. Emerlynne Gil (ICJ-Asia and Pacific Regional Office)

I would like to get your opinion on why the government of the Philippines refused to ratify the Convention?

⁵⁰ Walter Bennett (1987), 'A Critique of the Emerging Convention on the Rights of the Child,' *Cornell International Law Journal*, 20, 1, 29-31.

Atty. Ricardo Sunga III (University of the Philippines)

They think the domestic law is sufficient because some provisions of the Convention are incorporated into it, thus no need to ratify the instrument. I disagree with this decision, considering that the Convention has provisions not in the Philippine Law. Some of these provisions include the wrongful removal of children; this is not covered in the local law. The children in war can be victimized by enforced disappearances because some are taken with their parents. The two UP students subjected to disappearance, one of them was pregnant. The question now is what will happen to that child once the child is born? Take a look at the preparatory work of Convention, in the negotiation and the drafting processes, it was noted that there were children born during the time when their parents were enforcedly disappeared. The captors take the children or sometimes the children are given to adoptive parents. Those provisions that protect the children are not in the domestic law, but are provided by the Convention. Although this does not make the law less effective but the protection is lessened. The international treaty provides international accountability, the Committee on Enforced Disappearances (CED) can monitor what is happening in the Philippines. CED does look at the law but they monitor the practices of the Government in implementing the Convention. This could be a reason why the Philippine Government is resisting and chooses not to ratify this Convention.

Currently, the Philippine Government is busy with other issues, such as corruption. The Senate is responsible for the ratification process but they are busy right now. Some members are also under scrutiny but these are not valid excuses. The Philippines must be firm in its commitment to the promotion of human rights.

The Philippines is not eager to pass a law involving human rights. For instance, the position on internally displaced persons (IDP), the Congress passed the legislation and the Senate must sign it, but it was vetoed in the same year. It appears there is hesitation in adopting both local and international laws, because that means more work and more accountability on the part of the government in the area of human rights. These are possible reasons why we must strengthen our lobby work so the government can implement more meaningful ways to prioritize the agenda of human rights.

Ms. Nilda Lagman-Sevilla (FIND-Philippines)

The fourth possible reason as far as President Benigno S. Aquino is concerned is that he has reservations because the definition excludes non-state actors. We gleaned this during the meeting in October 2010. I learned yesterday, the new House Bill 4936, aims to amend the domestic law on enforced disappearance this early. The proposal is to amend the definition of enforced disappearance by including non-state actors and other concomitant amendments. This is the President's wish according to my source. The President has also issued a memorandum prioritizing the bill.

Atty. Emerlynn Gil (ICJ-Asia and Pacific Regional Office)

I want to comment on Ms. Sevilla's update. Protecting the right is government's responsibility, if the responsible party is a non-state actor then the question will go back to government. Why did it allow the disappearance of a particular person? There is a lack of understanding on the definition of human rights among governments including the Philippine Government.

Dr. Edita Burgos (*Desaparecidos* and FJBM-Philippines)

The laws to defend peoples' rights such as *writ of amparo* and *writ of hábeas corpus* are only good insofar as the government institutions would cooperate. In our case, we obtained orders to enter military camps and find the disappeared, but the military did not allow us to go in. Sometimes, we were brought to other areas not listed in the court order.

Atty. Ricardo Sunga III (University of the Philippines)

I believe in that value, what I have said is validated by my experience. I am working on a case involving the Manalo brothers. Together with another professor, we filed a *writ of hábeas corpus* case, but one witness backed out for fear of retaliation, of those involved in taking the Manalo brothers. The trial was on going for the *hábeas corpus* case, it turned out the brothers are still alive. During the course of the case, the military will show the Manalo brothers to their parents, pressuring the parents not to participate. But we decided to proceed with the case. The request for *hábeas corpus* was granted due to the testimonies of the parents who identified elements of Citizens Armed Forces Geographical Unit (CAFGU) as responsible for the crime. The parents recognized CAFGU members because they are from the same area. The *writ of hábeas corpus* mandated for these CAFGU members to produce the bodies of the Manalo brothers. Through that case proceeding, the Manalo brothers escaped. We filed a case of Injunction Petition, then an *Amparo* Petition, that was a different case since the brothers escaped and they are alive but this is not always the case that victims will surface alive.

A lot of obstacles are present within the concerned government institutions. The cooperation of public prosecutors in enforced disappearance is important. There is a provision in the Convention that enforced disappearance is a continuing offense. It means even if the offense started before, as long as the whereabouts of the disappeared continues to remain unknown, then enforced disappearance is still subject to legal proceedings, the case is ongoing. When I attended a meeting at the Department of Justice (DOJ), they were drafting the Implementing Rules and Regulations (IRR). I could sense their concerns with that provision. No one has filed a case under the law of enforced disappearance, it is a criminal case that needs the approval of the prosecutor. It is hard enough to convince the prosecutors, even in convincing the court to file a case of enforced disappearance and consider its nature as a continuing offense.

Ms. Marizen Santos (HURIDOCS-Switzerland)

In ratifying on the UN Convention, I remember the case of Jonas Burgos, in bringing a certain case to international bodies. I'm wondering if ICCPR and socio-economic rights can be used to bring forward those cases and as we advocate we can push for the civil and political rights cases.

Atty. Ricardo Sunga III (University of the Philippines)

Yes, such as cases in Sri Lanka. These cases took the attention of the UN Human Rights Committee due to individual communications. The Burgos case can be brought to the UN Human Rights Committee, this Committee takes notice of the cases from the Philippines under the ICCPR. When we filed an individual communication, *Karapatan* (a local human rights non-government organization) also filed cases involving extra-judicial killing. That is another remedy that can be used. Beyond ICCPR, the Convention must also be exhausted.

Ms. Margarita Zamora (Pro-Búsqueda-El Salvador)

In the case of El Salvador, there are advantages because we have a leftist government and the President shows cooperation to our call to ratify the Convention, but the National Assembly is ruled by the conservative party, it is the reverse situation in the Philippines. The Executive Department of El Salvador is doing all it can so we are hopeful that the country will sign and ratify the Convention. I believe, the conservative politicians oppose the power given to the General Assembly because they are the perpetrators. In the past, the legislators didn't want to ratify without the endorsement of the President. Now the President is supporting the ratification, the politicians still show refusal. The ratification will expose them as responsible parties for the disappearances committed in the past.

Mr. Marco Antonio Garavito Fernandez (Liga Guatemalteca de Higiene Mental-Guatemala)

The ratification is different from one country to another, some parliaments are eager to ratify others are not. While in some states, the executive department shows positive action towards ratification, this is not the position of other states. One of the factors not helpful to ratification is our weakness in the lobby work as NGOs and as members of the civil society. We assume the members of the parliament know the situation and appreciate the Convention as we do. We must do more in our campaigns so the legislators understand the Convention. Those states that ratified have a level of relationship with some perpetrators, but they ratified. The hesitance of the states to ratify must not be an excuse, instead we must recognize our weaknesses and reflect on these. This is better than pointing fingers, we must assume our responsibilities, we must double our time to achieve what we want. The International Coalition is important because we have more friends all over the world and we can exchange our experiences and share relevant information. In a collective manner, we can find ways how we can affect the political arena. Let us be honest, we have weaknesses in our lobby and advocacy work and let's not escape our responsibility. We must do it. Is it true that even in the Philippines, you fall short in your advocacy work?

Mr. Mugiyo (IKOHI-Indonesia)

The tendency of some Asian countries is they are in the process of ratifying the Convention. This trend favors the process of not recognizing the competence of the CED. This happened in Indonesia, we were in the process of ratification, the former President sent a letter to Parliament endorsing the process. In the document, Indonesia said it prefers ratification but not the recognition of the competence of CED. I suspect this might be related to ASEAN's principle of non-interference and the issue of national sovereignty. That is also the consideration of those states that are resistant to ratification. So what are the main benefits of the victims and families if the country ratifies, but does not recognize the competence of the CED?

Atty. Roberto Garretón (Chile)

The reaction made by the government seems like they are giving excuses; that is a flimsy argument. If those are the reasons, they might as well not sign the Convention Against Torture. The Philippines ratified the ICCPR, if the argument is that the Convention must always cover non-state agencies or parties, then better not sign the rest of the UN instruments, such as the Convention in Protecting the Rights of the Child, because some children are victims of abuse not directly perpetrated by the state actors. Using non-state actors as reason not to ratify is too insubstantial.

Atty. Alejandro Rúa (CELS-Argentina)

I would like to comment on the Principle of Non-Interference and abusing national sovereignty. In Latin America in the 1990s when we tried to fight impunity, the families of victims appealed to other courts in other countries, such as in Spain and France. Some cases of genocide in Argentina were accepted by a court in Spain. Some governments argued, claiming national sovereignty that we can't submit ourselves to foreign intervention. But it came to the argument that human rights issues are not the sole domain of a critical state because the state cannot give amnesty to people who committed crimes against humanity. The pardon or amnesty is confined to other cases but must not cover crimes against human rights and crimes against humanity.

In our region of Latin America, the civil society has pushed a certain culture that it is unthinkable and it is no longer acceptable on our part that issues of human rights violations must be confined to national affairs. The prosecution of human rights cases must transcend the national borders. That is our unified stand.

Mr. Sisto Dos Santos (HAK Association-Timor-Leste)

In relation to what we are facing in Timor-Leste on enforced disappearance, twice we negotiated in person with our governments to ratify the Convention. In our country, there are other Conventions ratified by the government but the challenge is implementation and complying with requirements such as the submission of reports to the concerned treaty bodies. The government said they are willing to ratify but the problem is how to become more responsible after ratification. How the government becomes more accountable to the civil society, to the victims and to their families? I want to hear the experience of Latin America, what effort you do, do you lobby your government until they ratify?

Atty. Emerlynne Gil (ICJ-Asia and Pacific Regional Office)

On the issue of sovereignty, the ICJ has been pointing out to ASEAN states that their claim of sovereignty is artificial, even the ASEAN members have commented on the situations of other member states. They asked Indonesia on issues related with transnational boundaries, they asked Myanmar on its stand on democratic reforms. These come from unofficial statements made by some ASEAN States. ICJ pointed out that ASEAN States voted country specific resolutions of the United Nations, such as the resolutions for Syria and Palestine. As always, Malaysia, Indonesia and Brunei, they are vocal on the situations in these countries. Thus, they can't use national sovereignty as an excuse.

Atty. Roberto Garretón (Chile)

By accepting any of the international laws, it means acceptance of the states that they are not totally sovereign in carrying out their tasks for the promotion of human rights.

Atty. Ricardo Sunga III (University of the Philippines)

Regarding my report, for further details, I have extra copies for reference. This is the book I authored.

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Families of Victims as Active Participants in the Struggle Against Enforced Disappearance: the Indonesian Experience

MR. MUGIYANTO
Chairperson, AFAD and IKOHI

Establishment of the Families' Organizations and Expansion

These experiences are based on the best practices of Indonesia in lobbying through the support of AFAD.

The birth of a movement against the issue of enforced disappearances is new in Indonesia. Even the term “enforced disappearance” is new, the public started to accept the terminology after the fall of the dictatorship in 1986. In the earlier years, we used the term “missing.” The phenomenon became visible to the public radar during the dictatorship led by Suharto. Under his watch, the government committed massive human rights violations in 1997 and 1998, these were the years during an economic crises when the activists were disappeared. I was one of the victims when I was disappeared as a student.

The people clamored for change, including the lawyers and activists. They established the Commission for Disappearance and Victims of Violence (*KontraS*) in March 1998 to

provide legal assistance and advocacy for the cases of enforced disappearances. Munir, former Chairperson of AFAD was one of the founders. He was an active human rights lawyer and one of my lawyers when I was detained. The Indonesian Association of Families of the Disappeared (IKOHI) was established later in September 1998. These are two organizations which were mainly participated in by the families of 23 missing activists.

IKOHI provides fora where families can talk together with their experience. IKOHI identified itself as the association of victims, while *KontraS* gives us legal assistance, since they have members who are lawyers and activists, a good combination for the provision of legal support. In 1998, IKOHI had limited members, and then later, the association expanded its presence into Aceh and Papua. In 2006, the mandate of IKOHI progressed even further.

Activities of IKOHI

1. Victims become the human rights defenders

IKOHI aims its activities to transform the victims to become human rights defenders. We have trauma healing and workshops to foster cooperation. This year, we established the victims' cooperative with the support of AFAD. Victims have led the campaigns and advocacy work. This is one of the outcomes of trauma healing and psychosocial workshops. The victims' morale is strengthened and they are empowered to deal with their trauma and psychological issues.

Most members of the organization are women and mothers. They have become human rights defenders. Due to this transformation, they have organized a rally every Thursday afternoon between 4:00-5:00 P.M. in front of the Presidential House. This practice is a learning from the experience of *Madres de Plaza de Mayo* in Argentina.

2. Strategy: Critical Engagement with the Government

The engagement includes rallies, advocacy, lobbying and appealing to the office of United Nations in Indonesia to intervene in cases of disappearances.

3. Advocacy Against Disappearances of Pro-Democracy Activists in 1997-1998

There is a string of evidence showing military involvement in these disappearances. It is the weak point of a dictatorship. In our campaign, the general public is giving their massive support to *KontraS*. Before the assassination of Munir, he said enforced disappearance becomes possible because of the participation of the security forces. Munir was one of the personalities who categorically linked disappearances to security forces when it was not possible to talk about such a topic due to military repression. After the fall of the dictatorship, the commander responsible for the disappearances of the students was dismissed from his post as military general and in the last election he was not victorious in his presidential bid.

Actions Taken for the Realization of Truth and Justice

The families of victims carried out different activities. Together, we visited government offices and conducted demonstrations near the military headquarters. These are landmark actions in the country where rallyists talk about their issues on civil and political rights in front of these powerful institutions. This is a historical breakthrough because we understand that we have nothing to fear and we need to know the whereabouts of our missing loved ones.

We collaborate with the judicial process and have the National Human Rights Court mandated by a national law. This was institutionalized in 2000 after the fall of Suharto, when Indonesia was under a new president. Under the said law, the cases of genocide and crimes against humanity can be brought to human rights courts but these courts are not authorized to receive the crime of enforced disappearance as defined by the Convention. The legal jurisdiction is defined: if a case occurred before 2000, before the passage of the law, then the *Ad hoc* Human Rights Court will deal with the proceedings. If a crime is committed after the law's approval, then the National Human Rights Court will conduct the trial. The *Ad hoc* Human Rights Court was established upon the recommendation and approval of the Parliament Body and afterwards the President will establish the *Ad hoc* Court.

Since 2006, there have been cases submitted to the National Human Rights Court. Some of the cases are also filed before the Attorney General's Office, but the court insisted that they cannot prosecute since they are still waiting for the President to create the *Ad hoc* Court of Human Rights, but President Susilo Bambang Yudhoyono never established the court. Civil society took initiatives to respond to the victims' needs. We cannot wait for the state to do their responsibility and take actions for public hearing similar to an unofficial truth commission; we review the cases like what IKOHI and KontraS do. We tap government funds for economic activities such as launching of cooperatives for families and education for the victims' children. We lobby thoroughly and assert the rights of the families of victims.

Obtaining administrative measures and referring victims' families to the government for them to obtain certificates issued by National Human Rights Commission are some other activities of our group. These certificates clarify that the missing person is a victim of enforced disappearance. With the certificates, the families can receive some assistance from government, through the Witness and Victim Protection Agency. The victim can get medical and psychosocial services but in limited capacity. There are further issues such as obtaining the funds and follow-up work with banks. Relevant to this, we want to hear the experience of Latin America since they are able to get the recognition of the governments that those who went missing were enforcedly disappeared. In Indonesia, the law has limitations. It does not recognize the status of the disappeared, it simply categorizes that the missing person could be alive or dead.

The Milestones of Campaigning for the Convention's Ratification

In 1998, 2002 and 2003, I was here in the Philippines and met with FIND and FEDEFAM. These networks are inspirations in building the victims' association in Indonesia. At that time FIND already worked with FEDEFAM and even initiated the establishment of AFAD in the Philippines, in Sri Lanka, and other countries.

As a group, we also visited UN Geneva for international advocacy and negotiated with the Indonesian Government with other AFAD members. The government is mainly passive in the ratification process but Indonesia signed the Convention. In 2007, the Human Rights Commissioner promised that Indonesia would ratify during a speech given before the UN HRC. The Parliament recommended the ratification in 2009 and Indonesia signed the Convention in 2010. Prior to the signing, 35 members of the families' association conducted a rally in front of the Presidential House and we stayed beyond 6:00 P.M. In Indonesia, rallies are not allowed beyond that time. Consequently, we were arrested and interrogated until midnight. Later we learned that Indonesia signed the Convention.

In all our activities, we include the issue of the disappeared student-activists and the establishment of the *Ad Hoc* Human Rights Court.

On the campaign for ratification, *KontraS* and IKOHI have been working with the support of AFAD and resources have been spent by AFAD for the lobbying. Patricio Rice of Argentina (the former Focal Person of ICAED) and Ruth Llanos from Bolivia joined us in one of our advocacy and lobbying events in Indonesia, but until today, we are still waiting for the Convention to be ratified. There was a process of drafting and the President submitted the document for ratification in June 2013 to the Parliament.

Challenges for Ratification

There are problems endorsing the ratification because of the presence of two political parties in the Parliament. Both parties belong to the majority, which are the military group of Suharto and the Islamic faction. They blocked the ratification stating they needed to study the Convention further. They do not want to ratify it because of the provision that enforced disappearance is a continuing crime. Due to the weight of the evidence, there is a possibility that General Prabowo and his men would be prosecuted nationally or internationally.

We remain hopeful for the positive action of parliament before its end in October 2014. We have a new government but the problem remains the same. The new President is relatively better. The situation in Indonesia is similar to El Salvador, the executive government is cooperative but the parliament has political parties that oppose the human rights programs. The members of these powerful political parties are responsible for the forced disappearances. If Indonesia ratifies, the state may not recognize CED's competence. This is a huge challenge in human rights work in general.

Organizational challenges likewise exist. Their limitations include lack of resources, lack of knowledge and skills in the advocacy and lobby efforts. The members have socio-economic issues that also affect the organization.

Prospect: Indonesia has a New President

Having a new President is good news. His victory is a manifestation that the organization of families is successful in blocking the victory of General Prabowo during the recent presidential election. The general is a human rights violator. The families' association invested much to counter his campaign and in educating the public about the cases he perpetrated, including the disappearances of the student-activists in Indonesia.

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The Euro-Mediterranean Federation Against Enforced Disappearances (FEMED)

MR. WADIH AL ASMAR
Secretary-General and Co-Founder of FEMED

What is FEMED?

FEMED reinforces the exchanges of experiences between the associations of the families of the disappeared from European Union, Oriental Europe, Maghreb and Middle East. FEMED intends to put an end to the enforced disappearances in the Euromed region. Before the FEMED, an informal coalition of associations of the families of the disappeared had been constituted in 2000. The necessity to formalize this union of the families had been recognized and the FEMED was created in May 2007 during the constitutive meeting in Beirut. FEMED is registered under the 1901 Law Regime in France.

FEMED has seven founding associations including: CFDA (Algérie), CLDH (Liban), APADM (Maroc), MPP (Turquie), CCFDMD (Maroc), SOLIDE (Liban) and SOS DA (Algérie). Today, the Federation has 46 member-organizations from 12 countries in the Euro-Mediterranean region (Spain, Morocco, Libya, Algeria, Syria, Turkey, Kosovo, Bosnia, Herzegovina, and others). It is working in close partnership with other associations from the

regions that are all invited to join the Federation: Spain, Iraq, Syria, Bosnia, Serbia, Croatia, Cyprus, and Libya.

Disappearances in the Region

Algeria

During the 1990s, both the State and the terrorists used enforced disappearances. Since then, several amnesties, the most recent being the Charter for Peace and Reconciliation, forbade anyone to seek truth and justice. However, the State recognized almost 8,000 disappearances due to its agents. The families are still fighting to obtain a truth commission in Algeria.

Morocco

During the Hassan II era, many political leaders, unionists and students have been disappeared in Morocco. They were sent to some southern jails, for instance. Some of them were released during the 1990s and many testimonies during this period have been published. The new king, Mohammed VI, has encouraged the establishment of the Equity and Reconciliation Commission. This body has 'resolved' many disappearances but they are still some problematic cases. For it, some DNA matching was conducted but the results take a long time. In Algeria and Morocco, the anti-terrorist struggle is still used to practice enforced disappearances but the persons tend to reappear after.

Lebanon

This country has been marked by war during the last decade and within this setting, all parties to the conflict have practiced enforced disappearances. Many of the disappeared are still detained in Syrian prisons. The families of the disappeared and the NGOs are now working jointly to establish a truth commission and a centralized database of all the disappeared.

Turkey

During the seventies, many political dissidents disappeared in Turkey and these violations continue. It occurs in the South Eastern part of Turkey, where the Kurdish Party of Workers is asking for independence of Kurdistan. Extra-judiciary killings, case suits against the human rights defenders, and enforced disappearances occur regularly.

Activities of FEMED and Status of Ratification

Morocco is the only country in the Euro-Mediterranean region that ratified the Convention and Iraq in the Middle East ratified it as well. Today, enforced disappearances are highest in Libya, Syria and Turkey. In September 2014, the Federation scheduled a lobby event at the UN in Geneva to bring focus to these countries and give more attention to the cases of enforced disappearances.

FEMED is working based on a three-year program of action. In this plan, many activities have been implemented: lobbying missions to Geneva, field missions to Turkey, Cyprus,

Bosnia and Algeria, training in Morocco, a thematic conference on the Convention in Rabat, publication of the bi-annual magazine 'Duty of Truth', updating of the blog and the conception of a website, etc. In the Autumn of 2009, the major event was the thematic conference on transitional justice, which took place in Istanbul during the month of November.

As a federation, FEMED members work as a network. We do not replace our local members. Instead, we help them to conduct lobby missions and field missions. We have achieved 5-10 field missions each year to visit the local members, project the presence of FEMED in different countries from Geneva to Brussels to advocate with the international bodies and conduct capability trainings and workshops. Some governments give prompt answers to cases of disappearances if the delegation is composed of international members.

We also pushed the Government of Algeria to end the practice of forced disappearances, but this is not possible in Syria and Iraq. There are countries such as Morocco, Lebanon, Cyprus and Algeria, where we can talk and reason out with government officials, making them aware that these problems exist. For example, in the cases of Algeria, the government refused to recognize enforced disappearances, but we showed them the cases. We also communicated our suggestion for these states to address the cases in the past by ratifying the Convention. The ratification is an act to give back to families the right to know the truth, their right to justice, right for reparation, and for these victims to claim their rights instead of just waiting endlessly.

Twice a year, we update our activities with our partner organizations, the members share their experience and updates on enforced disappearances through the federation's magazine, The Duty of Truth. In our next issue, we focus on our call to institutionalize the reconciliation and truth commissions in the countries of interest.

These are some of the updates we shared in our magazine:

1. Syria has a high number of cases of forced disappearances involving different nationalities. Around 10,000-20,000 people from Lebanon, Syria and from different countries disappeared in Syria. The discussion of this topic is prohibited in Syria. Approximately, 30, 000-40,000 individuals are held *incommunicado*. We do not know where these people are after they were arrested, some have disappeared for more than a year but their families did not receive information about their whereabouts.
2. Syria is now a problem state because of the war and the internal conflict that renders people vulnerable to abuses. The state and other parties have carried out enforced disappearances. Most victims of human rights violations are visible, thus, legal interventions are relatively easier to implement but with cases of enforced disappearances, we keep on searching for the victims but they are nowhere to be found.
3. For other cases where the families pursue legal proceedings, we issue press statements and solidarity statements to embolden the victims and their families to continue.

The Case of Morocco

Previously, this country had many victims of forced disappearances. Some survivors claimed they were detained in villas and residential buildings for 17 years or so. It is difficult to imagine that these houses were used as jails and some people were even kept underground.

Morocco has three commissions that are supposed to assist the families and the victims. The Equity and Reconciliation Commission is the most well-known, but the Commission has ended. It failed to solve all cases of forced disappearances, including the famous cases of Ben Barka, Manouzi and Rouissi. The families of these victims have been using the judiciary system to resolve the disappearances.

There are political changes in Morocco, which make it easy to talk about the Convention. Since the beginning, Morocco is a friend of the Convention but it took time for the state to ratify it. The families and civil society kept on pressuring the government, then communicated with the bureaucratic offices and obtained the commitments and signatures of the officers. These lobby visits were to the Ministry of Justice, Office of the Prime Minister and Commission on Human Rights. We always kept asking them about the unresolved cases and their commitment to ratify. At first, they kept on delaying but finally they ratified.

The political pressure exerted by local and international NGOs working for human rights swayed Morocco to ratify. The government felt the pressure at the international level. Most of the time, the NGOs cannot push the government to ratify. It is advisable to engage and convince the government officers. Discuss with them and show them the cases of forced disappearances. In FEMED, we categorize the governments according to the national situation. For instance, it is not possible to negotiate with Syria and Iraq but we can discuss with the Governments of Algeria and Libya.

Political will is important, the focus of campaigns of NGOs must consider this.

For the countries of the region, we explain to the governments the benefits of ratifying, but we also let them know that FEMED will denounce them at the international level if they will refuse to ratify.

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UNSILENCED

Video Presentation of AFAD and FIND



The video documentary, *Uns silenced*, captures in film the immeasurable pain and anguish endured by the families of six sub-contractual log haulers of the PICOP Resources, Inc. in Agusan del Sur who decisively broke their silence about the enforced disappearance of their loved ones.

According to a friend of the workers who was able to evade abduction by concealing himself in the crowd, his six friends were abducted at gunpoint and herded from a videoke bar to the 62nd Infantry Battalion, 8th Infantry Division of the Philippine Army by armed soldiers on the night of 14 October 2000.

The families filed a petition for *habeas corpus* against the corporal who led the abduction and an army colonel. They later withdrew the petition and filed a kidnapping and serious illegal detention case against the army officers. They narrated in court that they immediately inquired about the whereabouts of their loved ones from the camp authorities who denied having them in custody. They were not even allowed to enter the camp. It was only six days later when, accompanied by local government officials, they were permitted to go inside. But, their disappeared kin were nowhere to be found.

Four years later, an army sergeant of the 62nd IB took pity on the families and offered to testify in court. He said that he saw the six workers, who were tied with a rope approaching the camp being manhandled by the soldiers. He claimed to have witnessed how four of them bashed the heads of the victims with iron pipes, buried their lifeless bodies in shallow graves, but dug them up and burned them three days later.

In July 2008 the Regional Trial Court in Agusan del Sur convicted the corporal as an accomplice to the kidnapping and serious illegal detention of the six workers. He later appealed to the Court of Appeals but was found guilty as a principal to the same offense.

Despite their harrowing experience that has been compounded by a lengthy judicial process, the six families have refused to be silenced. They have remained unsilenced, courageously speaking up and out, as they now brace themselves for another uphill legal battle – this time in the first ever enforced disappearance case under the domestic *Anti-Enforced or Involuntary Disappearance Act of 2012*.



Session 4:

The Philippine Experience in Advocating for a Domestic Law against Enforced Disappearance

SPEAKERS



Experiences of Families of Victims of Involuntary Disappearance (FIND)

Ms. Nilda Lagman-Sevilla
Co-Chairperson, FIND-Philippines



Political Mapping as a Lobbying Strategy

Ms. Celia Lagman Sevilla
Former Advocacy Officer of FIND-Philippines



Asian Federation Against Involuntary Disappearances (AFAD)

Research on Legislative Advocacy
Ms. Caroliza Tulod-Peteros
AFAD Regional Campaign Officer



Experiences of Families of Victims of Involuntary Disappearance (FIND)

MS. NILDA LAGMAN-SEVILLA
Co-Chairperson, FIND

Political Context: Unsolved Cases and Unabated Commission of Enforced Disappearance (ED)

Reported ED Victims:

▪ Marcos (1971 – 1986)	878
▪ C. Aquino (1986 – 1992)	825
▪ Ramos (1992 – 1998)	94
▪ Estrada (1998 – 2001)	58
▪ Arroyo (2001 – 2010)	340
▪ B.S. Aquino III (2010 to the present)	25

FIND's Tactical Lobby, Information, Education and Communication (IEC) Campaign Plan for the Anti-ED (AED) bill

- Goal: Enactment of the AED law in the 12th Congress, before June 30, 2004

- Objectives:
 - Developing public opinion on justice and impunity vis-à-vis AED law
 - Heightening pressure on Congress by waging vigorous IEC campaign
 - Broadening local popular support through constituency building and/or a tactical lobby plan
 - Mobilizing support of the international NGOs in FIND's advocacy and lobby efforts
- Plan's target audience: legislators, executive officials, media, religious leaders, academe, lawyers, business and diplomatic communities, celebrities or high profile personalities
- Planned activities (during regular and traditional events): production/printing and distribution of briefing papers, press releases and statements, newsletters, factsheets, leaflets, postcards, stickers, video and audio tapes, posters, placards; public/mass demonstrations, alternative summits, dialogues; photo exhibits; speaking tours; embassy visits; signature drives/petition signing; diplomatic and press briefings
- Research, monitoring and assessment
- Convening of the local Coalition against Involuntary Disappearance (CAID) on 19 September 2003

First Lobby and Speakers' Training

Topics

- Lobbying in the United Nations
- The Philippine Legislative Process
- How to Become an Effective Lobbyist
- Discussion on HB 11 or the Anti-ED bill
- Survival Skills for Advocates
- Introduction to Public Speaking
- Speech Construction

Second Public Speaking and Lobby Training

Basically the same as the 2004 Lobby and Speakers' Training; LGUs and local legislation, securing LGUs' support for Anti-ED bill; roleplaying (debates on two contentious issues); review and assessment of previous campaign and lobby work; fine-tuning FIND chapters' campaign and lobby plans.

Assessment of FIND's Experience

- Pull/retardatory factors

There were period gaps/lapses in the implementation of FIND's lobby plans.

Meetings with lawmakers and key persons of their respective staff were few and far between.

The families of the disappeared were not fully mobilized to actively participate in the lobby activities. The planned face-to-face solicitation of co-authorship by the wives, parents and children of the disappeared was not carried out.

Limited position papers on the imperative of the law's enactment were distributed/sent to individual legislators, more particularly to members of the Committees to which the bills were referred in both chambers.

The political mapping was hobbled and eventually aborted by inadequate operational funds.

The signed petitions urging government to enact an anti-enforced disappearance law were not transmitted to the concerned institutions and agencies owing to the failure to gather an impressive number of signatories.

Human rights laws were and are still not the priority of both Congress and Malacañang. In the 15th Congress, the Committee on Justice of the House of Representatives to which the bill was referred had to suspend deliberation on the bill and other measures pending before it as the Committee prepared for and subsequently became actively involved in the impeachment of the Chief Justice of the Supreme Court.

- Push/contributory factors

FIND and CAID persisted in their public information campaigns and modest lobby efforts. The families remained patient and unwavering in their support.

Used traditionally commemorated/observed events, i.e., IDD, IWD, IHRD, HR Consciousness Week, All Souls' Day, Anniversaries of: founding of FIND, Flame of Courage Monument, declaration of martial law, calvary in the search for justice (Holy Wednesday) Campaign/lobby activities:

- Fora (solo or joint with CAID, AFAD, CHR, PHRC, LGUs)
- Focus group and roundtable discussions
- Consultations/dialogues with stakeholders
- Legislative briefings
- Meetings with government officials, i.e., Phl. Presidents, legislators, SC Chief Justice, cabinet members, LGU officials
- Diplomatic briefings, embassy visits
- Attendance in congressional public hearings and technical working groups
- Solicitation of local council resolutions
- Campus lectures and film showing
- Photo exhibits (Senate, HoR, City Hall, schools, churches)
- Holy masses
- Cultural presentations of SAD theater group
- Press releases and statements, letters to the editor
- Press conferences and briefings

- National and local radio and television appearances
- Social media projection
- Printing and distribution of campaign t-shirts, advocacy pins and postcards
- Launch of anti-ED pins in Congress
- Distribution of FIND publications
- Torch parade, kite flying, marches, rallies, marathons
- Oral interventions before UN bodies
- Group discussion and film showing with AI Maastricht, Holland
- Presentation of the AED bill in the Linking Solidarity training in Utrecht, Holland

The joint FIND and AFAD campaign and lobby activities generated stronger support from various stakeholders and publics notably the academe and the diplomatic community.

The much-publicized visit to the Philippines in February 2007 by Philip Alston, the United Nations Special Rapporteur on Extrajudicial Killings.

There were timely judicial initiatives and interventions. In July 2007 the Philippine Supreme Court spearheaded a National Consultative Summit on Extrajudicial Killing and Enforced Disappearance.

Karapatan, a nationwide human rights non-government organization, conducted high profile campaigns on the Burgos, Cadapan, Empeno, Manalo, and Balao enforced disappearances even as it took legal actions that had wide multimedia coverage.

Authors of H.B. 5727 led by Bayan Muna Representative Satur Ocampo succeeded in getting over 100 co-authorships of their anti-enforced disappearance bill.

Rep. Edcel C. Lagman effectively strategized and ably steered the enactment of the bill into law.

The sudden rise in the incidence of enforced disappearance under the Arroyo administration and its persistence under the present Aquino dispensation dramatized the urgency of combating impunity through the immediate enactment of an anti-enforced disappearance law. The Aquino government recognized the high political value of enacting the first anti-enforced disappearance law in Asia.

The long journey to RA 10353 has not really ended in the promulgation of its IRR for the law is only as good as its implementation. Lest the euphoria over the birth of RA 10353 obliterate other relevant vital concerns, anti-enforced disappearance advocates need to sustain their campaign and lobby for the law's full implementation and the Philippines' signing and ratification of the Convention on Enforced Disappearance. The domestic law cannot substitute for the Convention as the Convention cannot stand for the domestic law. Their being complementary and mutually reinforcing, however, is reason enough for their simultaneous implementation even as this will afford the people stronger human rights protection and best practices against enforced disappearance.

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Political Mapping as a Lobbying Strategy

MS. CELIA LAGMAN SEVILLA
Former Advocacy Officer of FIND

Legislative lobbying is a tricky business. There are many factors that affect the legislative process that can be unpredictable and beyond the advocate's control. These factors – ranging from the country's political, socio-economic, and overall developmental situation to the unexpected onslaught of manmade and natural calamities – can quickly relegate the policy change we are pushing for to the backburner.

It is therefore crucial in legislative lobby work to get a head start and find out early on who among the legislators are supportive of our issues and can be considered allies. It is also important to determine their level of support and identify possible champions who are willing to act as leaders in facilitating the enactment of our proposed bills into laws. Likewise, it is also critical to determine who among the legislators are likely to oppose the passage of our proposed legislative measures, and the reasons for their opposition.

This is where political mapping or PolMap comes in. It is a tool that will help us understand the dynamics involved in policymaking and allow us to systematically strategize.

When FIND spearheaded a PolMap project in the Philippine Senate during the 13th Congress, it aimed to serve a three-pronged purpose:

- 1) To make legislative lobbying for an anti-ED (AED) law more scientific and intensive;
- 2) To reactivate the Coalition against Involuntary Disappearance (CAID); and
- 3) To serve as a training ground for the members of the *Samahan ng mga Anak ng Desaparecidos* (Association of the Children of the Disappeared) or SAD.

The third objective was borne out of FIND's recognition that the children of the disappeared already had the desire to be future guardians of human rights. The PolMap project was an opportunity for that desire to be nurtured and coupled with ample experience and training to help develop them into knowledgeable, capable, and confident human rights advocates. Toward this end, the idea was: for each PolMap researcher to team up with one member of SAD during the conduct of interviews with legislators; for the SAD members to also be present during the analysis of data gathered; and for them to be involved in the strategic planning for the next steps in pushing for the AED bill in Congress.

PolMap Implementation Plan

Phase 1

- Consultation with other human rights organizations
- PolMap training
- Development of PolMap instrument

The first phase is basically a preparatory period designed not only to come up with the PolMap instrument, but also to reestablish and strengthen ties among the member organizations of CAID. The goal of the coalition was to come up with a political mapping questionnaire, which, although focused on the issue of enforced disappearance, will also determine the stances of legislators on human rights concerns in general. The final political map was expected to be a useful instrument in legislative lobbying for human rights protection as a whole, with emphasis on protection from enforced disappearance.

Phase 2

- Data gathering
- Data analysis

This phase is a three-month period during which data gathering shall be done through research and interviews. The goal was for the data to be analyzed using software to come up with the final political map.

Phase 3

- Post-data analysis campaign and lobby activities

The third phase shall commence after each legislator's position on the political map has been determined. A series of activities shall be undertaken during this phase, using the results of Phase 2 as a guide:

Proposed Post-Data Analysis Activities

Legislator's Stance	Activity
Strongly supportive	Human Rights advocacy training for legislative staff chiefs
Moderately supportive	Human Rights advocacy training for political affairs officers
Neutral	Room to room information campaign by FIND Advocacy Officer and SAD
Moderately opposed	Legislative briefing for legislative staff chiefs
Strongly opposed	Discussion groups at the barangay level in the districts they represent, followed by room to room distribution of signature campaign sheets from their constituents

CAID PolMap Experience: Phase 1

Consultations with CAID member organizations were held as planned. Subsequently, a technical committee was formed to develop the PolMap instrument. It was composed of the following CAID members, with FIND as lead convener:

- 1) FIND
- 2) SAD
- 3) AFAD
- 4) Task Force Detainees of the Philippines (TFDP)
- 5) Philippine Alliance of Human Rights Advocates (PAHRA)
- 6) BALAY Rehabilitation Center
- 7) Amnesty International - Philippines
- 8) Philippine Human Rights Information Center (PhilRights)
- 9) Philippine Legislators' Committee on Population and Development Foundation, Inc. (PLCPD)
- 10) Medical Action Group (MAG)
- 11) Philippine Coalition for the International Criminal Court (PCICC)
- 12) Claimants 1081
- 13) Sarilaya

The PolMap training was also conducted as planned. Former PLCPD Senate Officer Virginia Benosa shared insights on the dynamics inside the Philippine Senate, while former PLCPD Local Advocacy Program Manager Renato Llorin discussed the value of political mapping and taught the participants how to conduct a successful PolMap project.

The PolMap instrument was then developed. As intended, it covered other human rights issues, more specifically the prevention of torture. The final version of the instrument was composed of three modules:

Module 1: Legislator's Profile

- Personal and political circumstances
- Background
- Political affiliation
- Current positions

Module 2: Legislator's Agenda and Priorities

- Bills filed/co-authored/supported
- Privilege speeches delivered
- Priority projects/programs
- Budget items supported
- Advocacy involvements
- Public statements/media appearances

Module 3: Position on Enforced Disappearance and Other Human Rights Issues

- Top 5 legislative agenda priorities
- Position on enforced disappearance and other human rights issues
- Position on the AED bill and some of its salient provisions
- Position on other human rights measures
 - Compensation law

- Anti-torture law
- Abolition of the death penalty
- Ratification of the OPCAT

To determine the legislators' level of support, the PolMap instrument had a section on the leadership actions each legislator was willing to undertake when it comes to human rights legislation:

- ✓ Author/co-author (the) bill
- ✓ Deliver a privilege speech
- ✓ Convince colleagues
- ✓ Actively participate in committee hearings
- ✓ Actively participate in plenary deliberations
- ✓ Ally with human rights organizations
- ✓ Engage media
- ✓ Convince the opposition
- ✓ Engage in debate
- ✓ Build or strengthen a coalition
- ✓ Form a legislative circle/group

CAID PolMap Experience: Phase 2

Problems started to crop up during the data-gathering phase of the project. During this period, there was a sudden increase in the number of ED cases in the country. FIND and the other CAID member organizations quickly focused their efforts on searching for the missing and assisting their families. The human rights community became very busy with fact-finding missions, since the element of time was critical. Hence, the PolMap project was understandably not a priority at this point. Later, when the Manalo brothers surfaced, almost all of FIND's resources were put into ensuring their safety. Meanwhile, the Philippine Congress became absorbed with the push for constitutional change and investigations on allegations of electoral fraud and government corruption.

As a result of this unexpected turn of events, not much data was gathered for the PolMap project.

CAID PolMap Experience: Phase 3

The unfortunate circumstances during Phase 2 put the PolMap project to a halt; the 13th Congress ended before Phase 3 can even be started. Still, it was a very rich learning experience and there were definite gains especially in terms of networking not only among NGOs but also with legislative staff. Two out of the three goals of the PolMap project were attained: that of reactivating CAID and providing a training ground for members of SAD, who were given the chance to experience lobby work and the opportunity to discuss enforced disappearance with a Senator for the first time.

FIND believes in the value of political mapping in lobby work and, building on the lessons learned from the pilot PolMap project, hopes for a more successful implementation in the future not only for FIND and CAID, but for other associations and coalitions of families of the disappeared as well.

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Asian Federation Against Involuntary Disappearances (AFAD) Research on Legislative Advocacy

MS. CAROLIZA TULOD-PETEROS
AFAD Regional Campaign Officer

Two students who worked as AFAD interns personally conducted this research for a period of three months and I was their research supervisor. The research focused on the legislative process and the work of AFAD and FIND.

As part of our preparations, we held a training on the “*Legislative Advocacy Process in the Philippines*” and consulted resource persons who are experienced in this field. The lessons from this research serve as a reference for AFAD and member organizations in putting into operation its future advocacy efforts.

It is important to consider the political arena in terms of legislative advocacy. The political arena includes, the Congress and the Senate and both chambers as influenced by the executive branch of the government, the strength of the civil society, media, independent experts and international organizations. The elements of the political arena are classified based on the level of their cooperation on human rights work and concerns. The relationship with these elements could be antagonistic, cooperative or positively influenced.

Methodology:

1. The researchers reviewed the bills filed and the corresponding transcripts since 1996.
2. They read the relevant documents of AFAD and FIND.
3. They interviewed key resource persons including: (a) the chief of staff of a senator; (b) two legislators (including Congressman Edcel Lagman, one of the authors of the domestic law against forced disappearance); (c) the former head of the Human Rights Office of the Armed Forces of the Philippines; (d) the Co-Chairperson of FIND; and (e) the Secretary-General of AFAD.

Findings:

- For the past 16 years, 37 bills were filed.
- In 1996, the first bill was filed in Congress and in 1997; the first bill was filed in the Senate.
- The different bills filed were consolidated into one bill because the rest of the bills did not prosper.
- There were numerous authors of these bills but their involvement was varied. Mainly their participation was dependent on their length of service. Some were re-elected every three years while some were not.
- Congressman Edcel Lagman was considered as the champion of the bill because he supported the bill until its approval.
- Senator Kiko Pangilinan authored six bills in the Senate.
- The bills filed are not homogenous and some have contradicting content.

Factors of Sustaining the Legislative Process:

- In the absence of Congressman Edcel Lagman, the legislative process was sustained when his daughter, Congresswoman Krizel Lagman-Luistro took over.
- Personal connection to the issue manifested thru Congressman Edcel Lagman having a brother who was a victim of enforced disappearance.

The Debates:

- The progressive authors wanted to use the definition of enforced disappearance, according to the Declaration and the Convention.
- Those who opposed to the definition wanted to take account of the non-state actors. The non-inclusion of non-state actors in the definition remains a controversial issue. In the legislation process, resource persons from the National Bureau of Investigation, Department of Justice, and officers of the security forces opposed the non-inclusion of non-state actors.

- The Political Aspect of the Crime:
 - a continuing offense;
 - has a prescription period;
 - the liability of the commanding officers (there is a presumption of guilt instead of the constitutional presumption of innocence);
 - the issue of double jeopardy is not included in the law;
 - the exclusion of perpetrators from the protection of an amnesty law; and
 - the strength of evidence may influence preventive suspension to summary dismissal of public officials.
- FIND argued for the rehabilitation of both victims and perpetrators.
- Non-derogability of rights
- Inclusion of preventive measures such as surprise jail visits by the officers of the Commission of Human Rights

Actors and Their Strategies:

- The legislators are the main actors.
- The Committee Secretary and his/her chief of staff have crucial roles. The chief of staff is the point person to establish connection to a legislator, hence, he/she must be educated about the issue.
- An aggressive lobbyist, Congressman Edcel Lagman established alliances with legislators. He worked hard in drafting and lobbying for the bill against enforced disappearance as an accompanying bill to the anti-terrorism bill.
- The representatives of executive agencies were not entirely supportive. For instance, the stand of the security force was not clear but later they established the Human Rights Office of the Armed Forces of the Philippines (AFP), but they employed delaying tactics during the discussions. The AFP's Human Rights Office became a venue for public communication. The AFP showed resistance to the bill even failing to submit their position paper.
- General Tutaan is an officer of the AFP's Human Rights Office. During the interview, he said he served as an internal AFP Auditor and his role is to ensure that soldiers do not violate human rights laws.
- AFAD and FIND provided the supportive role.
- Other NGOs supported the inclusion of non-state actors.
- Strategies of FIND and AFAD

- Both organizations secured the support of legislators, such as Congressman Bonifacio Gillego, Congressman Edcel Lagman, Congressman Krizel Lagman-Luistro, and the chief of staff of Congressman Edcel Lagman, Nilda Sevilla-Lagman, who is the Co-Chairperson of FIND.
- Attendance of FIND in all public hearings
- Dissemination of information to the legislators
- Audience with the President of the Republic of the Philippines
- Using various venues to bring attention to the issue of forced disappearances
- Commemorating the traditional events on human rights and enforced disappearances to campaign for the bill

Difficulties:

- Human rights is not a priority of the government
- Few human rights advocates in congress and in the Senate
- Lack of support from the public due to a low level of awareness
- Lack of resources in sustaining the plan
- Lack of contact with legislators not committed to the effort against enforced disappearance
- There are other human rights issues that require attention
- Other factors that delayed the process
- The impeachment process against the President of the Philippines in 2001 due to plunder cases

Positive Developments:

The role of international actors, such as the diplomatic community (France, Spain, Belgium, Switzerland and Argentina) is strengthened.

- The UN Working Group on Enforced or Involuntary Disappearances has been repeatedly asking the government to give an official invitation for the latter to visit the Philippines. This is reflected every year in its annual reports, however, the Philippine government has not replied to the repeated requests for official invitation.
- The Universal Periodic Review was used as a venue to share concerns on enforced disappearances in the Philippines especially during the latter part of the administration of President Gloria Macapagal-Arroyo.

- In 2007, Philip Alston, the UN Rapporteur on Extrajudicial Execution visited the Philippines.
- The attention of the public and the international community to the Maguindano massacre in the Southern Philippines exposed the serious situation of human rights in the country. In 2009 , during the election period, 67 people were summarily executed. Thirty (30) were members of the media. Some of the victims remain disappeared.

Conclusions:

- The Senate is more resistant but more efficient than the Congress (Lower House) despite AFAD’s limited presence and contact.
- The authors of the different bills sometimes contradicted each other, and the NGOs were the only contact with those they assisted.
- Political opposition was not clearly seen.

Lessons and Recommendations:

- The value of training on legislative advocacy
- The importance of a comprehensive advocacy plan and flexibility in execution
- The imperative of constant evaluation is necessary.
- The importance of preparations of arguments and counter-arguments
- The need for developing contacts in the Congress and in the Senate
- The importance of engaging those legislators and offices that oppose the bill to advance the process
- The value of the presence of human rights organizations and families of victims during public hearings – they made their voices heard by submitting position papers on the provisions and measures that must be prioritized and by delivering oral interventions
- The need to follow the legislative process to effectively intervene, make analyses of the debate and evaluate strategies, to efficiently employ all resources
- The need to develop strategic alliances with civil society and other influential actors
- The importance of enhancing the capacity of organizations to conduct advocacy, campaign and lobbying activities
- The importance of the need to reach the broadest audience

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OPEN FORUM

Ms. Mary Aileen Bacalso (AFAD-Philippines)

The WGEID has been sending requests for official invitations to the Philippine Government for the last eight years requesting for a visit, but the Philippine government never replied. I am sure that this is not a facilitating factor. When we visited President Benigno S. Aquino in 2010, we made mention about the letters and he asked what is the WGEID. We explained the role of the WGEID and added that the last time the WGEID visited the country was during the term of his mother, then President Corazon Aquino. When the Department of Foreign Affairs was asked about the request of the WGEID, the person we met said he could not remember this. The Philippine Government did not reply to the WGEID's requests for official invitations. To note, the WGEID sent a separate request to the Government of Indonesia and the latter replied declining the request for a visit because Indonesia was expecting another visit from another UN rapporteur.

Atty. Emerlynne Gil (ICJ-Asia and Pacific Regional Office)

There is a disconnect between the Philippine delegation in Geneva and the Philippine Government. The ICJ encountered this many times. How to make them talk to each other? To inform both parties simultaneously, ICJ communicates with the Commission on Human Rights and the Philippine Mission in Geneva.

Ms. Caroliza Tulod-Peteros (AFAD-Philippines)

When the Convention was mentioned to the DFA, an officer even asked when is the convention, where is the venue?

Mr. Mugiyanto (IKOHI-Indonesia)

What is the role of the security forces in this effort? In terms of human rights instruments, the Philippines ratified the ICC and it is the first in Asia to pass a law against disappearance. It also ratified the Convention Against Torture. What is the position of the security sector? Are they supportive of the Convention? What is their role in the process of adopting these laws. In Indonesia, the security sector opposed the ratification of ICC and the Convention against Enforced Disappearance. The Parliament and the executive had a unified stand, thus Indonesia signed, but the military blocked the ratification process.

Ms. Nilda Lagman-Sevilla (FIND-Philippines)

The Armed Forces of the Philippines (AFP) opposed the definition of enforced disappearance under the Convention, which was adopted in toto under the domestic law. The AFP prefers the definition of disappearance under the International Humanitarian Law, and the Rome Statute of ICC, which includes any political organization and non-state actors. After the creation of the Human Rights Office of the AFP, they tried to accept the definition. When AFAD and FIND visited the Malacanang Palace the second time under President Benigno S. Aquino, it was difficult to understand their stand but now it is clear because there

is a pending bill in Congress that proposes to include non-state actors. Today, this is the position of President Benigno S. Aquino. This is another uphill battle for the amendatory bill, the amendments are not acceptable to me personally. We worked hard for 16 years for the law against forced disappearance and now there is a proposed amendment. I also heard that the President was hesitant to sign the bill but a cabinet member convinced him.

Ms. Caroliza Tulod-Peteros (AFAD-Philippines)

During the round table discussion with the representatives of the AFP, they did not oppose the ratification.

Atty. Samia Islam (Odhikar-Bangladesh)

Pertaining to the definition of the law covering the state actors, there are some incidents in Bangladesh where the ruling party members encouraged their affiliate student organizations to commit disappearance. In this case, can we consider the ruling party a state actor or non-state actor?

Ms. Nilda Lagman-Sevilla (FIND-Philippines)

The definition of state actors covers agents of the state, groups or individual acting with the support of the state. Even if the direct perpetrators are private individuals but if they carried out their actions with the support/acquiescence of the state, then they can be considered as state actors.

Atty. Alejandro Rua (CELS-Argentina)

In Argentina, we extended the timeframe of our work on forced disappearances. We also investigated enforced disappearances before the *coup* and found out the participation of the anti-communist private groups and paramilitary groups. They acted through the support of the Government and had an alliance with the Government of Argentina acting with the blessings of the government. Even if they are non-state actors but they are liable for the crimes they committed, we are going after them to prosecute them as non-state actors.

Mr. Wadiah Al Asmar (FEMED-Lebanon)

Clarification on non-state actors, the International Convention cannot address the non-state actors but the Convention will deal with the state actors. However, it is clear that the state is responsible to investigate those crimes perpetrated by non-state actors, such as members of the militia. They are non-state actors but they act with the support of the government. The state is accountable even for cases committed by non-state actors.

Atty. Chito Gascon (Human Rights Claims Board-Philippines)

Considering the stand of AFAD and FIND, the reality is in terms of norms and enforcement of those norms. It took 16 years to get the law passed. The law has been passed but the Convention is not ratified by the same state that approved the law that has provisions of the Convention. Now, it is time to discuss the issue as perpetrated by non-state actors. One

aspect is the participation of state agents, if they are non-government actors but if they are connected to the state, the law will still apply, 'acting for and on behalf of the government.' Enforced disappearance in the Philippines is undertaken by non-state actors also and the state must pursue them. The debate now in kidnapping is the provision of the Convention acceptable to victims of non-state actors. Now in some areas, there are forced disappearances committed by economic actors against those who chose to migrate or cross the borders, some are subjected to human trafficking. This case was mentioned as occurring in some countries in Latin America. We also have migration and trafficking issues in the Philippines. This must be addressed separate from the law; it cannot be brushed aside.

Atty. Emerlynne Gil (ICJ-Asia and Pacific Regional Office)

Why is that element very distinctive? The non-state actors who are not connected to state will be tried if they commit a crime. The non-state actor who abducts an individual and has no connection to the state will be prosecuted using laws against kidnapping and/ or arbitrary detention, depending on the facts. Atty. Garretón said, there are corporations, which are non-state actors but they were committing enforced disappearances by cooperating with state agents. For instance, a logging company in Peru's operation is being opposed by environmental activists, and all of a sudden one of these activists disappeared, and the evidence points to the security personnel of this company as a possible perpetrator of the said disappearance. More often than not, the security personnel of the said corporation are actually state agents. This phenomenon is not isolated to Latin America, there are similar cases transpiring in Cambodia. Private corporations give fees to the battalion in a local area for some security. Even in Malaysia this occurs; the logging corporations pay some sort of dues to the local government in charge of that particular state. Thus, there is a complicity with the state even if the act of forced disappearance is carried out by non-state actors.

Mr. Marco Antonio Garavito Fernandez (*Liga Guatemalteca de Higiene Mental-Guatemala*)

I'm struggling here with this notion of non-state actors. It must be understood that forced disappearance is a political crime with the intention of the state to go against a citizen in opposition to the government. In Guatemala, a great deal of those who committed enforced disappearances are non-state actors, but they are paramilitary groups organized by the government's armed forces. So these are private individuals, private armies that are responsible for carrying out a great deal of forced disappearances. This is a category that we have to understand. It does not matter if there is participation of non-state actors as long as the state sponsorship is present, we cannot go within the framework of omission disregarding state accountability. We have clear documentation in Guatemala, the genocide carried out by paramilitary groups against the indigenous communities was supported by the state. The rights of the indigenous communities are violated by capital industries, but it is essentially the state that goes against the rights of the citizens to struggle. For me, they are all part of the state.

Mr. Wadih Al Asmar (FEMED-Lebanon)

There are issues which are not very helpful to add to this debate. There are other problems which are historical and social in nature. The issues of human trafficking and migration are societal problems that may have some common elements but are too complicated to be introduced into this area of forced disappearance. We have to move on, this will diffuse the strength of the law that we have against enforced disappearance.

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SESSION 5

SPEAKERS

The Value of Domestic Legislation Against Enforced Disappearance (Virtual Presentation)

Prof. Rainer Huhle
UN Committee on Enforced Disappearances

Salient Features of RA 10368: The Human Rights Victims' Recognition and Reparation Act of 2013

Atty. Chito Gascon
Human Rights Victims Claims Board

Role of Documentation in Human Rights Advocacy

Ms. Marizen Santos
HURIDOCs

The Value of Domestic Legislation Against Enforced Disappearance

(Virtual Presentation)

PROF. RAINER HUHLE
UN Committee on Enforced Disappearances

Introduction

UNCED

- What are the objectives of the International Convention for the Protection of All Persons from Enforced Disappearance?
 - Determined to prevent enforced disappearances (ED) and to combat impunity for the crime of enforced disappearance
 - Considering the right of any person not to be subjected to enforced disappearance, the right of victims to justice and to reparation
 - Affirming the right of any victim to know the truth about the circumstances of an enforced disappearance, the fate of the disappeared person, and the

right to freedom to seek, receive and impart information to this end

- What are the most important features of the Convention for national legislation?
 - A correct legal definition (typification) of the crime
 - The crime of ED has typically two phases: first, an (illegal) privation of liberty and second, the denegation of information about this situation.
 - The active subject (perpetrator) of the crime is a state agent or a person acting on behalf of or in connivance with the state.
 - The crimes of ED and of kidnapping have to be clearly distinguished.
 - The continuous nature of the crime of ED has to be recognized.
 - The terms of prescription must not commence before the ED has been clarified and they must be among the highest foreseen in the criminal code for any crime.
- Enforced disappearance can both be a crime against humanity and an isolated crime.
 - It is therefore not sufficient to adopt the definition of the Rome Statute in the national legislation, since it conceives only the modality of crime against humanity. Quoting Art. 7, 2(i): “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.
 - Different from the definition of the Rome Statute, the Convention does not postulate “the intention of removing them from the protection of the law for a prolonged period of time.” The Convention understands that, independent from the subjective intentions of perpetrators, it is a consequence of enforced disappearance that it places a disappeared person outside the protection of the law. This must not be confused in national legislation.
 - Another important difference from the Rome Statute is that the Convention does not consider any time lapse as a necessary or constitutive element in the definition of the crime.
- Military jurisdiction should be excluded from seeing cases of ED.

Although the Convention does not explicitly touch the issue, the right of victims to a prompt and impartial investigation (Art. 12) implicitly excludes military jurisdiction. According to a well-established general understanding, no internationally defined human rights crime can be investigated and tried by exclusive jurisdictions. In the same sense, the Inter-American Convention against

Enforced Disappearance states clearly that persons responsible for ED can only be tried before regular courts (Art. 9).

- Each state party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention (Art. 23).
- The examination of the state report due two years after the entry into force of the Convention for the respective state, should be used as an excellent opportunity to take stock of the national legislation in view of its compatibility with the Convention. The CED has already developed a series of recommendations to states in that respect.
- Legislators, when approving the ratification of the Convention, should always include the corresponding declaration on Article 31 of the Convention, thus recognizing the full competence of the Committee to receive and examine communications of persons that claim to be violated in one of the rights of the Convention. The ratification in good faith of the Convention should include the will to submit situations in the country for the scrutiny of the independent body in charge of overseeing the performance of member-states.

OPEN FORUM

Atty. Emerlynne Gil (ICJ-Asia and Pacific Regional Office)

Considering the recent developments in the Philippines, there is a local bill on enforced disappearance being proposed that includes non-state actors in the definition of who would be the actors of enforced disappearance. There is an on-going debate. Would you care to comment why it is important that actors in the definition must be the state agents, or state agents who are complicit or acquiesce or have knowledge of the act for the act to be considered enforced disappearance?

Prof. Rainer Huhle (UN Committee on Enforced Disappearances)

It is important for victims to know that the Convention clearly prohibits the state to commit enforced disappearance. The human rights violations are still primarily the responsibility of the state. The state has over-all responsibility not to disappear people, but also the state must prevent others from doing it. If it is in one law, it is clearly distinguished. The problem of opening enforced disappearance to any non-state perpetrators is that the state might hide under other organizations and deny responsibility. A country must be clear in its legislation that enforced disappearance is a serious crime and is not in the same category with other crimes. The state must not escape from its over-all responsibility. These are two kinds of state responsibilities, which must be distinguished clearly. Bottom line, both are serious crimes and victims must be protected from all modalities of disappearances.

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Salient Features of RA 10368: The Human Rights Victims' Recognition and Reparation Act of 2013

ATTY. CHITO GASCON
Human Rights Victims Claims Board

I. Guiding Principles

- Access to an Effective Remedy by Victims/Survivors of Martial Law (Rule I, section 3 or RI, s3)
 - » Not a complete concept of remedy: limited to addressing the effect of the violation on the victim/survivor
- Compensation and non-monetary forms of reparation
 - » Original jurisdiction is to determine eligibility of claimants of human rights violations (HRVs), extent of human rights violation victims (HRVVs) and determination of award to ensure proper distribution of the Fund (RIII, s1)

- Criminal liability of perpetrators not within the jurisdiction of the Board
- “Reparation” refers to the obligation of the State to restore the rights and uphold the dignity of the victims. It is part of the right of the victims for an effective remedy as prescribed in R.A. 10368, its IRR and UN General Assembly Resolution 60/147 adopted on 16 December 2005. The resolution is entitled “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.” Reparation shall include both monetary and non-monetary reparations (RII, s1, g).
- Due process and speedy disposition of claims
 - » transparency in the processing of the claims;
 - » a procedure that allows any concerned party to oppose an application or claim on the ground that it is fraudulent, fictitious or spurious and gives that party the opportunity to question the same and to present evidence in support thereof; and,
 - » a speedy and expeditious procedure respecting the parties’ fundamental rights (RI, s2).
- State obligation (RI, s3)
 - » recognize the heroism and sacrifices of all Filipinos who are HRVVs and restore the victims’ honor and dignity; and
 - » acknowledge its moral and legal obligation to recognize and/or provide reparation to said victims
- Liberal interpretation in favor of HRV (RI, s4)
 - » Protection of Claimants (RV, s7)
- Non-discrimination
- Participation
- Attention to Vulnerable Groups
 - » Sustainability of non-monetary reparations
 - » Accessibility and reasonable accommodation
- Gender Integration
- Accountability
 - » Historical Background : President Benigno S. Aquino III signed this into law on 25 February 2013 although it had been long pending in

Congress since 1986. This was finally enacted into law under the present administration.

- » Significance: This is the first legislation of its kind in the history of the country. The acknowledgment by the state of its accountability for the human rights violations committed during Martial Law is unprecedented and precedent-setting. This serves as a commitment by the state that these violations should never be repeated – “*Never again...*”

II. Frequently Asked Questions

- ◇ What is the nature of the proceedings?
 - Original jurisdiction (RII, s1, a)
 - » Determination of eligibility of claims, HRVV and points
 - Summary Proceedings (RV, s5)
 - » Adopts Revised Rules on Summary Proceedings, including rules on prohibited pleadings and motions
 - Substantial Evidence (RV, s3)
 - » Authority to validate, verify, investigate and hear claims/allegations
 - No Fees (RV, s4)
- ◇ When is a claimant eligible for an award (RIII, s6)?
 - The applicant must be qualified to be an eligible claimant and present proof:
 - » that s/he is a legitimate claimant under section Rule V, section 1, paragraph 1, including applicants seeking recognition; and
 - » the human rights violation is one of those enumerated under Rule II, C, and Rule V, section 2, and committed during the period identified.
- ◇ Who may file a claims application (RV, s1)?
 - A person who is an HRVV as defined in Rule II, D.
 - » “Human Rights Violations Victim (HRVV)” refers to a person whose human rights were violated by persons acting in an official capacity and/or agents of the State as defined herein. In order to qualify for reparation under this Act, the human rights violation must have been committed during the period from 21 September 1972 to 25 February 1986. Provided, however, that victims of human rights violations that were committed one (1) month before 21 September 1972 and one (1) month after 25 February 1986 shall be entitled to reparation, under this

Act if they can establish that the violation was committed:

- (1) by agents of the State and/or persons acting in an official capacity as defined hereunder;
 - (2) for the purpose of preserving, maintaining, supporting or promoting the said regime; or
 - (3) to conceal abuses during the Marcos regime and/or the effects of Martial Law.
- Claimants who are conclusively presumed to be an HRVV under section 3 of Rule V.
 - » The claimants in the class suit and direct action plaintiffs in the Human Rights Litigation Against the Estate of Ferdinand E. Marcos (MDL No. 840, CA No. 88-0390) in the US Federal District Court of Honolulu, Hawaii, wherein a favorable judgment has been rendered, shall be extended the conclusive presumption that they are HRVVs. Provided, that the HRVVs recognized by the Bantayog Ng Mga Bayani Foundation shall also be accorded the same conclusive presumption: Provided, further, that nothing herein shall be construed to deprive the Board of its original jurisdiction and its inherent power to determine the extent of the human rights violations and the corresponding reparation and/or recognition that may be granted.
 - Legal heir/s, as determined by the provisions of Articles 960 to 1010 of the Civil Code of the Philippines, or authorized representatives of HRVVs who are deceased, incapacitated, or involuntarily disappeared.
 - » NSO issued proof of filiation and relationships. In the absence thereof, affidavits of at least two (2) disinterested individuals;
 - » In case of victim is lacking in capacity to file the application personally, a notarized authorization showing proof of identity of the authorized representative;
 - » In case of incapacity by reason of mental or psychological disability, NSO issued proof of filiation or relationship of the nearest next of kin in accordance with the Civil Code provisions on succession (RV, s2).
- ◇ What injuries or violations are covered by the claims application (RII, s1, c)?
- “Human rights violation” (HRV) refers to any act or omission committed during the period from 21 September 1972 to 25 February 1986 by persons acting in an official capacity and/or agents of the State.
 - » illegal arrest and detention
 - » physical injury, torture, killing, or violation of other human rights, of any

person exercising civil or political rights

- torture as defined under RA 9745
 - » enforced or involuntary disappearance as defined under RA 10353
 - » involuntary exile
 - » illegal takeover of a business, confiscation of property, detention of owner/s and or their families, deprivation of livelihood of a person by agents of the State
 - » Kidnapping or otherwise exploiting children of persons
 - » sexual offenses against human rights victims
- sexual offense refers to either crime of sexual harassment or sexual offenses defined by the Revised Penal Code other than rape
 - » similar or analogous to the above, including those recognized by international law

◇ Who are persons acting in an official capacity or State agents (RII, s1, e)?

- “Persons acting in an official capacity and/or agents of the State” refer to:
 - » (1) Any member of the former Philippine Constabulary (PC), the former Integrated National Police (INP), the Armed Forces of the Philippines (AFP) and the Civilian Home Defense Force (CHDF) from 21 September 1972 to 25 February 1986 as well as any civilian agent attached thereto; and any member of a paramilitary group even if one is not organically part of the PC, the INP, the AFP or the CHDF so long as it is shown that the group was organized, funded, supplied with equipment, facilities and/or resources, and/or indoctrinated, controlled and/or supervised by any person acting in an official capacity and/or agent of the State as herein defined;
 - » (2) Any member of the civil service, including persons who held elective or appointive public office at any time from 21 September 1972 to 25 February 1986;
 - » (3) Persons referred to in Section 2(a) of Executive Order No. 1, creating the Presidential Commission on Good Government (PCGG), issued on 28 February 1986 and related laws by then President Corazon C. Aquino in the exercise of her legislative powers under the Freedom Constitution, including former President Ferdinand E. Marcos, spouse Imelda R. Marcos, their immediate relatives by consanguinity or affinity, as well as their close relatives, associates, cronies and subordinates; and
 - » (4) Any person or group/s of persons acting with the authorization,

support or acquiescence of the State during the Marcos regime.

- ◇ What is the period when violation or injury should have occurred? (RV, s2)
 - The human rights violation, as defined under Rule II , C, must be shown to have been committed during the period from 21 September 1972 to 25 February 1986: Provided, however, that victims of human rights violations that were committed one (1) month before 21 September 1972 and one (1) month after 25 February 1986 shall be entitled to reparation, under this Act if they can establish that the violation was committed:
 - » by agents of the State and/or persons acting in an official capacity as defined hereunder;
 - » for the purpose of preserving, maintaining, supporting or promoting the said regime; or
 - » to conceal abuses during the Marcos regime and/or the effects of Martial Law.
- ◇ What proof needs to be submitted to show HRV (RV, s2)?
 - NSO issued proof of death;
 - warrant of arrest, seizure orders (PDA, PCO, ASSO), mission order and other similar documents;
 - certification by custodial government agencies on fact of detention, carpeta, police blotter, NBI files, release papers and other similar documents;
 - doctors' affidavits, medico-legal, autopsy or pathology certificate or report, and other similar documents;
 - declassified documents from the Department of National Defense;
 - court records;
 - original or duly certified lawyers' records;
 - photographs with affidavit of proper authentication;
 - affidavit of three (3) disinterested persons;
 - secondary sources of information from reliable sources may be presented such as church/non-government organization report, books documenting HRVs, newsclippings or other similar documents;
 - other documents and evidence attesting the occurrence incident and violations or that may be required for the award of any reparation.

- ◇ What are the steps in deciding a claim?
 - A. Filing of a Claims Application
 - » initial evaluation by the Secretariat to determine completeness, investigation and submission of reasoned recommendation (RIV, s1)
 - Completeness: shows/proves eligibility of claimant and HRV (RIV, s3)
 - » If complete, referral to Division
 - Board acts through its Divisions in resolving claims (RIII, s2)
 - » If incomplete, applicant is given time to complete
 - B. Determination of Eligibility of Claims and Monetary Reparation (RIII, s6 & 7)
 - A point system shall guide the determination of the award in the following manner:
 - » victims who died or who disappeared and are still missing shall be given ten (10) points;
 - » victims who were tortured and/or raped or sexually abused shall be given six (6) to nine (9) points;
 - » victims who were detained shall be given three (3) to five (5) points; and
 - » victims whose rights were violated under Section 3, paragraph (b), nos. (4), (5) and (6) under RA 10368 shall be given one (1) to two (2) points (RIII, s7).
 - In each category, HRVVs who had suffered more would receive more points. In instances where a victim is classified in more than one category, one shall be awarded the points in the higher category. Provided, that in cases where there are several eligible claims filed for reparation by or on behalf of a particular HRVV, the Board, through the Divisions, shall award only one (1) valid claim which corresponds to the category obtaining the highest number of points for each eligible claimant (RIII, s7).
 - After the final determination of the awards for all claimants, the Board shall then compute the final monetary value of one's award that is equivalent to the numerical value of one point multiplied by the number of points that a claimant is entitled to, as previously determined by the Board (RIII, s7).

C. Determination of Non-monetary Reparation (RIII, s8)

- The Board, through the Divisions, shall include in the resolution, when applicable, provision for necessary services as non-monetary reparation for HRVVs and/or their families, such as counseling, social protection, health services, educational scholarship or assistance, subject to the guidelines and mechanisms to be determined by the Board, in coordination with the identified governments agencies in Rule V, Section 10.

D. Notice to applicants regarding eligibility of claim

E. Board approves list of all eligible claimants and directs its publications in two (2) newspapers of general circulation once a week for three (3) consecutive weeks.

- Filing of opposition within fifteen (15) calendar days from date of last publication
- Board remands to concerned Division to rule on opposition (RIII, s9)
- Grounds for opposition (RIII, s9):
 - » new claimant is not legitimate under Rule V, section 1, paragraph 1;
 - » the human rights violation is not one of those enumerated under Rule II, C, and Rule V, section 2; and
 - » the claim is fraudulent, fictitious or spurious

F. Appeal to the Board (RIII, s10)

- Through a Notice of Appeal with the Secretariat, within ten (10) calendar days from receipt of the resolution, on any of the following grounds:
 - » that the resolution is not supported by substantial evidence and
 - » that the claimant or opposing party has been deprived, through no fault attributable to her, of presenting her evidence in support of her claim or opposition during the Division proceedings.

NOTE: In the case of conclusively presumed claimants, any opposition may be filed within 10 days as an appeal to the Board *en banc* on grounds under section 9 and 10 of Rule III (RIII, s9).

- The appellant shall submit a Memorandum appended to the Notice of Appeal, in at least nine (9) copies, citing the grounds why the resolution of the Division should be vacated, set aside or modified. A failure to submit said Memorandum shall be deemed non-perfection of the

appeal(RIII, s10).

- The Board *en banc* shall resolve the appeal within fifteen (15) calendar days from the time it is deemed submitted for resolution.
- The decision on the appeal by the Board *en banc* is final and executory.
- Any pending appeal filed by an aggrieved claimant or oppositor before the Board *en banc* must be resolved within sixty (60) calendar days before it becomes functus officio.

G. Effectivity of Award of Monetary Compensation (RIII, s12)

- Within thirty (30) days after the Board has approved with finality each eligible claim pending before it and after due publication of such legitimate claim, the award of monetary compensation shall take effect.

◇ What are the remedies available to the HRV?

- Compensation
- Recognition
- Non-monetary reparation

◇ How are remedies rendered?

- Compensation:
 - » based on a point system taking into account the frequency and duration of the violation, and, severity of harm and its consequences
 - » only one (1) valid claim which corresponds to the category obtaining the highest number of points for each eligible claimant
 - » After the final determination of the awards for all claimants, the Board shall then compute the final monetary value of one's award that is equivalent to the numerical value of one point multiplied by the number of points that a claimant is entitled to, as previously determined by the Board. Monetary reparation shall be free of tax (R3, s7).
 - » Monetary reparation is free of tax. No special power of attorney shall be recognized in the actual disbursement of the award, and only the victim or successor(s)-in-interest shall be entitled to personally receive said reparation from the Board, unless the victim involved is shown to be incapacitated to the satisfaction of the Board (RV, s7).
 - » ten billion pesos (P10,000,000,000.00) less expenses for implementation of the law (RVI, s5 & 6)

- Recognition:
 - » Persons who are HRVVs, regardless of whether they opt to seek reparation or not, shall be given recognition by enshrining their names in a Roll of Human Rights Victims to be prepared by the Board (RIII, s14).
 - » *Motu Proprio* Recognition based on judicial notice (RIII, s13)
- Non-monetary reparation (RV, s8):
 - » The Department of Health (DOH), the Department of Social Welfare and Development (DSWD), the Department of Education (DepED), the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA), and such other government agencies shall render the necessary services as non-monetary reparation for HRVVs and/or their families.

◇ What are the human rights violations covered and how many points are assigned to each?

Human Rights Violation	Corresponding Point
Killing of persons exercising their civil and political rights; Involuntary disappearance (still missing) as defined in RA10353	10 points
Torture, and/or rape or sexual abuse	6–9 points
Detention without a valid warrant of arrest issued by a civilian court	3-5 points
Force or intimidation causing involuntary exile from the Philippines	1-2 points
Force intimidation or deceit causing unjust or illegal takeover of business, confiscation of property, deprivation of livelihood, etc.	1-2 points
Kidnapping or otherwise exploiting children of persons suspected of committing acts against the Marcos regime; sexual offenses against human rights victims who are detained	1-2 points

III. Human Rights Victims' Claims Board

- Work period: The Board shall commence its two-year work period from the effectivity of this IRR (RVI, s2).
- Term of office: The Chairman and the Members of the Board shall not hold any

other office or employment during their term (RIII, s3).

- Rank, salary, emoluments and allowances of the Chairman and Members of the Board: The Chairman and the Members of the Board shall enjoy the rank, receive the same salary, emoluments and allowances equivalent to a Presiding Justice and Associate Justice of the Court of appeals respectively, which shall not be decreased during their term of office. The emoluments shall include salary, fees, compensation, perquisites, pensions and retirement benefits which shall be given in accordance with RA 6758 and RA 910, as amended by RA 9946 (RIII, s4).
- Board of Trustees:
 - » The powers and functions shall be assumed by the Board of Trustees which shall be composed of the following: Chairperson of the CHR as Chairperson; Chairperson of the National Historical Commission as Co-Chairperson; and Chairpersons of the CHED, the National Commission on Culture and the Arts (NCCA), the Secretary of the Department of Education and the Head of the University of the Philippines Diliman-Main Library, as members (RVIII, s1).
- Powers and functions of the Memorial Commission:
 - » establishment, restoration, preservation and conservation of the Memorial/Museum/Library/Compendium in honor of the HRVVs during the Marcos regime
 - » coordinate and collaborate with the DepED and the CHED to ensure that the teaching of Martial Law atrocities, the lives and sacrifices of HRVVs in our history are included in the basic, secondary and tertiary education curricula
 - » The Board of Trustees shall have the authority to hire and appoint its officials and employees, receive donations and grants for and on its behalf, and generate revenues for the benefit of the Commission (RVIII, s1).

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OPEN FORUM

Atty. Alejandro Rua (CELS-Argentina)

Based on the review of the reparation system that we have in Argentina, there is this monetary part. Argentina and the Inter-American Agency of Human Rights generated a report, which became an important basis of reparation in 1983. Based on that, there have been a number of laws enacted for different kinds of issues. To date, this is an ongoing process. The first ruling is the Law on Reparation. It includes provision how to certify and how to document enforced disappearances according to charges that were filed earlier and

how to determine the amount to compensate the victims. There was an attempt to whitewash these crimes during investigations. Then, there is the Law of Reparation for Children-Victims and another law was adopted to cover those who went into exile because of the repressive regime. In Argentina, we are still facing ongoing processes and support the efforts to generate appropriate laws because the benefits have been extended to the children who were born in exile when their parents were exiled. These children are recognized as victims because they were deprived from living in the country and that is another variant. We do this intentionally because there are conditions which might not be covered by a certain law. If people claim for compensation because of distinct circumstances, then these will be covered. This is a process that follows the universal recognition of human rights. After the establishment of reparation for enforced disappearances in that period of the dictatorship, we extended the coverage to those who suffered the same violation in 1985 and beyond. We also consider other possibilities for reparation measures.

For the reparation for children-victims, its fund could be disposed to cover the needs of the *Abuelas de Plaza de Mayo*. It's hard to enumerate the provisions exhaustively. The law also covers the recovery of those places where the victims were secretly detained so these can be turned into museums for historical memory. This will depend on political will and available resources.

Mr. Marco Antonio Garavito Fernandez (*Liga Guatemalteca de Higiene Mental-Guatemala*)

The point of view of the victims and the fact that this statute has been realized is an achievement. Aside from reparation they can get, it matters that they regain the dignity of the victims of human rights violations. We have to give them back their dignity, even if it is for a short time. Regardless, still we must focus recovering the dignity of the victims.

In the case of Guatemala in the peace process, we established the Commission for Reparation, wherein the reparation measures must be completed in a period of fourteen (14) years. Recently, when the 14-year timeframe of reparation for victims was concluded, we proposed an extension. That is to consider the expectations of the victims because the decision making process of any reparation is not overnight, it is a lengthy process. The victims must understand and become involved in the whole process. The extension might require more than 2 years since a number of victims have yet to come forward.

With what Atty. Rua said, it is practical to come up with a monetary compensation. In the case of Guatemala, the financial reparation was considered in a country that has the worst economic situation of Latin America. The opinion of the public is important, considering the country's poverty, if there are no tangible actions, then we can focus on other possible measures. Keeping the historical memory is vital. The museum that preserves the documents and things related with the struggle is also important. Guatemala has had a tragic human rights experience and we do not see a single museum for the preservation of the memory. The whole process centered only on reparation, with the victims gaining access to funds, but real reparation may not be totally resolved. The reparation measure must devise intangible things that are symbolic and psychological in nature.

What will happen after two years when we are not there anymore? We must find ways

for complementary measures for the victims. It is easy to pay what has been lost financially but the relatives are in pain and have not moved forward, even if this is the case, we must find other ways of healing. Enforced disappearance causes damage to the families of the disappeared, some could not work and could not earn money for the family. There must be a measure to make up for the lost economic opportunity.

A week ago in Guatemala, the Inter-American Court of Human Rights made an appeal. The government is not fulfilling its responsibilities to eleven (11) victims. We do not want to sacrifice the opportunity. A breadwinner was away for 25 years, they can justify the number of years that they missed their earnings such as professors and engineers. Within the 2-year extension, the government can find ways and reach out to the person whom they must pay. The money will not pay for everything especially the suffering.

Ms. Margarita Zamora (*Pro-Búsqueda-El Salvador*)

What will happen with those victims that cannot prove that they are indeed victims? In El Salvador after the conflict, there are a number of situations which are financial in nature. Those children whose parents were assassinated, regardless of whether they lost 1 or 2 parents or those parents who lost all their kids, the amount compensated was only for one victim, so all families received the same amount. The orphans who are minors until the age of 18 will also receive the same amount. When the war was over, given that their parents were assassinated during that period, they received the lump sum amount unless the minor received a monthly stipend for their studies. Some parents lost their kids but they did not submit their claims under the prescribed period but they appealed. They are considered ineligible due to their failure to submit their claims within the prescribed period. In our country, some victims live in the remote areas and never heard the news about the compensation and there are no witnesses who can prove that the violation indeed occurred. Two years is a short period, not all victims can come up and approach the government for their compensation.

In the case of our country, many persons who pretended to be victims, availed of compensation. They abused the resources which they were not entitled to. I wanted to share all about reparation modalities that we have in our country, ethical and psychological in nature. In our country, unfortunately, we did not attend to the psychosocial needs of those who suffered from the armed conflict. Many are suffering from mental health problems. There are some monuments constructed by the state, but these are products of the struggle of human rights associations. These monuments contain the list of victims of enforced disappearances, those who were assassinated, and all civilian victims. But those who died in the battle ground, the guerillas and those who have no place to pray and put flowers, we gather at those monuments and offer our prayers and flowers for graves that we never found. This is a way to give reparation for those who cannot weep for their loved ones.

Atty. Yati Adriyani (*KontraS-Indonesia*)

In Indonesia, we have an article for compensation, but this is not the total remedy. Under the human rights law, in some situations, the remedy could not be completed within the given deadline. The compensation depends on the decision of the court of law. As a result, some

cannot claim their compensation in Indonesia. There are also cases in Timor-Leste.

The victims in the community do not want to talk about advocacy for reparation. For them, the compensation will stop the judicial process and the justice process. For them, justice is more difficult for the government to give them. Compensation is easier for government to provide. What is the situation in the Philippines? We cannot stop seeking justice and we cannot stop seeking for compensation as well. How to find justice and truth?

Atty. Chito Gascon (Human Rights Claims Board-Philippines)

We have much to learn in this field of reparation and justice. We are doing this first step, certain that if we do not give 2 years, then those who must come forward will not come forward. We will award reparation both monetary and non-monetary, moral, psychosocial, and symbolic forms of non-monetary reparation. The law sets up a body that will continue beyond our work. The Memorial Commission will continue the work for non-monetary compensation.

This will be led by the Chairperson of the Commission on Human Rights with the cooperation of other government agencies.

Right now, there is a debate in Congress on the Charter of the Commission on Human Rights (CHR). It is important to empower the CHR. We hope to strengthen the Charter for the CHR to receive complaints regardless if the human rights violations happened before, during, and after the Martial Law. CHR must be provided with financial resources to implement this program under the mandate for reparation.

There are two possible areas to expand the terms of reparation; one is the conflict area in the South (southern part of the Philippines). Part of the Peace Agreement is to set up a new structure of governance for the Muslim area in Mindanao. Part of the agreement is the creation of a Transitional Justice Reconciliation Commission. Although it is not yet official, this has yet to be formally announced. One of the speakers, Atty. Cej Jimenez will be the government representative for this Commission. The Transitional Justice Reconciliation Commission is not constrained by time. This could cover the Jabidah (massacre) or the purge prior to Jabidah. The second area is the rebellion involving the Communist Party. If the peace negotiations with the Communist Party will advance similar to Guatemala or El Salvador, maybe whatever limitations we experience under this law will be covered through an agreement under the peace process that says: "there will be truth, reconciliation, compensation, a transitional justice mechanism, for the conflict with the communist insurgency." These are possibilities in moving forward beyond the law of compensation.

My important lesson is that we separate the matter of reparation from court process, while the criminal proceedings continue the component of reparation works. The court processes take too long and different levels of evidence are required. It is an administrative process that acknowledges that there were victims regardless of the perpetrators and must be victim oriented. The victims must not wait too long and their concerns must be addressed. While allowing the court process to continue, the reparation must be provided to the victims sooner rather than later.

We want the victims to tell their stories in their own words. As they file for their claim, they tell their stories in their own words. This is what we see as best remedy against false claims. False victims will not be able to share their stories. There were people who came forward asking for compensation but when we asked questions, e.g. what happened, where, etc., they cannot give the details. True victims can give details. We do not need judgment, since they need more time before they can tell their story, such as those who suffered sexual violation or rape. The second stage is for us to further investigate and work with common stakeholders. The stories will be submitted to the Memorial Commission. Different narratives will be produced out of these stories. The Department of Education is part of the Memorial Commission. They will draw the stories and include these in the curriculum. The children in our schools will be told about the stories that occurred during the Martial Law.

Until today, there remain political questions about what happened during the Martial Law, such as a taxi driver will say it is better during Martial Law. The son of the dictator is now a senator. The day he arrived in the Senate, he said Marcos should be buried in the cemetery for heroes. The stories of victims must be told because we are still building a country that is democratic.

Dr. Edita Burgos (*Desaparecidos* and FJBM-Philippines)

My husband was a victim, his business was demolished, our pieces of property were destroyed. My children and I refused to file a claim under this law. When he was still alive, my husband would say: “*why should I claim for my duties that I do?*” All of my children adopted that principle. I am more practical but my children will not agree. I have not filed a claim but what you said struck me – stories must be told to correct history. My husband contributed to restoration of democracy, his story must be told.

Atty. Chito Gascon (Human Rights Claims Board-Philippines)

Many heroes refused to come forward and file. They feel that it would diminish their contribution, but that is not the purpose. We pay monetary compensation to give physical compensation as part of the state’s duties and obligations to recognize the errors committed. We encourage people to come forward so they will be recognized. The state must address the truth and be accountable for what happened.

Another option, if a person claims reparation or recognition only and if the latter is chosen, then the victim can waive the right to money. You can still come forward, if you do not claim the money but just seek for recognition. However, I do not encourage this. I suggest that the activists claim the money and contribute it to common funds for fellow activists. Their stories will be told. Another option is to use the fund to set up an initiative for other people, for therapy or psychological intervention. We need you to come forward, be recognized, and this will help to eliminate the fraud. Some of the victims in Hawaii case had this experience. A state agent made a false claim and now he is listed and is receiving funds for the victims. The remedy is for the victims to oppose his claims.

If we are successful here, then this will become a stepping stone for next efforts where the state will provide and acknowledge other violations perpetrated after Martial Law.

Mr. Marco Antonio Garavito Fernandez (*Liga Guatemalteca de Higiene Mental-Guatemala*)

I admire the integrity (pertaining to the comment made by Dr. Edita Burgos), I want to share a similar experience. Four years back, I was working with victims of enforced disappearance. A young lady's father was disappeared, but she said, she never saw her father as a hero. Later on, we talked about reparation. She said now that she knows that her father is a hero, then she cannot ask money for his heroic deeds. She will tell the whole world that he is a hero, so she got the compensation and she used it to write a book about her father. She is in advocacy work and that vindicated her father. What I am saying is, the economic compensation could be a tool. The society must know these heroes beyond the knowledge of the family. The country deserves to know the story of your husband.

Ms. Margarita Zamora (*Pro-Búsqueda-El Salvador*)

It is difficult to take the step to ask or to accept monetary compensation for the loss of my husband. It was like selling him and it was a painful decision. There were nights I could not sleep. I decided to accept the money since my daughter needs it. We lost all we had. It was a priority and survival. Her father was killed, nothing will compensate the loss of the father or of not knowing the father. This is part of our advocacy, we are neither selling the right nor the love for the one we lost, but this is for the country.

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A close-up photograph of a woman with dark hair and glasses, speaking into a silver microphone. She is looking slightly to the left of the camera. The background is blurred, showing what appears to be a room with some posters or notices on the wall.

Documentation for Human Rights Advocacy

MS. MARIZEN SANTOS
Consultant, HURIDOCS-Switzerland

Types of Documentation

Documentation is a common specific tool for advocacy and human rights work. It is defined in various ways in human rights advocacy and it is employed to promote the protection of human rights.

HURIDOCS commonly uses the collection of documents for library type documents and recording of events in grassroots situations, where the worker documents events in places where human rights violations occurred. The sources of data are the victims, families, and human rights groups. The library type documents could be published or unpublished but include proceedings where collective knowledge is organized.

Access to these documents is limited to organizations, rights activists, and professionals.

The circulation of these documents is widened if the organizations share their documentation to Treaty Bodies of the UN. Both types of documents complement each other in human rights advocacy work. An organization may make use of both types or employ one more strongly than the other.

Why document? What data can be collected and for what purpose?

“If there is no documentation on these events [in the case of human rights atrocities], information on them may forever be gone, and the benefit that could have been derived from them is lost.” – Manuel Guzman and Bert Verstappen, HURIDOCs

The following materials must be collected: documentations of violations, testimonies, interventions, research and real-time data.

As human rights organizations, we are here for advocacy but we play different roles. Some concentrate on education, awareness raising and capacity building, such as what FIND is doing. Other organizations spend more time on call for ratification of rights-based policies. Through documentation, humanitarian groups can provide assistance to victims’ families by submitting evidence to courts, or submit documents to regional or parliamentary events. The objective is for people not to forget, and the perpetrators must be held accountable.

Notable Examples

1. Documenting violations
 - Asian Federation Against Involuntary Disappearances (AFAD). The organization’s thorough documentation of cases of enforced disappearances is one of its advocacy strengths, which contributed to influencing policies such as the passing of the landmark Anti-Enforced or Involuntary Disappearance Act in December 2012, in the Philippines.
 - Palestinian Center for Development and Media Freedoms (MADA). MADA documented 238 press freedom violations in 2012 and 229 such violations in 2013, (UNESCO, 2014).
2. Recording testimonies
 - Iraq History Project (2005-2009). Over 8,900 testimonies representing over 55,000 pages of personal narratives were collected. This project recorded human rights violations committed under the government of the Ba’ath Party and Saddam Hussein (1968-2003) and by various entities after the U.S.-led invasion (2003-2008).
3. Monitoring Interventions
 - OpenData.ge – Public Information Database invokes social science research
4. Research
 - Collecting and Protecting Human Rights Data in Guatemala (1991-

2013). Documentation can involve social science research (sociological/anthropological), to try to understand the consequences of violations on its victims.

5. Real-time Data

- Eye on Cuba. Tracking, organizing, disseminating and updating information as it is happening, uses interactive maps and allows human rights activists to respond to situations.

Challenges in documenting for rights advocacy

1. Security concerns

- confidentiality and safety of the reporters, documentors, and victims
- if data falls into the wrong hands, this would compromise the safety of those involved
- human rights-related investigations are not published, many organizations are cautious in reviewing their sources of quantitative and qualitative data

2. Human resources and financial resources

- small number of staff members who play multiple roles and responsibilities
- some organizations have limited means as they advance their advocacy, they must focus on a certain advocacy they can afford and availability of staff to do the work

3. Sustainability issues

- human rights NGOs strive to obtain hard evidence
- compilation of trends and statistics are based on large amounts of data collected over time
- some documentation initiatives are not prioritized due to lack of resources

4. Awareness of and capacity in the use of technology

- Access to mobile documents are possible through downloadable apps.
- online security must be addressed
- information management
- sustain the capability building and assure safety of families, victims and human rights workers

Solutions, moving forward with documentation for rights advocacy

1. There should be continuous capacity building and networking. HURIDOCS provides trainings and one-on-one discussions with human rights groups.
2. Tools and support available
 - » traditional methods such as the use of spreadsheet and Word documents
 - » available software: OpenEvsys, Casebox, Martus
 - *OpenEvsys* is a tool where human rights organizations can record cases of human rights violations, analyze trends or patterns of abuse. This tool is relational; it collects and organizes stories and information. One perpetrator can be related to various violations. The documents are accessible through online documentation systems or cloud application.
 - *Casebox*, stores and allows access to related court cases. The load of cases can be managed for each lawyer and for the officers of an organization. This is a tool to support legal research. Online accessibility is possible to only trusted partners who have access for information sharing.
 - *Martus*, a software that encrypts and backs up data to a remote server, data can be accessed online and offline

What is HURIDOCS?

1. An international NGO helping human rights organizations in using information technologies and documentation methods to maximize the impact of their advocacy work.
2. It develops tools and techniques and provide advocates with customized training and support.
3. It is a global network that shares its experiences and creativity to develop common standards and tools for information management.

Useful References

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OPEN FORUM

Atty. Roberto Garretón (Chile)

Documentation is basic to human rights work. Even if we lose the case in court, the documents remain valuable because they contain the events, dates and other facts. In our experience, the documentation is useful in our appeals. The UNESCO has a monument since 1982. It is the heritage for humanity wherein the lists, world archive, and documents on humanity are preserved. I take pride that the solidarity movement in Chile is registered in that world archive. The solidarity documents occupy an area bigger than this room. The lifespan of the document goes beyond what we have today. We give historical value to our work, and we present what we do.

Mr. Marco Antonio Garavito Fernandez (*Liga Guatemalteca de Higiene Mental-Guatemala*)

On documentation, we must observe caution in finding the state documents and archives that might detail human rights violations. These state documents must be recovered and preserved because these contain incredible information. Through these, we can identify who committed the crimes and what crimes were done. It is important to preserve the archives of the armed forces. In Guatemala, it was an accident when we bumped into the historical files of the police. We accessed incredible information to convict the perpetrators. It is a wealth of information enough to convict the perpetrators and advance the cases to attain justice. The state has the documents, these are useful to advance the legal proceedings.

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Small Group Discussion

The participants were grouped into three (3) and they shared their ideas and lessons learned from the discussions and topics presented for the past two days. For the purpose of future cooperation, they identified possible actions that are achievable in their respective countries and the sets of activities for possible implementation through collaboration with other organizations.

For the improvement of the conference, the participants shared their feedback on the general flow of the conference, the topics, the participation of the attendees, and other comments.

RESULTS

- Marco (Guatemala):
 - This has been an enriching experience, particularly as we do not usually have the opportunity to share much with others.
 - Having this opportunity allows you to rethink your experiences through others and hearing their experiences.
 - The lack of these experiences means you miss opportunities for even the smallest acts of solidarity.
 - These experiences allow you to feel a little less alone.
- Mandira (Nepal):
 - These exchanges with Latin America enrich and help many of us because of what has been achieved there especially regarding documenting.
 - The experience facing and challenging amnesty laws is interesting to me, being a lawyer.
- Irina (Belarus):
 - There are three concrete things I have learned that I must now implement:
 1. During dictatorship – (1) documentation is fundamental; (2) preparing cases beforehand, even if not yet possible to lodge in court; and (3) importance of a public awareness campaign
 2. After dictatorship – creating a human rights committee and considering the issue of reparation and what that might look like
 3. Organizing their association/organization – using the concept of Guatemala, we need to consider not simply finding the person, but focus more on working with families and society and creating the foundation of a strong society
- Samia (Bangladesh):
 - The context in Bangladesh is very different from Latin America, Indonesia, Timor-Leste, and Philippines because there is no armed conflict or civil war. Bangladesh is still struggling with the present situation where others are dealing with the past. In 2009-2014, 151 people disappeared because the current government cannot tolerate different views. The identities of victims tend to be political leaders, labor leaders, students and farmers. It is a misuse of State power. The security forces take money from influential political parties to disappear people. The government would not admit disappearances or abductions.

Possible follow-up¹

- When Marco returns to Guatemala, he will have two events, one with the organisation and a broader one with families of the disappeared. In these two events, he will be able to share experiences of this conference that will help them feel less alone (and allow them to know they have helped many others through their experiences).
- Mandira (Nepal) will document oral histories so that when people die, their stories are not lost. **We should recommend to AFAD to encourage and focus on this kind of documenting activity.**
- Mandira (Nepal) will conduct **a review/analysis on different laws on enforced disappearance that might be useful for others wanting to implement laws against ED.**
 - For Gabriella (Italy): There is a 2010 study on the best practices in criminalizing ED released by the UN WGEID. Gabriella also has all the preparatory materials on the case law because she prepared the study, which she would be happy to share with those who are interested.
- Samia (Bangladesh): We need to do public awareness campaigns so that people realize that disappearances happen and we need a campaign for ratification of the Convention. There is a need for more meetings/conventions in individual countries to raise public awareness of the issues. Odhikar is trying to provide trainings in different parts of the country but it is difficult because the organization is under surveillance. **Perhaps AFAD could organize conferences in regional areas of partner organizations.**
- Mugiyanto (Indonesia): Countries have their own specific issues and priorities so maybe, what we can focus on is bilateral cooperation.
 - Marco (Guatemala): This concept of bilateral cooperation needs to be further explored. We can take advantage of technology to share ideas. We would love to share more, and we have much more to share than we were able to speak about during the conference.
- Mugiyanto (Indonesia): There are two key actions for AFAD coming up:
 - In Indonesia and Timor-Leste (Indo/TL), the priority is finding separated children. We can learn a lot from Latin America which is not necessarily relevant to colleagues in Kashmir, Nepal, etc. We should organize a workshop/training with Timor-Leste, Indonesia and Latin America. **We must develop a concept together and have a base for our work. Melissa probably could take the lead in this. [Melissa's response: We already have a concept note but**

¹ Note: items in bold face are tangible actions that AFAD can focus on

we should review and develop further, with this new perspective from Latin America and the need to focus more on families than politics). In Indo/TL, the governments say they do not know what to do. They want CSOs to give them a concrete idea.]

- With the new President of Indonesia, this is the time to propose something to our new government with support from international friends. This is the time for AFAD (and ICAED) to play its role in Indonesia. Argentina is also very prominent in Indonesia. We should utilize that.
- Gabriella (Italy): **What about this kind of conference for the families of the disappeared** so they can feel they are not alone? They can be inspired and strengthened for the struggle. We, who are here, are very technical.
 - Mugiyanto (Indonesia): The more we cannot achieve their demands/needs, the more they despair but through a conference like this, they can see they are not alone; they can build hope and increase their understanding. We need to focus more on the UN, as well as families, otherwise it will lose its power and we will be back to square one.
- Nilda (Philippines):
 - One important lesson learned is for the families of victims to form an association for the struggle for justice. It facilitates the struggle for truth, justice and reparation. It is difficult to fight for justice as separate individuals. The association will strengthen and provide unity for victims.
- Roberto (Chile):
 - The importance of the work between lawyers, advocates and families' victims has to be emphasized. Lawyers are limited only to legal matters but the psychological aspect of the victims should be the concern of the professionals. Solidarity among victims, work with the media, communication with the public are very important, too.
- Alejandro (Argentina):
 - The importance of the internationalization of the issue must be underscored. Disappearance is not a common, isolated crime. The internationalization of the issue is inevitable. There is a need to share experiences. We cannot treat disappearance as a local case. It is a crime against humanity, a concern of all humanity. Hence, sharing experiences among countries is very important. The consequences of solidarity between each other, between Indonesia and Chile and the other way around are worth considering. This is the thing we have been appreciating in this century. Solidarity should be wide.
 - We share the pain, victories from different countries. We have to be one. International solidarity should be developed. This is the venue to strengthen solidarity.

- Nilda (Philippines):
 - Defending victims is not the work of lawyers only but also the victims, their families and community. The same thing in the work for the enactment of the law. We should say that the law is not only the work of the Congress (lawmakers), but also the families of victims, CSOs and other stakeholders.
- Sisto (Timor-Leste):
 - As I said yesterday, in the case of Pinochet, compared to Timor-Leste, disappearances in Timor are a bit different because the perpetrators of disappearances are in Indonesia. Both governments of Indonesia and Timor-Leste want to have a good cooperation between their countries. That is why we are pessimistic in working for truth because most of the children of Timor, about 4,000 that the Indonesians took, live in Indonesia. Their names and IDs are changed. That is why we are very much interested in the sharing from El Salvador, the importance of the work for truth and reparation for victims. For perpetrators, we have to seek formal accountability on two levels, victims and perpetrators. It is important for future prevention, not only in Timor and Indonesia but all over the world. That is why there should be an example, by bringing in perpetrators of CAH to be brought to international jurisdiction. That is why in Timor, we have established ANTI, National Alliance for International Tribunal. This is what we have to do in the future, not only for us, for the victims of today, but also for the future all over the world.
- Wadih (Lebanon):
 - About today's forum, I believe that the fight should be on two levels, national/local and international; and NGOs and families. Each country is complicated. If it is in the details, we cannot replicate. However, the global picture is the same so that the victims express what they need and do political advocacy on a national level. We do whatever possible at the international level if at the national level, there are no possibilities anymore. In some countries, we advocate laws or commissions, but in other countries, civil society organizations still demand countries to recognize their commissions. Others, like our members in Spanish-speaking countries, work on history. It depends on the countries.
 - Because of impunity on the national level, many organizations, international organizations, seek justice from other countries like Spain, France, Germany, Italy etc. There are also other cases in Armenia, which at the end after the hard work was finished, came to be considered as genocide. Argentina is a special case or situation.
- Nilda (Philippines):
 - Regarding reparation, Philippines has one, not a perfect one, not complete nor comprehensive. We can learn from Argentina and Guatemala where you have several pieces of law on reparation. Not just one, but several. Depending on

the peculiarity of the law, in the future, we will adopt other laws to fill the gap.

- Roberto (Chile):
 - Same in Chile, the law on reparation, extra-judicial execution, with compensation, monthly compensation, exemption of children from the obligation to do military service for victims of human rights violations, law for those fired from work, pension, etc. Another is reparation for those detained. There are also other laws on reparation. Monuments are established in all parts of Chile in order to address the short memory of the population, Marcos' of the Philippines, President of Guatemala, in Tucuman Argentina as well as in Chile with the followers of Pinochet. They have already forgotten the past.
- Mugiyanto (Indonesia):
 - There are many good examples from other countries to share and replicate, on truth, reparation and justice, but it should be situated within the national context of each country. The approach can be through bilateral cooperation.

Roberto and Mugiyanto mentioned about lustration, which means to formulate policies or call for human rights violators not to take public positions in government like president, prime minister, mayors, etc.

Comments about the conference:

- ◇ to give more time if there is more interest in the forum for certain topics
- ◇ to utilize informal fora for discussion
- ◇ punctuality is okay
- ◇ translation is okay, interpreter must be exhausted
- ◇ things are well organized
- ◇ There is very good exchange despite language barriers.

We have to continue the struggle in a positive manner. We cannot see things by just saying them, this is not possible, this is difficult. That way, our struggle will go nowhere.

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Session 6:

Family Associations and NGOs and the International Convention for the Protection of All Persons from Enforced Disappearance

ATTY. GABRIELLA CITRONI
Track Impunity Always-Switzerland

The role played by the associations of families in the history of ratifying the Convention is unique; it goes back to 1981. The Latin-American Federation of Associations of Relatives of Disappeared-Detainees (FEDEFAM) at a congress held in November 1981 in Caracas, assumed as an absolute priority – the objective of achieving a Convention against enforced disappearance.

Since 1981, the families demanded for an international Convention but their position was not very clear at the start of their campaign. Later on, they realized that this Convention was essentially a legal tool for the associations. Martha Vasquez also added that she fought for this Convention, but it took her ten years to understand its legal significance.

There were stories from Latin America on issues of disappearances but the families had difficulties in explaining to the authorities what happened to the disappeared persons since they did not find the bodies. There was no information that would explain what happened to the disappeared people. There were even legal challenges in using the term, *desaparecidos*. FEDEFAM had an appreciation that enforced disappearance must be understood as an

international phenomenon and must have a legal perspective.

The meeting in Caracas was echoed in Paris. The idea of enforced disappearance was reiterated but at that time, there were no legal tools to address the crime effectively. In 1982, FEDEFAM held a second annual congress in Peru. They approved a written project of “*Convention on Enforced Disappearance*” drafted under the guidance of the Chilean Jurist Eduardo Novoa Monreal. Since the very beginning, the idea was to have it adopted by the United Nations. For almost 20 years, FEDEFAM lobbied the Commission on Human Rights to achieve this aim.

The first draft elaborated by FEDEFAM was inspired to a large extent by the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide and foresaw the establishment of an international criminal court competent to judge specific cases of disappearance. The same court would be endowed with the power to invalidate decisions issued by domestic tribunals on cases of enforced disappearance since the regional and domestic courts were rejecting *habeas corpus*. If this can be achieved on the international level, then, something might be achieved. The idea was too progressive, it did not push through but it triggered further discussions.

In 1986, the José Alvear Restrepo Lawyers Collective convened a colloquium on enforced disappearance in Bogotá. On such an occasion, a draft declaration against enforced disappearance was adopted and submitted to the UN Working Group on Enforced or Involuntary Disappearances and to the Commission on Human Rights for consideration. But they knew the limitation of a declaration which is not legally binding while the Convention is legally binding.

In 1998, FEDEFAM and a consortium of Argentine NGOs convened a meeting in Buenos Aires. They put forward the idea of having an international convention. They identified it as a legal tool for lobbying and advocacy. The Convention is a legally binding tool and it establishes the obligation for States to qualify enforced disappearance as a separate crime in their domestic legislation, and this would push for the fight against impunity.

Until today, this is the only international convention that prohibits the competence of the military courts to handle cases of enforced disappearances. The Convention makes clear on the disappearance of children but it has thin provisions for cooperation among states to address enforced disappearances of children. This is not enough considering the massive disappearances of children in Central America.

Behind the exercises of the associations of families and NGOs, a global response to push for the Convention was triggered. In 1988, the Inter-American Commission on Human Rights presented a draft Inter-American Convention on Enforced Disappearance (that later become the 1994 Inter-American Convention on Enforced Disappearance). The International Commission of Jurists, Amnesty International, Human Rights Watch and International Federation for Human Rights (FIDH) are the international NGOs that contributed most to this global response in pushing for a convention. They created discussions on various levels.

1998 is an important year that influenced the endorsement of the Convention. This is the year when the Rome Statute was adopted, and it listed enforced disappearance as among the

crimes against humanity. It was a huge step forward and it dismantled the idea that enforced disappearance was only limited in the 1970s to a few countries in Latin America. The Rome Statute increases awareness that enforced disappearances occur in different countries.

The same year, the European Court of Human Rights rendered a judgment on enforced disappearances against Turkey. The judgment clarified the responsibility of Turkey in committing enforced disappearance. The decision showed that enforced disappearance also transpired in Europe. One of the judges objected to the use of the term enforced disappearance. He said enforced disappearance is more related with the experience in Latin American countries such as in Argentina and it must be different in Europe. But history has proven him wrong. Now, there are more than 100 judgments on enforced disappearances in Chechnya and Caucasus. Some judgments are not very good but there are also those that include the judgment of enforced disappearance cases involving the Balkans.

Still in 1998, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities brought back the discussion of enforced disappearances. Enforced disappearance grabbed attention that it continued to occur in various countries but no meaningful responses ensued. It was recognized that enforced disappearance must be prevented.

Another personality, Manfred Nowak, a UN expert, stated a position and categorized the need for an international legally binding instrument to address enforced disappearance.

The Negotiations

The negotiation for the approval of the convention took a longer period. The associations of families and NGOs attended these negotiations from Latin America, Asia and Africa. That presence made a strong impact that enforced disappearance occurs in various areas of the world. The participating NGOs also gave important inputs during those many occasions.

The late Ambassador Bernard Kessedjian, accomplished a Copernican revolution during the period of negotiations. He encouraged representatives of NGOs and associations of families by asking them, "What do you want to be included in this convention?" He would use these suggestions to start the dialogue. In a very diplomatic way, he would cut-off the speeches of State Representatives and consult the representatives of the NGOs and associations of families by asking them, "What do you want?" With the help of ICJ, Human Rights Watch, Amnesty International, the International Federation for Human Rights and the Uruguayan Lawyers, and other NGOs in countries with high cases of enforced disappearances, the representatives of associations of families shared their ideas.

The historical experience jumped to the idea of having the Convention, and the perspectives of families' associations from Chile and Argentina, and the influential representatives of other associations of families gave strong impact to those negotiations. That representation played an important role.

The Contributions of the Associations of Families and the NGOs

The Convention is a comprehensive instrument. It defines enforced disappearance and it is a step forward from the definition of the Rome Statute. The Rome Statute is not a Human

Rights Treaty: it is an instrument establishing the ICC. Even from a criminal law viewpoint, the threshold put forward by the Rome Statute requires significant pieces of evidence to prove that a victim must be provided protection but the period is too prolonged or indefinite and this places the security of victims at risk.

In terms of the issue at stake, can non-state actors be included? For the association of families from Latin America, enforced disappearance is a form of state violation to control the opposition and dissidents. Where to strike the balance? The Convention is balanced, there is no mention of non-state actors, but there is a mention of paramilitary groups. This is another provision of the state's responsibility; the Convention is directed at the state. It is the state that ratifies the Convention and not the non-state actors.

The Convention honors the work of NGOs and associations of families. Today the Convention is presented with comprehensive provisions but it went through difficult debates, such as the right to truth. This is a concrete provision because it will establish the whereabouts of the victims, the truth of circumstances of disappearances and it will push the progress of the investigations.

Who is victim of enforced disappearance? The victims are not only the disappeared, but also the family of the disappeared and the social group of the disappeared. The leaders of the trade unions, the leaders of the indigenous groups are not the only targets but their entire groups.

All those who deal with enforced disappearance know that it is important to retrieve the bodies of those who died, those victims who were burned, the mutilated remains, those bodies thrown out of the airplanes. These crimes were committed on purpose. From the psychological and religious viewpoint, the bodies must be retrieved for the relatives to mourn. It is clear that the remains must be respected and must be returned to their families.

On the notion of reparation, money is not enough because reparation is more comprehensive. Reparation necessitates investigations and public apology, not only for the victims but for the entire society. Those who committed enforced disappearance must recognize their crimes.

Article 25 of the Convention tackles the enforced disappearance of children. The article details the states' responsibility and introduces measures if adoption is based on enforced disappearance. This is a controversial provision but the associations of families pushed this. The Committee on Enforced Disappearances (CED) was created because of the assertion of the associations of families. They want to entrust this new task and ensure that the Treaty Body can accommodate the responsibilities and duties of the treaty. Having a steadfast Committee has a strong symbolic meaning.

Article 24, Paragraph 7, recognizes the creation of family associations to look for the disappeared. Many state representatives questioned the importance of that article. During the negotiation, Mary Aileen Bacalso of AFAD made an intervention. She shared the story of the assassination of Munir (the former Chairperson of AFAD) and mentioned that he was killed because of his work to find the disappeared. That intervention convinced the body that this article must be added. No one objected to the inclusion of that provision after Aileen

took the floor. After that, Martha Vasquez shared the experience of the *Madres de Plaza de Mayo* in searching for the disappeared. This Convention is partly written by victims and this is distinctly for the victims.

The Convention is the symbol of the participation of all relatives struggling against enforced disappearance. The instrument is partially drafted by the NGOs. Instead of criticizing they participated and provided suggestions to address enforced disappearances.

Before the adoption of Convention, the UN was closed to establish the Human Rights Council, but the NGOs and associations proactively pushed for the process not to be shut down because they knew that it would take years before the negotiation would move productively again.

Challenges Ahead

There is not enough ratifications. In 2014, only 2 new ratifications have been achieved. Most states parties are from Latin American countries, few from Europe, and very few from Asia. This is worrisome because enforced disappearance is now occurring in Asia the most. As per the report of the WGEID, there are 420 new cases of enforced disappearance. This is just a small percentage of what is the reality on the ground due to underreporting. There are urgent appeals from China, Bangladesh, Cambodia, India, Thailand, and Nepal and these countries are not parties to the Convention. The increasing incidents of harassment against family members, especially in the Asian countries, Bangladesh, Sri Lanka, Nepal and Pakistan and others is another worrying development for non states parties.

Many of the states parties do not recognize the competence of CED, so it is now presently underused. The NGOs must be more proactive in submitting alternative reports. Now, there are states reports, but no alternative reports were presented by the civil society such as the case of Paraguay. Mexico is a state party, but not a single case has been brought to CED for urgent action. The civil society is not taking as much as it could from CED. When CED was established, this is the only UN committee created under probation; there was a huge struggle to obtain that deal. The representatives of states parties will hold a conference in 2014 or in 2015 to evaluate the CED. If the CED is not very useful, they could feasibly make a suggestion to eliminate the Committee.

OPEN FORUM

Atty. Samia Islam (Odhikar-Bangladesh)

Bangladesh is not a state party but it ratified the Rome Statute. Enforced disappearance is considered as a crime against humanity, may we proceed with the cases through the International Criminal Court (ICC)? The country is party to the Convention Against Torture (CAT), but some important provisions here are not included in the domestic law. The Ministry of Justice drafted the law without consulting the civil society and the punishment is not enough compared with the provisions of CAT. If the government ratifies the Convention against Enforced Disappearances, and a domestic law is passed, the provisions might only serve

their own interests. Is it possible for international pressure groups to make the government accountable to duplicate the provisions of the Convention against disappearances?

Atty. Gabriella Citroni (Track Impunity Always-Switzerland)

With respect to the Rome Statute and enforced disappearance as a crime against humanity, the definition requires a high threshold, and there are two orders of things. The Rome Statute establishes individual criminal responsibility for crimes against humanity and it does not establish sets of measures for the victims and for the role of the civil society. ICC has limitations.

In terms of domestic legislation, there is a valuable study by the WGEID. These are good practices in criminalizing enforced disappearance in a well-drafted study. It analyzes domestic provisions of enforced disappearance compared with international standards. Enforced disappearance must be codified. Many times, enforced disappearance is codified but the standard is lowered. The codification opens vulnerability to impunity, such as the case of Peru. Peru is now challenged before the Inter-American Human Rights Court and they are pressured to upgrade their standards. The civil society and the NGOs must join the exercises in drafting the domestic law.

Atty. Samia Islam (Odhikar-Bangladesh)

What about the legal obligations of the state to incorporate the provisions of the Convention into the domestic law?

Atty. Gabriella Citroni (Track Impunity Always-Switzerland)

The states parties have legal obligations to include the provisions of the Convention but not the non states parties. Under the Declaration, there is no legal obligation but the Declaration requests states to codify enforced disappearance as a crime. WGEID received reports from civil society on the loopholes of domestic laws on enforced disappearances. WGEID addresses the government and will ask the position of the government.

Atty. Yati Adriyani (KontraS-Indonesia)

Indonesia signed the Convention. The possibility is for the Parliament to endorse the Convention but if that happens, the government will not recognize the competence of the Committee for individual complaints.

Atty. Gabriella Citroni (Track Impunity Always-Switzerland)

If Indonesia ratifies, the state is obligated to report to the Committee and this will open the door for civil society to submit alternative reports. The reports will become a ground for the Committee to scrutinize the state such as in the case of Spain. Reports of violations from the past were submitted by NGO reports then the civil society urged the government to be responsible for these previous cases. Now, the Committee can assert their competence even

if it is new. The Committee will have the power to employ state visits and deal with individual complaints. Another example is Argentina. It took a few months more until they recognized the competence of the Committee. This kind of effort can be done on different tracks.

Ms. Margarita Zamora (*Pro-Búsqueda-El Salvador*)

The victims must not stop in pushing the states. For them to ratify the Convention, then they must be given the guarantee that the ratification is effective. The Convention must be implemented or else we do not gain. It is better to have a little of something than nothing. We must continue as we advance step by step, the struggle is not yet over.

Atty. Gabriella Citroni (*Track Impunity Always-Switzerland*)

I agree, the state has a big responsibility to continue the struggle. There are many countries that have no knowledge about this Convention. These countries must understand, ratify, and implement it.

Mr. Marco Antonio Garavito Fernandez (*Liga Guatemalteca de Higiene Mental-Guatemala*)

The associations and relatives accomplished all these efforts in 30 years. In years to come, there is a kind of historical fatigue among the relatives, that explains what is happening now. FEDEFAM is an example. It is nurtured by country associations but there is a challenge how to reinvigorate and renew the commitment of the members. This is a daunting task. The historical role is valid from the start.

Atty. Gabriella Citroni (*Track Impunity Always-Switzerland*)

I agree with you, that is true in Latin America. Until today, impunity occurs in El Salvador, Mexico, etc. If we analyze the takeoff, there was fatigue, a generational one. People grow older and they try to continue, but there must be successors. Who will carry the torch? How to close the generation gap? How to rescue and recover the associations? It is time to find new ways for those people who are committed to answer the current situation. The civil society and states of Latin America have a greater role to help the brothers and sisters in Central America and find allies in government. For instance, Argentina can help in what is happening to those other countries that are lagging behind in this effort.

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Session 7:

Strategic Litigation, Successes and Difficulties

SPEAKERS



The Argentinean Experience
Atty. Alejandro Rua
Centro de Estudios Legales y Sociales (CELS)



The Chilean Experience
Atty. Roberto Garretón
Former Member, UN Working Group on Arbitrary Detention



Nepal: The Role of Civil Society in the Arrest and Prosecution of Col. Lama in the United Kingdom
Atty. Mandira Sharma
Advocacy Forum



The Argentinean Experience

ATTY. ALEJANDRO RUA

Centro de Estudios Legales y Sociales (CELS)

The previous stages of thirty years must be used as a reference to know how we can advance in litigation. We can trace back the evolution of the struggles. The first state of ligation was during the dictatorship. There were dictators from different Latin American countries who fled to neighboring countries. The dictatorship made the situation terrible. As I mentioned previously, there was an organization, the Operation Condor, where the intelligence community and military agencies carried out terrible repression across borders. They set up a system of harassment against all victims. For many years, it was difficult for the relatives and victims to go to the courts and meet.

In the early years, they participated in international fora to denounce these violations. Our citizens went to the Inter-American forum. In the years of the dictatorship, impunity was the domestic culture but solidarity was at the international level. Europe hosted many exiles from Argentina. In 1979, there was an on-site visit conducted by the Inter-American Commission. They received a number of cases from victims. In Argentina, clandestine detention centers existed. They were discovered because of those who escaped and the Inter-

American Commission gathered many names of victims. These cases progressed because of the international pressure against the military junta to put an end to the repression. During the dictatorship, the society was denied legal measures. There has been a solidarity from the international community to put an end to enforced disappearance.

In 1983, different commissions were generated to search for justice. This was preceded by the dictatorship's actions opposing this democratic process. The dictators did not have laws but they passed an Amnesty Law to protect themselves from prosecution. They built mechanisms that all these complaints must be heard only by military courts. The first measure made by the newly elected constitutional government was to establish a criterion to judge the members of the military junta. A National Commission on enforced disappearance was created and it was an inter-disciplinary group. For eight months, the members were working to gather information on enforced disappearances. The Commission was allowed to see how this was supposed to work out.

In 1985, all investigations that were conducted by military courts were extracted out from them. For the first time in Argentina, and considering that there was no major legal proceedings in the world, the courts faced 8,000 cases in 8 months. The cases were heard and there were convictions. The information was disseminated and those responsible were convicted. The verdict implied the need to continue the legal process down to the chain of command, at the lower level of government, and military hierarchy to determine all those responsible. This generated a certain opposition that led to new stage, wherein some parties became lukewarm because they were fearful of possible military intervention. They decided to set a deadline saying that they would listen until the cut-off date but afterwards, no cases were heard. People rushed to meet the deadline, on one hand to submit new evidence and on the other hand to put an end to the possibility of an ensuing military uprising. Given the military chain of command, the low-ranking officers had no choice but to follow instructions. The argument was, those who simply followed the command must not be convicted. That was one of the exceptions, which will be elaborated on later.

Another exclusion was the search for the disappeared children for the crime of abduction. Those cases were totally set aside. They were not covered in the investigations. That neglect pushed the *Madres* to practice years of rallying. They brought awareness that pardon to the crimes committed was considered but the issue of the disappearances of children was not covered.

In these processes, there were individual cases of conviction, and the military was saberrattling. Afterwards, pardon was granted for those convicted and for those cases being heard. There was a pendulum-like cycle of phenomenon. In the succeeding year, an awareness campaign on the damage of enforced disappearance to the society was held. This motivated another search for the victims and another mechanism to further the process for truth and justice.

In 1990, there was a new cycle and advances throughout the new decade, and the stages were apparent. One was the effort for reparation, then appeals were submitted to the Inter-American Court, the place where appeals were successfully heard. In 1993, a report triggered a whole new set of issues which I cannot elaborate for now.

On one hand, in many European countries, many cases had been accepted for those European citizens whose rights were violated in Argentina. They decided to push for investigations in Italy and in France. In absentia, they sentenced those who committed crimes against French citizens. All these processes in search for truth exerted pressure at the national level. The attempts to advance impunity were now countered by these cases and convictions in Europe. These developments led to a renewed quest for the search for truth. There were many of the same courts that had, decades earlier, prosecuted the previous cases, started to receive new evidence submitted by the victims. These courts said there was no risk, so they decided to accept new information. I must also mention the report made by the Inter-American Court of Human Rights, our group *Centro de Estudios Legales y Sociales* (CELS) helped and reached an amicable settlement. The state agreed to carry on investigations and with this renewed quest for truth. Admissions like dropping people from the airplane made by violators outraged the people. They cannot be convicted despite talking openly about these crimes. Meanwhile, cases were being heard in Europe. Someone confessed that he participated in these death squads. The Spanish Government issued a capture order against the Argentine repressive officials.

In the beginning, the Argentine Government did not want to turn over these people, but in later years, changes occurred which allowed us to take initiatives. Argentina had a unique development related to the international trend. Its connection with the Nazi history contends the same way with the judgment on the military junta. There was a reference to Nuremberg trials or to Israel. A trend in jurisprudence started there – the process of extradition. There were demands for the officers to be extradited from Argentina. Throughout these events, the role of international organizations that transcends boundaries was accepted.

However, the fight against impunity was not easy. Victory came when a local judge heard the cases of disappeared children. Even the dictator Jorge Videla, who was accused of these crimes, was brought back to jail because of this development. A concrete case involving the disappearance of a young girl was heard. The judgment was considered a precedent and led to a series of court rulings and convictions. These developments happened under a new government that was pushing for legal measures. I am a child of the *Madres de Plaza de Mayo*, I am an heir of that tradition. They reversed the rule of impunity. Even the previous decisions of the Supreme Court were reversed, and the Amnesty Law was declared as illegal and was nullified. The cases of those who were absolved based on those previous court proceedings were revisited. At this point, revisiting many cases was encouraged. I will not give details on this but the examples are in the list. You can go back any time and take a look at it.

It is important that I share with you the statistics where we have achieved new accountability and responsibility. Everything has been revised and a new wave of accountability on crimes against humanity is reaching the peak; this is a hopeful development. This is a process that strengthens the notion that there was a grave situation, but all decisions and executive orders have been revised. What can we get from this? We had the minority voice but there is a favorable situation that unfolded regardless of the difficulties we met during the previous litigation.

Based on observations, there are massive and widespread enforced disappearances in our country. There are some cases of enforced disappearance that are very different from the

previous phenomena. It is connected when the police are overwhelmed with police work. An example is the disappearance of a victim Jorge Lopez. He became a witness and as he continued to give his testimony in a new case, he disappeared. It was a terrible blow that made the state to take action. He has not surfaced yet but his disappearance started a new effort with a promise that it will not happen again.

The police nowadays are also found accountable for the disappearances of the juveniles. These cases are most likely isolated and not a pattern, but this is the current situation that I want to show as well.

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The Chilean Experience

ATTY. ROBERTO GARRETÓN

Former Member, UN Working Group on Arbitrary Detention

Human rights work is very important that allows us to struggle. Maybe at my age, I will not see the end of the line but the conditions are a lot better than 70 years back. I cannot quit and be intolerant. I cannot give up. A few days ago in Argentina, the President of the *Abuelas de Plaza de Mayo*, after nearly 40 years, was finally reunited with her grandson. It was a glorious week. It can be done and the time will come but it will take a lot of work.

Everything is interconnected, the *coup* in Chile was totally unjustified. They wanted to kick out the leftist government and put in a rightist government that was the first dictatorship in Chile. There is a lot of similarities with the dictatorships. However, it was not a dictatorship, it was like a kindergarten fight. At 8:30 in the morning before they bombed the Presidential Palace, the first case of forced disappearance was committed. Violence erupted but people stood up for human rights. A congressman at 11:00 in the morning, asked for *hábeas corpus* for someone he assumed had disappeared. There was a *coup* going on but he went to court; it was a futile exercise but a very important symbol. He was one of the first persons in authority who stood up. The Catholic Cardinal, together with a Lutheran Bishop and a Methodist Pastor, a Baptist Pastor, a Bishop of the Orthodox Church and the great Rabbi of Chile - they created a Committee of Cooperation for Peace.

Imagine days after the *coup*, to bring these rather hostile religions against each other, together in a room to advance a common cause. They were dissolved, but the church continues on its own through the Vicariate of Solidarity. What started was a defense, but it was not just a matter of lawyers; it was the prerogative of human beings, so it was not only the turf lawyers. It is a rule, a mandate, and a culture. We, lawyers, have roles to play when there is a strong attachment to the victims that we work with. Everything was against us. First, the freedom of expression was curtailed. Pinochet only authorized two out of 14 newspapers in the country. The judges expressed that they were joyous with the *coup*, the citizens were stunned, and all of the cases in court were turned over to military courts. In one day, they tried the cases and gave rulings, then they approved the Amnesty Law, hence, all crimes were not investigated – everything was against us.

I studied law between 1960 and 1964, but human rights was not taught in our university in the 1960s. There was no single syllabus. One of the experts who made the declaration at the UN is Chilean but human rights was never brought into our educational system. It was not politically correct, it was not culturally accepted; it was alien. Then we were confronted with the dictatorship, but there was no tool, so where did we turn to? Denounce violence and proclaim the truth, all we have to do is proclaim the truth. Every single violation of human rights is a crime against humanity. Every time there is violation, there is a violent act, when someone is killed, enforcedly disappeared, raped. Second, there is cowardice. The armies, the armed forces are bunch of cowards. Imagine, 10 to 30 armed men to pick up one person, to get 1, 2 or a maximum of 3 persons; they must be cowards. They have the guarantee of their superiors, their superiors have no guts to carry it out. They are assured to go scot-free, will not be convicted, and will remain untouched. Not only that, the country and the society will reward them for their selfless act. What a bunch of cowards! The third element of any crime against humanity is the element of deceit. It was impossible to do all those crimes without the element of lie. They will never accept that they tortured and killed. If bodies will surface, they will not accept responsibility.

Our reference is truth. The judges will believe the perpetrators. We go to the press but they will not write the real story and they will come up with their own spin. It is an imbalanced struggle. We lose the battle but we never give up. We and victims will not stop every single day. Step by step, we are convincing others. Every alliance and even small victories make it bigger. We do not quit, that does not exist in our vocabulary. Before we started with the struggle, we are best friends that help each other. Human rights must not be violated but since there are violations, then we have to do our job.

We lose one case but we go on and appeal to the next court. We did not go out from the legal borders. We filed appeals, charges, and *writs of hábeas corpus*. Time will come that history will turn its eye on these efforts. Step by step, you will grow up to greater victory. It was so clear that the dictator was lying and it started to be felt by civil society. These loonies of human rights defenders have the truth, it is an incremental process of winning alliance. I never won a case but we must stop the system of forced disappearances.

The killings did not stop but enforced disappearances slowed down. Now we do not have new cases. Some cases were perpetrated by the state between 1973-1976. Ninety percent (90%) of enforced disappearances took place in a period of three (3) years. When Pinochet

passed a law to perpetuate himself in power, we managed to win the referendum of the civil society, the civil society that distrusted us and that put the dictator forward. Pinochet lost his credibility on human rights, so he was forced to use the referendum.

Then comes the second stage of our struggle for truth, the new democratic government. On 11 March, a new government took office and forty(40) days later, the Truth and Reconciliation Commission was established. It was not clear what reconciliation was. That development identified an incredible number of cases, identified names and originated number of laws for reparation, but I will not speak about this. But the judges demanded, saying the government violated the constitution by creating a Truth Commission. These judges were a bunch of inept cronies and they were lying. What they did, they denied justice. Is that what the Supreme Court is supposed to do? After the 1990s there are changes, now we continue to file the cases again, but we almost lost hope.

In Spain there is a case against Pinochet. I went there as a witness and I was threatened not to go but still, I proceeded. He said, he will go scot-free and he will go to UK because he is untouchable. Nonetheless, he was apprehended. For all the democrats in Chile, the happiest days of our lives was when the dictator was behind bars in the London clinic. Then came the whole debate and I also had a role to play. The convictions were reversed and finally it led to the extradition of Pinochet to Spain. The political arrangements between governments compromised this. It was a human and democratic bankruptcy when the Government of Chile compromised. Charges were filed and we wanted him charged in Spain as there are more guarantees. In any case that day, the Chilean judges could have accomplished more between 70 to 90 and from 90 to 98, only if they accepted our cases, but they did not. Then miracles happened, they said, “No, you cannot apply for amnesty.” They were denied.

They gave old arguments, suddenly they turned around and said they never meant that. All the 20 cases I lost were reopened and the process restarted. Today, we have the head of the security agency that was accused of 80 crimes and he was sentenced to more than 200 years of imprisonment. Sadly, the military judges have applied unfair convictions. One person who committed 15 crimes was sentenced to 5 years and he can undergo this conviction in a house arrest. The day I was traveling to the Philippines, the President said they will review and file a new bill to reverse and nullify the Amnesty Law. The cases they took up until 1998 are all covered by the Amnesty. This will open the doors if this bill will progress into a new law and if we have the chance to reopen the cases, there is hope for new convictions. I am not sure how far we can go but this will take us in the right direction. As I know, hope springs eternal. The last thing that a human rights activist can do is lose hope. That is the biggest crime. You cannot lose hope and I am saying this from a judicial point of view.

Law is a weapon, an instrument. The Spaniards said once, the law is in the service of life or it is totally useless if it does not serve life. But law is not everything, there are things that must be changed in the cultural pattern as well. We must achieve cultural change, there are many Pinochets there and some want to return. We must make it unacceptable; we have to advance human rights. Now human rights is not a legal thing – it is a cultural matter, it is a way of understanding life. And that is the real point, we must make human rights a culture, that will make all these things intolerable.

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Nepal: The Role of Civil Society in the Arrest and Prosecution of Col. Lama in the United Kingdom

ATTY. MANDIRA SHARMA
Advocacy Forum, Nepal

These are inspiring developments after years of suffering and fighting. We have used strategies used by Latin American countries in bringing cases to another jurisdiction to trigger changes.

Context of Nepal

- Before 1990, there was an absolute monarchy, autocratic regime, and no human rights
- Political movement known as Jana Andolan (People's movement), brought political change in 1990. Such as:
 - Constitutional Monarch
 - New Constitution
 - Fundamental Rights in the Constitution

- Multiparty democracy
- Ratification of major human rights treaties
- Enactment of the treaty law

The multiparty system was introduced and the country ratified human rights conventions. One of the demands of the political parties is for the Constitution to be written by a collective constituent assembly. In 1990, the negotiations ended with difficulties so the Communist Party of Nepal took up arms and insurgency followed. In 2001, the insurgency was declared as terrorism. There were cases of enforced disappearance, killings, torture, and sexual abuse.

In 2006, the people's movement was popularized; we sought to abolish the monarchy system, and make the insurgents partake in the legal political parties. The commission was not established despite the demands. In the process of conflict transformation, there have been efforts to look into the actors involved, but the resistance in addressing human rights violations persists.

Strategic Litigation: National and International Levels

The victims' associations and civil society associations demanded changes in human rights. We use the *writ of habeas corpus* since we do not have legal remedies to find the disappeared and those that were detained illegally. The interpretation of the court is to look into the legality of the detention. If the person is detained illegally, then the person must be released but if the person is disappeared, then there are no legal remedies.

We argued before the courts not to quash the petition in finding the disappeared persons while using the *writ of habeas corpus*. We reached a landmark decision in 2006. The country decided to have a commission of inquiry dedicated to cases of enforced disappearances and provide detailed rulings on the rights of the disappeared. In that battle, there were several attempts not to provide the demands of the victims and not to follow the standards set up by laws.

Using litigation as a tool, we have reached rulings on criminal cases where the political activists are implicated in the crimes. We have challenged those rulings and the provision of amnesty to those who committed heinous crimes. We also filed complaints demanding truth to crimes of enforced disappearances, where we suspected the victims were murdered. These are criminal proceedings perpetrated by high military officers and government officials including the minister. These proceedings incite harassment to the involved lawyers and human rights workers. In the number of cases the Supreme Court made rulings, many have been accused but none is convicted, so we explored other alternatives such as the international venue.

When we brought up individual criminal liability, we used other avenues, such as targeting soldiers to be barred in serving the UN peace missions. We brought cases before the UN Human Rights Committee (UNHRC). There are few cases of torture and enforced disappearances that we brought to UNHRC after having this scrutiny from international community. We have achieved good rulings by UNHRC as they pushed the government to

enact measures and initiate investigations on these cases.

We use the case of Pinochet as an example. There are international laws that allow universal jurisdiction that can handle cases regardless of the location of the occurrence of the case or location of the perpetrator.

The Case of Col. Kumar Lama

Lama, a Nepali Colonel has been arrested by the Metropolitan Police of the UK under the Criminal Justice Act of the UK on 3 January 2013 in East Sussex for two accounts of torture under Section 134 of the UK's Criminal Justice Act, an Act that contains provisions of the UN Convention against Torture:

- 1st account: Lama inflicted serious pain and suffering while he acted as a public official in Gorusinge Barrack in between 15 April-1 May 2005 upon Janak Bahadur Raut;
- 2nd account: He also inflicted serious pain and suffering upon Karam Hussain, another detainee in the same Barrack, between 15 April-31 October 2005.

Col. Lama commanded the infliction of torture on those detained and arrested. He was tried in UK for two counts of torture and released on bail, but there are restrictions and his movements are tracked. The Nepal Government is not allowed to issue travel documents so he cannot escape.

The case is ongoing, the prosecutor who tried Pinochet is the defendant of Col. Lama. This person worked with the UN Peacekeeping Mission when he was arrested but the UN Secretary-General waived his immunity. One of the arguments mentioned is that, the waiver came a week after the arrest was made, making the arrest illegal. They also claim the case must not be tried in UK due to double jeopardy. The victims are represented in the Nepalese courts under the Compensation Act but this case has no criminal liability, only monetary compensation. This is a civil litigation and we have represented the clients before the courts. The torture was proven and victims have been offered monetary compensation.

The claims made by the defense in the UK have not been founded and the district court ruled in favor of the victims. Last month, there was an extensive hearing of the case and the Court of Appeals ruled in our favor. The defense threatened to go to the Supreme Court, they argue the requirements of the Convention, such as the Convention must make the government of Nepal responsible first. But the Justice Act of the UK does not allow torture regardless of the jurisdiction of the crime, location of the public officer or person acting in an official capacity. A torture case committed in UK or elsewhere allows the universal jurisdiction if the perpetrator is found in a territory of UK. The highest penalty for this case is life imprisonment.

The universal jurisdiction is not commonly used and there are few cases under universal jurisdiction. This is the tool that the international community has been using to expand its jurisdiction. Countries like Belgium and Spain have made progress using this authority. The civil society and NGOs can bring cases of human rights violations to the international level. From our experience, we did extensive investigation and documentation, gathering of

evidence, continuously worked on this case since 2005 and gradually, we made achievements.

This process requires involvement of witnesses and victims. Other requirements include medical evidence, legal dossiers and knowledge on where to bring the case. We also have to work in devising strategies for the protection of witnesses, victims and lawyers. It is necessary to identify institutions that will serve as allies and we have identified organizations that have interest to work with us in this case. The collection, verification and justification of evidence take time. We do collaborative work with various organizations for the collection of the data.

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OPEN FORUM

Atty. Melissa O'Donnell (HAK Association-Timor-Leste)

What is the role of the civil society in convicting the dictator?

Atty. Roberto Garretón (Chile)

When Pinochet was convicted, it led to a party and celebration. A series of rallies were effected but at some point, became violent. The people of Pinochet did counter protests, for them the conviction of the dictator violated the national sovereignty. I participated in one of the hearings in London and I saw 20 Chilean exiles who went to the UK from Sweden and Norway. They were there to participate from the outside of the court. Many people were outside the court and they were active in the Chilean and European media. That court case was the headline news of the entire world, all the leading newspapers talked about it for 4 to 5 months. The media also covered the downfall of the compromised agreement. All of the victims went to the UK to be heard; they shared their testimonies and even went to Spain to speak during the hearing. We cannot separate the role of victims, lawyers and historians, there must be a close relationship with families and relatives.

Atty. Alejandro Rua (CELS-Argentina)

I just wanted to add, before achieving conviction, the judge must be visited by victims and public opinion must be created to build up pressure. This way, the judge will find the motivation to listen to the case. That judge will have to face many risks, if it works well, he will get applause but if it goes wrong, he will be met with criticisms. We have to create awareness about the case.

Atty. Melissa O'Donnell (HAK Association-Timor-Leste)

How to manage victims' expectations? It takes time to make the victims understand.

Mr. Sisto Dos Santos (HAK Association-Timor-Leste)

The name of actors and perpetrators since 1999 are included in a list based on the

documents of the crime unit from the UN. In that list are the names of perpetrators as main actors responsible in committing the crime against humanity in 1999. Three weeks ago, one commander was investigated based on the information submitted to the public prosecutor. The UN Assessor said, the indictment is already expired. This is a big challenge for us. How to share the information with the public? Is it impossible to ask support for a formal indictment from the government? Like what happened in Nepal, if we have the support of the government, we can indict the perpetrator based on our experience.

Atty. Roberto Garretón (Chile)

The victims must be fed with information and make them appreciate the importance of *hábeas corpus* for the judge to come into a ruling. It is the duty of the lawyer to work with the victims in the whole process and observe moral ascendancy. They must appreciate what they are facing, I want a favorable ruling for the case of Pinochet and I want this person behind bars. I observed the case of Fujimori and cases in an international court in Congo. All I see are some guarantees to protect the victims. In the last days of the government of Pinochet, people were still disappearing. We entered the Vicariate of the Church and presented *hábeas corpus*. We used all avenues, we asked them to find the victims. They have all the resources and they asked us to file the *writ of hábeas corpus*. It is dropping information like a bomb. If this UN official is authorized, the civil society must ask this UN bureaucrat to remove the perpetrator from the service. For me, I will start a movement to remove this person from service, whoever she or he is.

Mr. Sisto Dos Santos (HAK Association-Timor-Leste)

For instance, if it is not supported by the government, can we indict the perpetrator in another country like the case of the colonel from Nepal? Today, the governments of Timor-Leste and Indonesia have good relationships; it makes the work more difficult.

Atty. Mandira Sharma (Advocacy Forum-Nepal)

I do not have details for this case. If the crime is committed by a government official, then push the government to have political will. In the case of Kumar Lama, no one knew he would be arrested. When it was leaked to the media, the government said it is an act of violation of national sovereignty. They summoned the representative of the British Embassy and the defendant cited it as a national issue, but he too was labeled as a traitor that is one side. This is the first time in the history of Nepal, the politicians and military felt the consequences of their actions. They do not feel comfortable in their international travels. It is not possible to prosecute every person abroad but we have to use emblematic cases to have a window of opportunities to achieve justice. Observe caution and manage too many expectations from the victims. They thought we have to provide for them but we must keep listening to them and carry their voices. We must keep on explaining the limitations and that this is a joint initiative. This is how we work with victims. It is because of human nature that we must push.

Ms. Margarita Zamora (Pro-Búsqueda-El Salvador)

It is important for the case of Pinochet to be used as model but possibly I will see justice

in our country. We are very close and maybe our grandchildren will see the day when the grievances are addressed. The other thing, it is most important for the families and victims to be well informed. But there is no guarantee on how long the process will take and what must be the steps to be taken. Over time, the relatives might say that the legal process is tedious and they might give up. This is the role we must play to motivate the families and victims.

They tend to forget and forgive while the case gradually advances. When we search for justice, some of the relatives will say that the children are happy with the new families and it is opening an old wound. However, we say we do not seek for revenge but we only want justice and that is what we must work for.

Atty. Gabriella Citroni (Track Impunity Always-Switzerland)

The experience relates to another international jurisdiction case, a former Algerian General was arrested in Switzerland. It is possible to arrest if the person accused of torture is in the territory. The general was flying to another territory. This was a powerful action since he served as the Ministry of Defense. It is a difficult trial since victims have no long-term commitment; the prosecutors in Switzerland had a difficult time. There should be sound groundwork to prepare the victims and their families. Both Chile and Argentina went through a long process. It took years before these cases were processed in the courts. How do you preserve these pieces of evidence? Some people will die before they can serve as witnesses and there is fatigue. On the question of use of universal jurisdiction, in most countries, you need the presence of the accused even those who are flying through. You need to know where the perpetrator is, how to build the case in advance and prepare the case to progress.

Atty. Alejandro Rua (CELS-Argentina)

Let me try to answer the preservation of evidence. There are charges being filed and people appear before the commissions of these courts. Whole bodies of evidence have been submitted. These cases of crimes against humanity will gain new testimonies since new witnesses are standing up. Suddenly, they bumped into us and like mushrooms, new pieces of evidence were found. As time goes on, crimes are committed against old and young people. For those who were very young when crimes were committed, they benefit from the archives. In Argentina, there is an archive of all cases filed. The *Abuelas de Plaza de Mayo* made their narratives as parents of the disappeared. They write something they want to tell their son or daughter once they appear. If the grandchild appears, she/he can go to the archive and retrieve the narratives of their grandparents.

Atty. Mandira Sharma (Advocacy Forum-Nepal)

One of the challenges is tracking the movement of perpetrators. Others said it is a long part of an interview, which is finding a clue of knowing where the person is. This has never happened in Nepal. Hiring private detectives might not be possible, but if they see we are NGOs and we do a good job, that builds credibility. There are always ways as to what level of progress we want to achieve in a certain case. It happens that this country is taking a serious commitment to the universal jurisdiction on torture. There are on-going activities to strengthen the anti-impunity laws in our own country.

Mr. Khurram Parvez (APDP-Jammu and Kashmir)

There are difficulties in our cooperation because the judges are weak. In many countries like Sisto mentioned, the legal system is part of the oppressive regime or occupation. What are the efforts to shake up the judges for what they have done? Once these judges retire, they can be shamed for their roles in being responsible for these crimes.

Atty. Alejandro Rua (CELS-Argentina)

There are many levels of cases being heard by corrupt judges. These judges are being fired when the judicial system is partial to the oppressive regime. It is necessary that the judges understand the problem since they still use the past paradigm. In Argentina, there was a turning point that was brought into the constitution like the Latin-American Covenants. We bring the cases into the international venue and use the Covenants that are applied locally. If the Latin American version becomes a higher hierarchy, then it is a jurisprudence and the local justice system will change their outlook. We just have to do with what the international laws say; they insist on using the domestic law. We just have to push a paradigm shift for them to understand the international convention and the situation.

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A photograph of three individuals standing together at a conference. On the left is a man with a beard wearing a striped shirt and a yellow lanyard. In the center is a woman wearing a pink and blue patterned shawl and a yellow lanyard. On the right is a woman with blonde hair wearing a dark blue top and a white shawl. They are all holding awards. In the background, there is a banner with the text 'Practice...ngis...Di...ces' and a globe icon. A blue banner is overlaid on the bottom left of the image.

Session 8:

Public Awareness Campaign and International Solidarity

SPEAKERS



Belarus: 2013 Alternative Report of Civil Society to UNHRC
Dr. Irina Krasovskaya
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**Philippines: Research on Level of Public Awareness
on Enforced Disappearance**
Ms. Caroliza Tulod-Peteros
Regional Campaign Officer



Kashmir: Research on Alleged Perpetrators
Mr. Khurram Parvez
APDP, Jammu and Kashmir



Belarus: 2013 Alternative Report of the Civil Society to the UN Human Rights Council

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We Remember Civil Initiative-Belarus

Belarus has a population of 10 million people and we have a problem with the dictatorship. In 1991, after the first presidential election, the dictator dissolved the Constitution. He used repression to suppress civil society. This situation has remained for the past 15 years.

How many people disappeared? This is a difficult question to answer but two famous politicians disappeared without a trace. Some of these disappearances happened in 1999 and 2000. In May 1999, former Internal Affairs Minister and Police General Yury Zakharenko was abducted by unidentified persons. According to the witnesses, the victim was forced into a car. In September 1999, Anatoly Krasovsky, a businessman and supporter of the opposition and Viktor Gonchar, an opposition member, disappeared. In July 2000, Dmitry Zavadsky, a famous journalist was kidnapped on his way to the airport.

Unfair elections in 2010 brought a new wave of repression. Many of my friends were arrested. Some of them are still in prison including one candidate for the presidency, Nikolai Statkevich. Many of them had to leave the country and now they have been granted political asylum in Poland, Great Britain, France, Lithuania, and US.

The election of 2010 was the 4th election for the current illegitimate president while the Constitution allows the president only two terms. That explains why we still have unsolved cases of disappearances, which occurred back in 1999-2000 in Belarus.

On September 16th, it was 15 years since my husband Anatoly Krasovsky disappeared.

The abduction of my husband was not the first political disappearance in Belarus and unfortunately not the last one. The disappearance of Yuri Zakharenko, Viktor Gonchar, and Dmitry Zavadsky followed.

Pieces of Evidence

Fifteen years ago, on 16 September 1999, my husband and Viktor Gonchar left a sauna in the center of Minsk at 10:45 pm. They got into their car, which then was blocked by other cars converging from different directions. Next morning, we discovered various car fragments, bloodstains and skid marks on the asphalt. As we found out from the official report later, witnesses observed suspicious activity by a number of young men wearing uniforms.

Evidence of this and other disappearances started to leak in 2000. A copy of a handwritten note appeared from the Chief of the Criminal Police of Belarus, General Lapatik, dated 21 November 2000, addressed to the Minister of the Interior, Naumov. In this note, he accused Viktor Sheyman (at that time, Secretary of the Belarusian Security Council) of having ordered the former Minister of the Interior, Zakharenko to be physically eliminated. This order was allegedly carried out by Special Rapid Response Unit (SOBR) Commander Pavlichenko with the assistance of the then Minister of the Interior, Sivakov. Sivakov provided commander Pavlichenko with the PB-9 pistol temporarily removed from SIZO-1 prison. The same weapon, General Lapatik concluded, was used on 16 September 1999, when Gonchar and Krasovsky were disappeared.

Later, those facts were confirmed by testimony of the former Head of Prison, Oleg Alkaev and former investigators, Petrushkevich and Sluchak. The day after General Lapatik's accusation letter, the main suspect, Commander Pavlichenko was arrested. The arrest warrant, signed by the then Chief of the Belarusian KGB, Matskevich and sanctioned by then Prosecutor General Bozhelko, reads as follows:

“The materials of the operational investigation contain trustworthy data confirming that Dmitry Vasil'yevich Pavlichenko is the organizer and head of a criminal body engaged in abduction and physical elimination of people...]. It was decided [to apply a preventive detention for 30 days].”

Despite the period of detention indicated in the warrant, Commander Pavlichenko was freed in the following days. He was released by special order of President Lukashenko. The Chief of KGB and the Prosecutor General were dismissed and forced to hide in Russia. The main suspect of orchestrating this crime, a close ally of Lukashenko, Viktor Sheyman became Prosecutor General. That was the end of the investigation.

In 2004, based on investigatory work carried out by the Special Rapporteur Christos Pourgourides and the *ad hoc* sub-committee, the Parliamentary Assembly of Council of Europe released Resolution 1371 (2004) entitled, “*Disappeared persons in Belarus.*” It states that

“a proper investigation of the disappearances has not been carried out by the competent Belarusian authorities. On the contrary, the information gathered by the rapporteur leads it to believe that steps were taken at the highest level of the state to actively cover up the true circumstances of the disappearances and to suspect that senior officials of the state may themselves be involved in these disappearances.”

The report concluded that “... it is hard to believe that the above could have taken place without the knowledge of the President.”

In 2004, those four high ranking officials suspected in organizing disappearances of political opponents and mentioned in the Report were put on visa ban lists in EU, USA, Canada and many other countries. In 2006, the illegitimate president Lukashenka was added to this list of sanctions. This is a first in history of Europe.

Legal Instruments

There is no best practice in fighting the dictatorship. We try to open new doors repeatedly. This is the best practice we have against the dictatorship. In Belarus, legal instruments for justice in cases of enforced disappearances cannot be successful because there is no political will to solve those cases. The same people who are suspected in organizing the crime are still in power. The President’s orders have more power than law. Viktor Sheiman, the main suspect in orchestrating this crime and a close ally of the President was appointed as the Head of Administration of the President after being a Prosecutor General. Then he was promoted to Secretary of Security Council of Belarus and eventually, the Head of Department of Presidential Affairs. The same people are in power for 20 years.

Nonetheless, with the help of our lawyers, we tried to use legal procedures inside the country. We sent hundreds and hundreds of requests, demands, and questions to the investigators and their supervisors. We received responses for all our papers, but officials rejected our petitions, which were aimed to bring to life our procedural rights (including the criminal prosecution of the suspects) - without any grounds and they did not carry out any of the investigation we asked for in our petitions. We have submitted hundreds of appeals and documents for our cases to be heard, but we did not get an answer.

In 2003, investigations were once suspended and we were allowed to read the papers of investigations. We found a lot of facts and contradictions in each case. Analysis of all information in those cases leads us to the conclusion that the investigation of the case was blocked by those who were in-charge and those who were supervising the legality of its conduct.

Today, the Investigation Committee of Belarus finds new tactics which allow them not to share any information about the investigation. Every three months, they send to relatives a short letter saying that the time of investigations has again been prolonged for another three months. It means that by rule of law, they can hide behind the secrecy of the investigation. This has been going on for the past 15 years. The authorities in Belarus probably are waiting for the 15-year statute of limitations under Belarusian Law when they can close the case.

The apparent failure of the Belarusian authorities to investigate the whereabouts of the four prominent Belarusian disappeared men has drawn sustained international criticisms

from the international institutions like the Parliamentary Assembly of the Council of Europe (PACE), the Organization for Security and Cooperation in Europe (OSCE), the Inter-Parliamentary Union in Geneva (IPU), the United Nations Committee against Torture, the United Nations Working Group on Enforced or Involuntary Disappearances and the UN Human Rights Committee.

Unfortunately, the Belarus government reacted to the resolution and decisions of international organizations the same way they reacted to the demands of the relatives of their victims. For instance, in 2013, the Inter-Parliamentary Union in Geneva again received the information from Belarus that the investigation had once more been extended and no new information or response or observation on the specific questions raised in previous resolution of IPU. No details regarding the investigation could be released before the end of the investigation. This is the usual answer of the Belarusian State. Every time we question Belarus for not doing the recommendations of the UN Human Rights Committee for our cases, they say the disappearance of my husband has nothing to do with human rights.

A better chance for justice might come from the UN Human Rights Committee but again not for Belarus. My daughter and I won the case against Belarus before the UN Human Rights Committee (UN HRC) established under the International Covenant on Civil and Political Rights. In April 2012, the Human Rights Committee concluded that Belarus had violated its obligation to investigate properly and take appropriate remedial action regarding Mr. Krasovsky's disappearance (violations of Article 2, paragraph 3, read in conjunction with Articles 6 and 7 of the Covenant.) HRC requested Belarus to provide the victims with an effective remedy, which should include a thorough and diligent investigation of the facts, the prosecution and punishment of the perpetrators, adequate information about the results of its inquiries, and adequate compensation to the authors. The State party should also take measures to ensure that such violations do not recur in the future.

The Belarus response was that *"... under the Optional Protocol, the states parties have no obligations on the recognition of the Committee's rules of procedure and its interpretation of the Protocol's provisions, which could only be efficient when done in accordance with Vienna Convention on the Law Treaties (1969). Any communication registered in violation of the provisions of the Optional Protocol to the Covenant and Political Rights will be viewed by the State Party as incompatible with the Protocol and will be rejected without comments on the admissibility on the merits. Decision that may be taken by Human Rights Committee on such declined communications will be considered by the State Party's competent authorities as invalid."*

Belarus does not recognize the procedure of the Committee. This means that not one single judgment of UN HRC under ICCPR (around 70 cases) won by citizens against Belarus was acted on by the Belarusian state.

This is my question, are there any procedures for the government of Belarus to fulfill their obligations of the decisions handed to them by the Committee? What else can we do? We can conduct a public awareness campaign.

Public Awareness Campaign

In 1999, when my husband disappeared, I just wanted to find him. Later, when we understood that there would not be justice in Belarus without international support and

solidarity, we created a civil initiative, We Remember in 2002. It is an independent public organization, which affiliates family members and friends of victims of political kidnappings that occurred in Belarus in 1999-2000. Our mission is to disseminate truthful information about politically motivated disappearances of Belarusian citizens and to inform the world community about the situation in the country. As a member of International Coalition Against Enforced Disappearances (ICAED), We Remember also aims to fight for a world without disappearances.

We Remember openly condemns the government of Belarus for disappearances of political opponents of the regime, violations during the electoral process, pressure exerted on the civic society, and repressions. We have offices in the USA and the Netherlands. We have partners in Minsk (Dmitry Zavadsky Foundation), Warsaw (European Belarus and Charter 97), and London (Free Theater). These groups had to leave Belarus and they live now in these cities.

Actions organized by We Remember serve now as they will in the future be a constant reminder that the issue of enforced disappearances will never be left behind. For instance, every year on 16 September, in the Netherlands and in the city of Eindhoven (which is the twin city of Minsk), together with many organizations in the Netherlands, we have a special event to commemorate disappeared Belarusians on the central square of the city, where four trees were planted in memory of four men disappeared in Belarus.

We do not have graves but we have trees that we can visit and remember the disappeared. We do everything we can do to remind the public of the disappearance in Belarus. We have theater, public campaign, and press releases. We also lobby with different international bodies.

Conclusion

Today we still do not know what happened to our loved ones and where they are buried. The perpetrators have not yet been punished. Belarus is still not going towards democracy but at least we have some achievements, which help us to believe in the future. These achievements include the following:

- No more political disappearances occurred in Belarus after 2000. This is a good sign.
- The main suspects of these crime including the President are on a visa ban list of EU, Canada, US and some other countries.
- Many politicians and governments in the democratic world follow closely the situation in Belarus.

For all these 15 years of struggle for justice, I understood one very important thing – only in solidarity are we strong. Almost 15 years ago, I was introduced to international organizations of families of disappeared such as AFAD, FEDEFAM, FEMED and other NGOs. I am extremely grateful for sharing their experience and involving us in a wider struggle not only for our families or our country but also for every person in the world and his or her right not to be disappeared.

We Remember is a member of the Steering Committee of International Coalition Against Enforced Disappearances. We Remember has actively participated in the international campaign to protect all people against political disappearances. The best result of the work of organizations of families of the disappeared and NGOs from all over the world as well as journalists, lawyers, our supporters is the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance which entered into force on 23 December 2010. This gives us hope.

I believe that one day I will find the grave of my husband. I believe that one day all my friends here will discover the fate of their beloved. I believe that one day we will experience what we are fighting for – a world without disappearances. As Atty. Roberto Garretón said yesterday, *“Our grandchildren will finally win this war.”*

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Philippines: Research on Level of Public Awareness on Enforced Disappearance

Ms. Caroliza Tulod-Peteros
AFAD Regional Campaign Officer

These are the results of AFAD's research on the level of public awareness of enforced disappearance.

Objectives:

1. To determine the level of awareness of the public, i.e. students, media, religious sector, relatives and the security forces on the problem of enforced disappearance and the campaign of AFAD against it;
2. To identify the strengths, weaknesses, and cull lessons from AFAD's campaign, and;
3. To recommend ways to improve media coverage and increase people's awareness on the problem of enforced disappearance and the campaign to ratify the Convention.

Theoretical Framework: Reception Theory of Stuart Hall

- The message delivered by the media was encoded by the sender and had to be decoded by the receiver.
- The receiver could then adopt one of three different behaviors.

- He or she could decode the message the way the producer wanted it (“dominant reading”). He or she could also decode it in a slightly altered way, according to previous beliefs or knowledge (“negotiated reading”).
- Or, he or she could reject the message for cultural, political or ideological reasons (“oppositional reading”).
- In any case, this theory shows that in order to serve the purpose of an advocacy campaign, the media has to be used with caution, always bearing in mind that the message sent might not be the one received by the audience.

Related Studies

- Studies in 1990 and 2006 validated the importance of television as an important source of information to most Metro Manila residents; spent 3.7 hours a day watching TV
- Philippines has an active online population: 25% use Facebook; ranks 8th in the world for top Facebook users
- Philippine Trust Index 2011 (<http://asiafoundation.org>):
 - 68% view online news as “most trusted sources of news and information”
 - 49% trust social networking sites

Methodology

- Survey for students, religious and security sector
 - Purposive sampling: 400 minimum participants
 - 2 sets of questionnaires: before and after a film showing/discussion
 - Film showing: Unsilenced
 - Lecture: The Law and the Convention
 - Forum
- Focus Group Discussion with relatives
- Interviews with media
- Document review

Research Questions for Church Members and Students

- What is the current understanding of enforced disappearances among the students and church members?
- What is their attitude regarding enforced disappearances?

- Is AFAD's information dissemination strategy effective?
- Can it influence students' awareness and attitude?
- How can it be improved to reach greater effectiveness?

Research Questions for Members of the Media

- Which media are the most effective to disseminate information on enforced disappearances in the Philippines?
- What is the current understanding of enforced disappearances among the main media?
- Is the topic of enforced disappearances often related in those media?
- What are the main limits to a broader coverage of enforced disappearances on those media?

Research Questions for Relatives

- What is the extent of understanding and awareness of the families on enforced disappearances?
- Are the families of the victims aware of the Law on enforced disappearances?
- If yes, how did AFAD/FIND help in the dissemination of information regarding this law?
- Has AFAD/FIND answered the families' needs for information?

Research Questions for Members of the Security Force

- What is the current understanding/perception of enforced disappearances among the security sector?
- How could AFAD help improve their understanding?
- Do you think that enforced disappearances must be included in the curriculum of military and police?
- As a member of the military/police, what do you think are your obligations concerning the problem of enforced disappearance?

Findings

1. Students
 - Majority of the respondents are female
 - Sources of information

- Very effective: TV, Facebook, printed newspapers, online news
 - Effective: Twitter, Radio, Online newspaper
 - There are improvements in the answers, after the film showing and discussion, such as disappearance supposes the involvement of the state; the victim has no contact with his family and lawyer; whereabouts of victims are concealed; enforced disappearance is a form of torture
 - Some students answered that enforced disappearance is a result of a natural calamity.
 - Other positive answers:
 - for students to become part of a human rights group
 - they will include the victims in their prayers
 - they will stay informed of the situation
 - they will give donations
 - they will participate in activities
 - It should be noted that even after the presentation, only a minority of students was able to give all and only the right answer.
 - There is a positive improvement regarding the identification by the students of the three elements of enforced disappearance.
 - There is also significant increase in their willingness to participate in activities.
 - There were many students who joined in one forum which possibly affected the impact of the message.
2. Church Members (Seminarians)
- Most effective source of information: TV, Facebook, printed newspaper, radio
 - Positive answers:
 - include the victims in their prayers
 - stay informed
 - forward information
 - give donations
 - participate in activities
 - become a member of a human rights group

- Though the vast majority of the participants thought the presentation was useful and instructive, half of the group also thought that it was not enough.
 - Is there a gap in the presentation?
 - Interest in the topic?
 - It should however be noted that, despite the positive impression, the presentation fails to systematically raise the level of awareness and understanding.
 - Even after the presentation, only a very few could actually identify the elements of the definition of enforced disappearance, and some important misunderstandings (notably concerning the difference between enforced disappearance and kidnapping, and concerning the involvement of non-state actors) remain.
3. Security Sector (Philippine Army)
- Officers of Civil-Military Operations: 15 participants
 - Non-Commissioned Officers in two schools: Civil-Military Operations School (CMOS): 125
 - Army Headquarters, Metro Manila
 - Army Training School
 - North-eastern Mindanao (under the Doctrines Command), 403rd Brigade: pulled out from detachments for the activity
 - Sources of information on forced disappearances: broadcast, print, online, superiors, personal experience
 - Out of the 125 people surveyed, 60% claim to be aware of the act but understanding of the act is questionable. Some identified non-state actors as perpetrators of disappearances while some answered police and military as responsible actors.
 - For the one day forum workshop, 75 individuals participated.
 - More than half of the participants (53%) have been connected with the military for more than 10 years; 14% between five to 10 years and 21% have been with the military for less than five years; 28 answered yes, enforced disappearance supposes the involvement of the state; and 23 answered yes, the victim has no contact with his family/lawyer.
 - It is very encouraging to note that most of the participants were eager to know more and were open to the implications of enforced disappearance on their profession.
 - Almost all the participants agreed that the families were also the victims of the

disappearance and that the State has an obligation to look for the disappeared person.

- Most of them also acknowledged their obligation to report any human rights violation they might witness; and
- Even though more than a third considered they had to obey an order of battle, almost all of them accepted that those responsible of enforced disappearances (or any other form of human rights violation) should be punished.
- Most are also willing to learn more and think that enforced disappearance should be addressed in military training.

General observations:

- A member of the security force asked why human rights organizations mainly make the military accountable but not the New People's Army (NPA).
- An army officer criticized the presentation as biased in favor of the NPA. This reflects the low understanding of enforced disappearance among the military officers and soldiers.
- In Bukidnon, Mindanao, the AFAD training/forum was conducted inside the military camp. Compared with the sessions with the CMO, the activity in Mindanao yielded better answers from the foot soldiers but they say that they have to obey the orders.
- In the military, they only have three hours for human rights course.
- One of the soldiers said that two of his relatives were executed by the NPA. Another soldier admitted they did something but they paid the families and promised not to do it again. They said they understand human rights better after that activity and they made a pledge.

4. Relatives

- It was difficult to group the participants.
- The relatives were invited to a restaurant and a participant asked how to answer the question on civil status.
- One of the recurrent statements was “the act of disappearing someone ultimately means stealing his life as well and that of his friends and family.”
- It was also said that enforced disappearances was a “life long experience for the families who never get closure.”
- The disappearance resulted in a dramatic change in the dynamics of the family.
- The presence and support of associations such as FIND and AFAD alleviate the grief and the burden of families.

5. Members of the Media (2 print, 1 TV)

- The three journalists interviewed had knowledge of enforced disappearance before they started covering.
- There is a general empathy of the profession for the victims of enforced disappearances.
- They know it is a risk they are exposed to, especially when they cover sensitive subjects.
- After they covered the issue of 2 students of the University of the Philippines who were disappeared by the men of General Jovito Palparan, the mother of the journalist was approached by unidentified men, so there is a worry about the security.
- Radio is the most effective source of information since most people are using radio especially in the rural areas.

Coverage of Enforced Disappearance Stories:

- Mainstream media do not focus on human rights stories. Some stories on enforced disappearance appear from time to time depending on their news value: “the gravity, mystery.”
- Follow-up stories are not often published because of the lack of new elements that might be interesting to the readers.

How can AFAD improve its media publicity and the coverage of news on enforced disappearance?

- a. Know your audience. Use different medium.
- b. Radio is a more effective way to reach the greatest number of audience.
- c. Use comics as a way to reach the most rural population by making the subject more accessible.
- d. Contact the right person. Send the stories directly.
- e. Make enforced disappearance a public concern.

Conclusions and Recommendations

- There is a low level of awareness about enforced disappearance and of human rights in general before the presentation.
- Maybe reflective of the low media coverage of issues on the phenomenon and on human rights in general. Journalists focus on what is new or what is a deviation from the normal.

- Television, Facebook and radio are the most effective and powerful media platforms in terms of news dissemination. Give priority to these media platforms in order to be more effective and have a bigger audience reach.
- The traditional campaign materials of leaflets and posters are hardly read or used as sources of information but these are still useful to those who do not have access to the internet and broadcast media. These can be minimized but should not be totally eradicated.
- Educating the media who are AFAD's medium to reach the broader public is important. This requires a comprehensive and sustained media advocacy plan.
- Longer training or workshops on enforced disappearance and human rights are more effective. In the case of students, integrating human rights in the General Education Program can be more effective.
- In the case of military and police training schools, it is important to advocate the inclusion of enforced disappearance and the law (in the Philippines) in their training program to introduce human rights. Seminaries can also integrate human rights education in their theology lessons.
- The intervention has improved the knowledge and attitude of the three sectors on enforced disappearance.
- However, such an intervention was not enough to eradicate erroneous notions about the notion that non-state actors are also responsible, that enforced disappearance is synonymous to kidnapping and that enforced disappearance is the result of a natural disaster.
- The intervention was not enough to convince the research participants to be involved in joining human rights organizations. This shows that knowledge and awareness are not enough to organize and mobilize people to join the struggle for a "World without disappearance." Other interventions need to be undertaken, e.g. organizing, sustained education work.
- However, for the students and seminarians, there is a significant increase in their willingness to participate in activities related to enforced disappearance. A plan to effectively engage them needs to be considered.

In Journalism

- The buzzword now is CONVERGENCE – the use of news into different platforms.
- Because of this, journalism educators are encouraging students to learn how to write news and narratives in multiplatform or in various media such as print, broadcast and online. I believe that organizations must also look into this phenomenon when they design their media and information campaign. I have noticed that in previous campaigns, there is a tendency concentrate/focus only on print.



Kashmir: Research on Alleged Perpetrators

Mr. Khurram Parvez
Association of Parents of Disappeared Persons (APDP)

Jammu and Kashmir is a disputed region of India. Three countries, India, Pakistan and China are competing for the territory. These countries have questionable records of human rights. There is an uprising in Kashmir, similar to Palestine, the people are demanding to have a separate state. Between 1947 and 1989, we in Kashmir, have been using all legal and political means to resolve the issue. Since 1947, there are wars. Jammu and Kashmir are the most militarized region in the world. There are around 700,000 Indian troops, 250,000 Pakistani troops and an undisclosed number of Chinese soldiers present. These armed forces are deployed in different areas in Jammu and Kashmir.

In 1989, there was an uprising. As a result, around 70,000 people lost their lives and 8,000 people disappeared so families started to go to courts. The legal system and these courts are an extension of the Indian Government, still we fight for our cases.

In 1994, we created the Association of Parents of Disappeared Persons (APDP). Every month, we have a protest where family members of the disappeared meet in the park. There are many activities directed at the government, including media and public events, but not much has changed. In Jammu and Kashmir, enforced disappearance is a daily topic among the members of the communities because of the prevalence of this crime. This level of awareness even reaches the grassroots level, each household knows about this.

The government is not making exhaustive efforts to solve the disappearances. The civil society groups have been launching initiatives to investigate forced disappearances. In the remote areas, there are around 7,000 marked and unmarked mass graves found. We asked the Government of India to investigate and conduct legal inquiry but they refused. They have no records of the dead bodies; these are general allegations against the state, not on individual military officers. The Indian Army is responsible. For years, we have been campaigning about these violations but our focus is on individual victims.

We decided to change our strategy and focus on the perpetrators. We started our research by identifying the individuals who were responsible. We found out that there were 500 officials of the armed forces who were involved in these crimes based on the documentation. The cases we filed in the court have exhausted us, hence, we use the same records to bring institutional memory to victims of disappearances. These include judicial and magistrate inquiries and police investigations. Every data has been used extensively. The government said enforced disappearance happened and they simply pay money to the families. Documentation exists. The government documents show the names of the perpetrators, hence, the government is also involved. Now our strategy is to ask for a legal trial and we deliberately use the word alleged. We do not want to use the law to abuse others. We are careful in identifying the perpetrators.

After the release of the research on perpetrators, the military became concerned. The officers wanted to know if their names were there. The research became an instrument to bring enforced disappearance and some information on the military officers involved to society's consciousness. After that, the members of the armed forces were more careful.

When I applied for a passport, the officer who issued me the document said, "I do not want to become the next person to be included in your report." There is a positive effect, in fact, most of them want to have a copy of our research.

There is a perpetrator who is a police officer. He was involved in the abduction of a female victim. The body of the victim was thrown into the river. There are people who expressed their support, even some foot soldiers and agents who want to make the record straight. They provided information about their superiors who gave orders on the disappearances.

One officer begged to help us and remove his name on the report. He promised to help and provide information. We realized the power of shaming. We take the names to their communities and we talk to the people in their communities. However, this was not a political campaign. We simply talk about their involvement in the disappearances. Even the young people are asking their parents to quit the armed forces or the police force. We identified 500 perpetrators in the first research and 1,200 perpetrators in the second research. These reports contain the stories of the victims and the names of the agents of the states.

The state does not recognize our demands but we must do something. We are careful in using technology and emails, but at this point, we are at par with the perpetrators. We are able to talk to them. One perpetrator is responsible for disappearing a lawyer. He left his job in the army and he relocated to the USA, then he lived in Canada. When we filed the case, we kept on pursuing him. It was difficult to mount pressure on him. Later, the court issued a notice to extradite the perpetrator to India. The pressure was mounting; he committed

suicide but he also killed his wife and his children. We have to reconsider our strategy, since it is risky as he jeopardized the security of other people – his family.

This event provoked discussion among the military men. We visited military camps and we shared the story with them, showing that the state will not protect them for the enforced disappearances and human rights violations they committed. However, we are careful that our campaign will not produce misery for others. We are putting pressure on the Government of India and we appeal to the European Union countries to ban these perpetrators. This is a huge research; some of the perpetrators might be travelling to European countries. They think there are no repercussions for their actions. We also start to contact the civil society groups in European Union countries so that they can also put pressure on their governments not to accept these perpetrators. We learned that their children are studying in other countries.

One police officer responsible for different human rights violations applied as a member of the UN Peace Keeping Force; he wanted to go to Rwanda. We negotiated with the UN and shared the data on human rights violations he committed. The police officer is under tremendous pressure and he apologized visiting the relatives of the people and paying them money. The relatives have not withdrawn the cases yet but we advised them to accept the money since the money given to them becomes an important piece of evidence.

This can be done in the Asian level and encourage other Asian countries to follow suit.

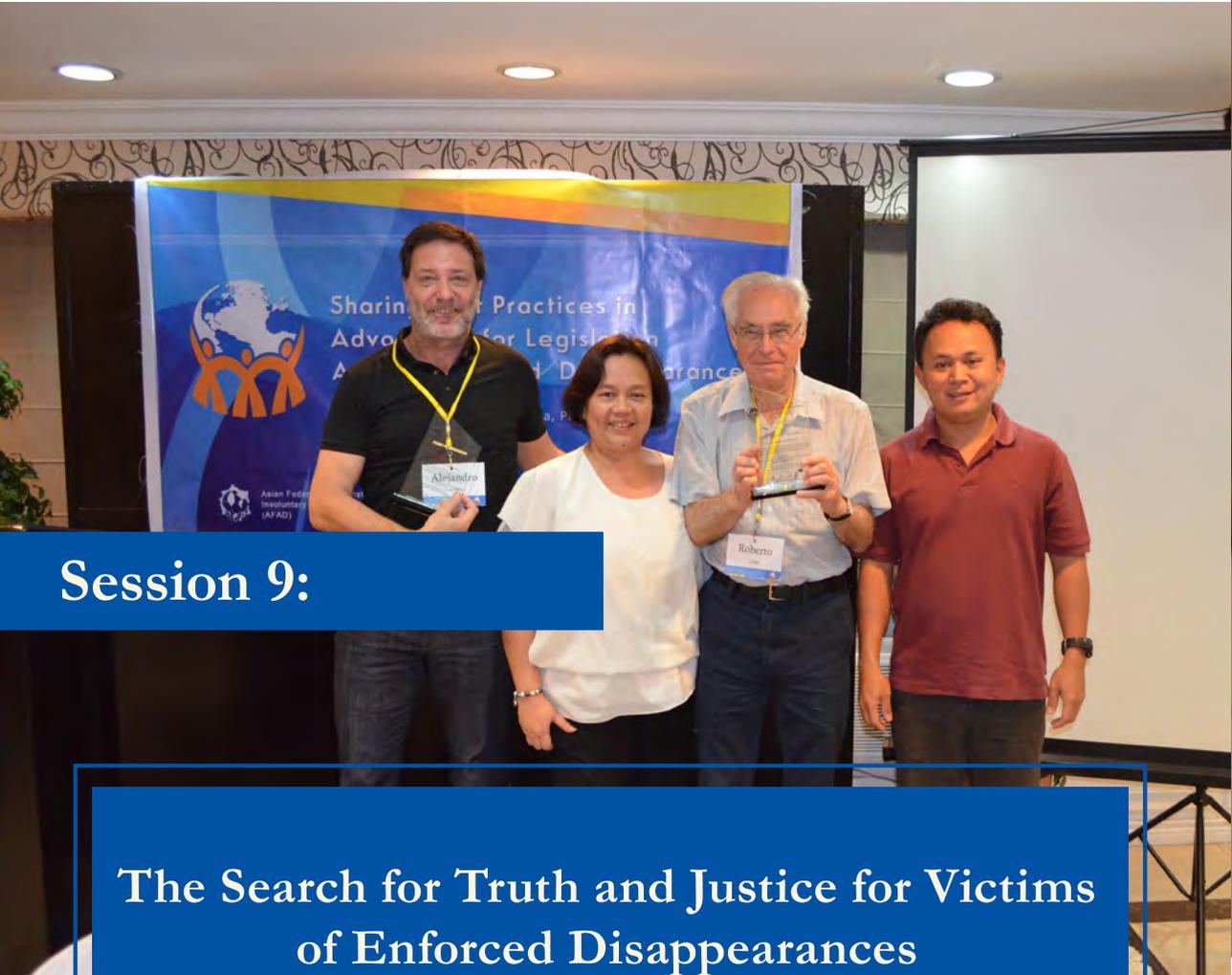
OPEN FORUM

Atty. Roberto Garretón (Chile)

For Irina, I was a member of the UN Working Group on Arbitrary Detention. We had cases from Belarus. Every time we communicated with the state, the answers we received from authorities from your country are exactly the same sentences that you quoted regarding your husband. The state did not reply to the Working Group; they think there is no arbitrary detention in your country but we filed the findings of the Rapporteur. It is an exercise of hypocrisy and arrogance on the side of the government. The government claims that it is beyond our jurisdiction. A similar Rapporteur from Belarus looked into the situation of human rights in Myanmar, Sudan, etc. I do not know if the associations of victims have resorted to that Rapporteur. To make a Rapporteur on human rights from your country is the biggest slap on courtesy. The governments will say how can you become a Rapporteur of your country, but a rapporteur must be a balanced and sober person.

Dr. Irina Krasovskaya (We Remember Civil Initiative-Belarus/USA)

That is a special mechanism, we report to special rapporteurs all the time. I met this rapporteur and he is a good human rights defender. He includes all human rights violations. Every time we submit the report, he asks us what has been done and he even asked us what more he can add to the report to make Belarus accountable. However, no mechanisms today work but I agree with you that we must use every opportunity we have. People involved in enforced disappearances must be on the banned list. In lobbying against these perpetrators, I remembered the first officer who met us when we went through the passport control. He said, “Thank you so much for what you did to our Minister.”

A photograph of four people standing in front of a blue banner. From left to right: a man in a black polo shirt with a name tag that says 'Alejandro', a woman in a white top, a man in a light blue button-down shirt with a name tag that says 'Roberto', and a man in a maroon polo shirt. The banner behind them has the text 'Sharing Practices in Advancing Legislation on Disappeared Persons' and the logo of the Asian Federation of Intergovernmental Organizations (AFIO).

Session 9:

The Search for Truth and Justice for Victims of Enforced Disappearances

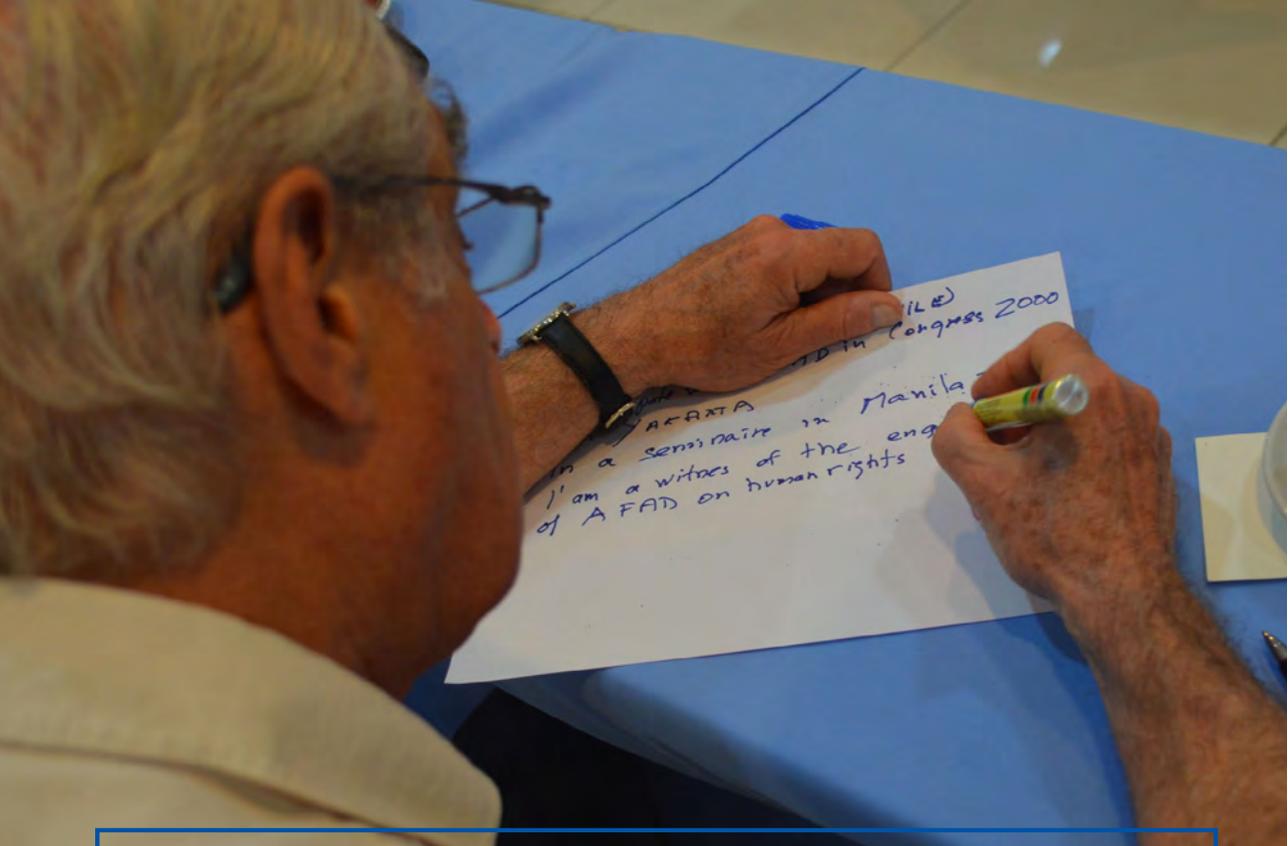
SPEAKERS



The Chilean Experience
Atty. Roberto Garretón
Former Member, UN Working Group on Arbitrary Detention



The Argentinean Experience
Atty. Alejandro Rua
Centro de Estudios Legales y Sociales (CELS)



The Chilean Experience

ATTY. ROBERTO GARRETÓN

Former Member, UN Working Group on Arbitrary Detention

As mentioned previously, disappearances in Chile started even before the military *coup*. Some persons were kidnapped, some lawyers, and a twelve-year old girl. The girl was a child of the leader of the Communist Party. The girl said her father would not go into exile since Allende was the President but after the *coup*, the father was looking for his daughter who disappeared. That is how cowardly they were. They deliberately targeted their victims and it was not an isolated case. It was the norm to the point that the Commission on Truth and Reconciliation stated that there was intent to exterminate those people who were identified with Allende's administration.

There was a systematic way to exterminate the government officials during that time. We are talking about genocide. Genocide does not have to be done to ethnic groups but the intention to exterminate the whole collective was there. This pattern repeats itself. People disappeared all throughout the country. There was always military and police involvement. The state denied responsibility and said that the army, police and navy did not detain those disappeared persons. Our organization came out to defend human rights. We resorted to the National Court of Justice and used the historical law of Chile, which is democratic in nature. The rules of the dictatorship mandated us to go to the military tribunals. These are illegitimate lawyers and judges because they are the military in alliance with the ruling executive.

What brought me to this work was to defend the people facing the military court. I joined this Committee to give legal assistance. I also tried to find those detained who did not have records. If someone is protected by the state, they must not disappear. In particular, the prisoners are supposed to be protected by the state because they are under the custody of the police. But those who are supposed to take charge of the prisoners did not know where the prisoners were.

We initiated a search. We did not use the word “disappearance” then. We just called them prisoners who are not in the detention facilities. People were looking for their relatives. They claimed that those missing people were taken from their families by the police or military but they were nowhere to be found. The relatives with the same concerns organized themselves in a rudimentary process while the search continued. The police said they never detained those people – a typical lie that comes with this crime. Sometimes, some disappeared people surfaced; they came home. They said the military took them to a place they did not know and they saw other people. That was how the dialogue began. These people related their stories before the lawyers and the Committee for Peace. They detailed how other people were killed, such as the case of the Chilean folk artist, Victor Jara who was tortured and killed. Then we put the pieces together. The dictatorship was facing a world that is demanding accountability. The world was exerting pressure so they created a registry of the detained people. However, the disappeared victims were not there; they did not detain those who disappeared. The authorities even told the families they could see their lists.

The disappeared persons were all members of the Communist Party. The husband of a woman was a trade union leader and the husband of another lady was a labor union member. These persons lived in the same neighborhood. These became pieces of the puzzle. We likened it to a cancer that was growing. This did not happen in Chile before. When they started searching for their loved ones, they disclosed their stories. They went to churches. Again, many of them were communists and socialists. At first, they were not kind to us since we are members of the Catholic Church. But they realized that we were their allies like their lawyers. We, too, suffered the same way as they do. They said they did not know why their husbands disappeared. We said they were taken perhaps because they were members of the Communist Party. We told them that their husbands were trade union leaders and that is healthy, legitimate and rightful. They must not be ashamed.

The snowball became bigger and bigger. Later on, we started to use the word “disappeared.” A year and a half later, we started our organization, the association of families of disappeared-detainees, the *desaparecidos*. They started to acknowledge their activities but the government always insisted there were no detainees. Five years later, in 1978, we received a revealing report. A mine, an abandoned flint stone mine, was full of corpses. I did not know who gave the information, we went to the mine and then we saw the dead bodies. We tried to match the *habeas corpus*, matching the information with the persons who were arrested and detained. We confirmed the bodies and shared these facts with the media. We found the cadavers hidden by the dictatorship. We trapped them and that was the time when the dictatorship started to taste their defeat.

Upon hearing the news, the military said they brought these people, but on the way to the soccer stadium, they were assaulted by terrorist groups and they killed only the detainees, but

not the military officers. The judges started to wonder that the people who disappeared were not detained but were murdered. Hence, we did an investigation and showed the remains to the women and they identified the bodies of their husbands. Another disappeared person had his tooth removed so we sent a *writ of habeas corpus*. However, we were told they did not detain them. There were fourteen (14) disappeared persons but we found out that it was actually fifteen (15). He is from another country and was only at the wrong place at the wrong time. Our claim was affirmed. There were 14 disappeared and we found 14 dead bodies. It was clear that we did not lie, we did not bloat the figures. That was a hard blow to the dictatorship.

In the USA, they assassinated the former Secretary of Foreign Affairs of Allende. They killed him 500 meters away from the White House in Washington, DC. His death anniversary is 20 September. An assassination in Washington, how daring the perpetrators could be! The US, their ally in the beginning of the *coup*, went against them.

The organization grew bigger and stronger and the investigation was massive. Not only one husband was taken but many people. They started their petitions signed by writers, editors, musicians, priests, bishops, rabbis, musicians, and many persons. However, the judges would still believe, they would ask who are you asking for a writ of *habeas corpus* for, are you relatives? These people said they are not the relatives but they wanted to see the bodies. The association became bigger. One day, around 40 relatives of victims started a hunger strike inside the premises of the United Nations. How they entered, no one knew but the doors were open. A hunger strike in the United Nations was another earthquake for the dictatorship. What I want to highlight is we still to continue our investigations. They cannot deny but they never gave intelligent reports.

There is a list of hundreds of Chileans detained in their homeland. We have not found them, but the dictatorship, through the local magazine and even through the Argentinean *Lei Magazine*, said: “The disappeared Chileans killed each other because of ideological reasons; they killed each other in Argentina, Panama, France, Venezuela and Mexico.” That was stunning, no way to argue back, it was a planned show. Later on, it was proven that these disappeared were detained by the government. Pinochet said that was a plot of Marxists against Chile. The *Lei Magazine* of Argentina only had one issue; they created that newspaper for that specific news. The newspaper in Brazil that published the story existed but the first issue was in 1920 and it took 50 years for the second issue to come out. That is how, criminal minds, who clung to power, lied. Even the conservative newspapers would not comment because they said the story was difficult to verify. That brought about the change because they could not call us liars. The organizations kept on growing stronger.

We moved forward, the United Nations created a Working Group. This was the first Working Group to investigate the violations of human rights. The state of Chile had to accept the visit of the Working Group. During the visit, the Chilean head of the group went to the detention centers where they were able to unearth some facts. A legal issue followed. I want to share how we have identified 3,000 victims the cases that we handle today. Those remains were exhumed; there are 700 cases where bones are properly identified. Experts from Scotland, Spain, UK, helped in the identification of remains and the cases have been resolved. Today, some relatives are still looking for their loved ones but some cases were resolved because of important factors. First, the respectable organizations in Chile are churches. They

are respected and are very much cherished. They worked together in the spirit of ecumenism and inter-faith with no opposition. They joined forces for a common campaign to fight against injustice perpetrated by the military.

The second contributing factor is the role of the association of relatives of those who disappeared and those who were killed. Have they made a difference? Those whose relatives were killed know about this fact. Relatives of the disappeared have a stronger will to look for their loved ones in the ongoing process. Everything we claimed has been proven to be true. We were very cautious of the reports we published, but they accused us of being liars.

Every report is based on facts and statements of credible witnesses – all those documentation, the copies of *habeas corpus*, presentations we did before the Supreme Court, letters we wrote to the newspaper that were never published. All these documentations are included in 2007 in the world archive of UNESCO. We all know there are Committees for the Heritage Site but there is one now for the Memory, and that is how they have been lodged. Data have been preserved; we have taken good care of these. Everything has been digitized. The room containing the documents is as big as this. The digitization assures that generations to come will know what was happening. There are back up data in the USA. we lost the cases but they can never prove to us that we lied. History has vindicated us.

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The Argentinean Experience

ATTY. ALEJANDRO RUA

Centro de Estudios Legales y Sociales (CELS)

I will bring you back to the timeline that I shared with you in my morning presentation, the struggle of relatives due to the pendular process of impunity and investigation. Unlike what was shared by Roberto Garretón, there was one intervention made by the military but in Argentina, we had military *coups* every time we had a popular people's government. However, it never reached the level of atrocity of the dictatorship. There was a league for human rights and the peace and justice service had also been set up. There were a number of organizations established before the *coup* because there were traditions of *coups* in the past. After the repression, new organizations were born like the *Madres de Plaza de Mayo*, Grandparents of *Plaza de Mayo*, and *Centro de Estudios Legales y Sociales (CELS)*. These organizations contributed to the existing struggle. We have been doing dialogue among each other because of the need.

As Roberto said, when we asked the whereabouts of the disappeared, the military and the police said no one was detained. The censorship had control over the media and the major dailies to make sure that this would not be made known to the public. Moreover, the obelisk, which is a monument at the heart of Buenos Aires, held a banner that carries this message:

“Regarding the protest, silence is health.” This was in response to the noise barrage that we did. For us, the slogan said too much. It means we must shut up.

As I said earlier, the human rights groups doubled their efforts in the universities and the international organizations to share the milestones of the search for the disappeared. There was a World Cup in 1978, in the middle of the dictatorship. It happened during the military rule. We celebrated. Some 500 meters away from the stadium was the main detention center. There was an important campaign in Europe to boycott the World Cup. It was like a campaign against Argentina. One football star said, “I will not play, I will not go to Argentina.” They had to explain their absence. That was a consequence of the campaign. Another milestone of the human rights movement was the Nobel Prize given to a justice in Argentina. It was very hard for the dictatorship not to make the news public. For the human rights movement, that was an international recognition.

During the dictatorship in 1982, the Argentinean Government was very much eroded. The government fell into a war (against the British) in the Falklands in Maldinas Islands. Near Maldinas, in Georgia Island, a marine was detained. He turned over his position and his capture gave us the image of who he was, as a military and navy officer. He was not surrendering without firing a shot nor was he prepared to die. He became the symbol of repression against the Argentinean people and became a symbol of the deep penetrating agents that persecuted the *Madres de Plaza de Mayo*, which led to kidnapping of the mothers. The mothers were able to identify him. The dictatorship eroded, the system of repression crumbled, and the human rights movement advanced. It was inevitable to come to a transition towards democracy.

In this stretch, the role of human rights organizations was critical in terms of information dissemination. The human rights organizations were also instrumental in advancing the cases that led to the progress of the legal process against the military junta. There was not a single moment of justice that was not moved by the human rights movement. In the same way, when there were attempts to preserve impunity, the human rights groups stood up and fought.

When the information on violations committed was made public after years of repression, morbid stories were heard. The gravity of the offenses helped to make impunity even more unacceptable. As much as one million people participated in rallies against pardon, impunity, and amnesties. This was part of the efforts to search for the truth. This was the greatest support extended by the Argentine society during the time of impunity. It took a decade of many attempts at reparation and search through other ways. Some of these efforts were in transit, just to show the assertion of the families and relatives as they asked the government, “Tell us where they are (the disappeared)?” Even the relatives said, “We want them alive, you took them alive. Bring them to court.” Now, memory, truth, and justice are the agenda of the human rights movement. These claims are also the consideration of the government. Many court cases reflect these claims of government and civil society.

In 1995, in the process of finding the children and grandchildren, those that disappeared after 18 years started to take a role in the search for the truth on who their real siblings were and who their real parents were. This generated a renewal of ways on how we conducted

our campaign. The women and the children experienced another form of struggle. They used movies and the entire media in search for their identities. There were new forms of struggle and awareness raising. What is being done now is a product of all the archives that have been unopened. We have the National Day against the *coup*. Most schools make sure the students are reminded of the issues and for these issues to be included in the curricula. After the Constitution was restored, we tried to block the career of some military members who committed atrocities. Nowadays, it is unthinkable for someone who participated in the impunity to advance his career in the armed forces. These are the responses and demands of the victims' relatives in the democratic society and these are all that I want to share with you.

OPEN FORUM

Mr. Marco Antonio Garavito (*Liga Guatemaltica de Higiene Mental-Guatemala*)

I would like to mention a contribution to the experiences. It is necessary to make it very clear that this phenomenon of disappearances in Latin America is where USA is very much involved. The phenomenon was not born in Chile and Argentina. It was a product of strategy used in Guatemala in 1963. The first disappearance was in Guatemala when there was a *coup* fomented by the military and supported by the United States. That was the time when the first disappearances occurred. Since 1963, the disappearances occurred in Guatemala, ten years before Chile. Our country was a laboratory. Our country had an armed group after the Cuban Revolution. In the case of Guatemala, some relatives of those who worked in the banana industry disappeared after they tried to find their disappeared family members. They also vanished. The situation was created so that we would not search anymore for the disappeared, since if we search, we would be the next ones to disappear. There was an armed struggle. Disappearance was introduced by the USA. They were the ones holding the strings of the puppets in Guatemala, Chile, Argentina, and Honduras. We cannot forget and we cannot ignore. As Roberto said, the truth is the truth. The US is accountable for all of these. That caused so much pain in our country. Never ever did we have political prisoners. In El Salvador, they had political prisoners. We did not experience that because people were killed and assassinated. History shows the military is not the only ones responsible for the ferocious dictatorship, but also the foreign policies in the creation of the Panama Canal. There is a military school where the military *coup* plotters are trained.

Atty. Alejandro Rúa (*CELS-Argentina*)

A year ago, CELS was part of an investigation on Operation Condor, a collaboration of neighboring countries in Latin America. The dictator Videla was one of those who initiated the operation and he died in an ordinary prison. He said in one interview, "I need 10,000 more enforced disappearances; we have to cleanse the society." Now, about the process of the role of the business community, it is clear that it happened not because the military was in a bad mood but that was part of the distribution of wealth. The business community might not have been part of those who are responsible, had the business community chosen not to lend some support or contribution. One of the pieces of information we have is how the victims were taken and shared during the legal process. They took students and workers and disappeared.

Mr. Mugiyo (IKOHI-Indonesia)

This is related to the situation in Indonesia on the strategy of addressing the cases of disappearances in the past. We have a new government that is relatively pro-human rights. The new president has set up a priority program. One is a human rights agenda to address the cases of disappearances that happened in 1998. We even asked the human rights community in a very concrete way on how to deal with the disappearances in the past. With respect to the experience of other countries, which one should we solve first if we cannot get justice and reparation? In Indonesia, we have experienced the massacre in 1984. This case was resolved through the Human Rights Court. The protocol says, there was no evidence that the case met the requirements for it to be considered as a crime against humanity. Since the case was not widespread, the judges concluded that victims were considered as perpetrators. They used machetes to defend themselves during the attack or massacres against them. The prosecutor made an appeal but the case is now considered closed. We want the government to establish an *ad hoc* human rights court first under this mechanism for truth seeking. The truth commission would be established. Argentina a good example. After the fall of the dictatorship, the new government established a Truth Commission. As a strategy, work for the truth first, then from the truth, continue with the other aspects.

Atty. Alejandro Rúa (CELS-Argentina)

In this presentation, I want to show the range of how we approach this. What we wanted to do and what could be done and the limitations that we have. How this is a pendular thing that we are advancing, hoping that these examples could be of use to you. Like what the grandmother of Gabriela said, better to have something than nothing. Then we go into a ladderized process. Let us take one step then move on to the next. It is clear that if it is anything, a single step can be taken but not as a final step. I take the step because there is a next step. I will never take my last step. Yesterday, Thursday, the day of *Madres de Plaza de Mayo*, they made 1,900 rallies so far. They never stop. There are convictions, bodies have been found. It means a majority exactly. They know the place; the process of search does not end. We take a step with a promise that another step will follow. Take as many steps as you can but not always the same step all the time. To find the bodies in a common grave; some will say they do not want bones, some want the person alive. It is important to understand that there are those who accept reparation; others want the bones or the remains, while others want the person alive. We can learn more about here.

Atty. Gabriella Citroni (Track Impunity Always-Switzerland)

The role of the generation thing, e.g. mothers and children – is there something in Chile? How did it happen? The third country nearby, Peru, has a very different story but many people disappeared. Other generations say they do not want to know of the armed conflict. They do not want to because it is dangerous. There is no attitude change and in some other countries, I want to focus on the process that is economic in nature. For those people who made money out of those who disappeared, I heard cases in Argentina where they prosecute the persons who committed the crime, those persons who deprived the family because they blackmailed them such as people asking for money to help the relatives find the grave. People

amassed property. Is it not a crime against humanity to blackmail people to find the truth? Is that not a crime in itself? How can we work in these fields?

Dr. Edita Burgos (*Desaparecidos* and FJBM-Philippines)

We agree that there is so much to do. We do not see the end of the work in this generation. I can see the fire and passion. It is refreshing to see this in people who are white-haired. Enforced disappearance exists. We have the knowledge and understanding of the depth of the problem that may impact the present and future generations. Those of us will be able to take the work but I want to protect my children so they will not become targets of the government. I serve as the resource person. Are there things that you do deliberately to transfer this awareness to the next generation? You are doing a lot of work, as we are saying.

Atty. Mandira Sharma (Advocacy Forum-Nepal)

In Chile, when the elected president was removed and Pinochet assumed power, some people supported the extension of the dictatorship. Everything has been well documented. Is there any discussion involving third country support? How the trials are unfolding in Argentina? To facilitate this progress, what challenges have you encountered now in working out these cases?

Atty. Roberto Garretón (Chile)

There is an organization of children and youth known as HIJOS. I have the impression that this is maintained by the Mothers even if this is called HIJOS. It is not a big group in Argentina but it exists. The communist party for example has the greatest number of victims. They are part of the coalition; they have positions in the government as a political party. In 1912, the communist party was established before the Bolshevik Revolution, a traditional democratic party. Today, they are fighting for truth and justice. We are still fighting for this to find justice but for the majority of the youth countries, they say: please stop talking about what happened, better talk about reconciliation; stop talking about what happened or a repressive regime will happen again. Before, no one would buy that in Chile. The Church of Santiago was a total departure from the bishop we had in the dictatorship. Ambiguity is what we have now.

About what Edita said, the memory of the next generation: we are not going to give in a single inch. This happened 41 years ago. I knew what happened in Santiago: big rallies, the president of the Republic organized a big event in the palace. She is not a religious person. The event was in the palace with thousands of people in Santiago, at the heart of the city, maybe also in other parts of Chile. The event in the palace was nice. The current president of the senate is the daughter of Allende. We have gone full circle. We have the rabbi, bishop, protestant priests, and the family of Allende as a senator. They go to places where President Allende fell and died in a dignified manner. This has been happening in various cities. There are monuments left and right for the victims, almost all towns have the monuments.

We are in a process and I say this because we are part of it, we want to change the names of the streets from the names of generals and some persons who participated in the *coup*, all

branches of government, the navy, air force and the police. We have a campaign to take away the name even the names of squares. There is a whole consciousness to never forget and to remember. The memory museum is a living thing. I go there once a month – guiding a tour, launching a book in Villa Grimaldi, and the park is full of activities for the victims of human rights and another in Simon Bolivar Avenue. It is punctuated with mementos to remember, never to forget. There is the risk. What happens if we pass away? Will people take care of Villa Grimaldi? the museum? Will they carry the torch if we go? The memory will be there, how about the spark?

On the participation of the United States, that is a fact, the copyright of all the lies. The oldest newspaper, *Mercurio*, is the official lying newspaper. The editor spoke with Nixon and an agent of CIA on September 1973. When he was elected president, Nixon received the owners of the *Mercurio* is together with the director general of the CIA. It was a conversation exactly after Allende was elected. But to insist on the *coup*, they killed fellow Chileans. It is documented, and they played a role. I was against the *coup*.

Atty. Alejandro Rua (CELS-Argentina)

How to guarantee the success in the coming generation is to share the truth of what is happening and the possibility of going to the roots of this problem, of the reason why this happened. This is a social and political demand, a whole process in the region, regional integration, and leftist government. When the time is right to explain this in a more political way, we can try to seek civilian support. I think that after many years of struggle, from the *Nunca Mas* Movement, we saw that the tragedy that affected us in that period could never take place again. It is clear that we do not want that to happen. This could not happen again. The process of reparation comes hand in hand with the whole society. We are not only organizations; we want to detect how repressive regime could take a new form. All these cases, all the convicted will pass away. There are still many years. Many died without being convicted. Some of the victims have passed away but this is a problem of the society as a whole. In many museums, we can see people were illegally detained. We put markers because people were tortured. It might happen that we might not need it in a hundred years. We can have emblematic things but it is too hard to guess. Another part of the history of Chile on the role of the business community specifically the role of the sugar mill, Mr. Ledesma, the Minister of Finance and a businessman, was detained. It is important to see how some companies were taken over like the two major newspapers in Argentina, where the dictator forced the agenda. They took over the companies while some influential persons were tortured.

The Argentine society advances in finding the truth. I believe the people realized that it is not a matter of the past. It is hard to think that someone is trying to blackmail the relatives of the disappeared and fraudulently getting money. On the role of United States in Argentina, Uruguay, other countries and other regions, the documents distinctly show the role of agents and military of the United States. Twenty years back, the documents showing members of the Operation Condor were not shown. This is endless, I do not think there is a finish line. It is a moving target. It is not impossible for this to happen again.

Atty. Roberto Garretón (Chile)

For Argentina and Chile, the phenomenon of impunity goes all the way back until Pinochet was detained. Impunity is not the truth shared by many. The dictator and the United States supported the impunity, so it is the norm in some countries. In the southern part of Latin America, impunity is not the ruling standard. In Peru, they go far. Uruguay is lagging behind but they keep on working. Uruguay's civilian president (Juan Maria Bordaberry) was elected in 1973 but he joined the military *coup*. He died under house arrest. Brazil is lagging behind but it is starting to work. Brazil had a *coup* in 1964. After 20 years, the Commission of Truth was launched. This body negotiated and investigated the roles of the military. The truth will be revealed one by one. The military is important due to the support of the US.

Advances happen, but many military men detained civilians. There are more military officers than civilians who collaborated that are behind bars. The designers of these *coups* are civilians and they are scot-free. This will end when the *coup* designers will also be behind bars. It is a living culture in Central America. There is impunity. In Central America, people want the truth.

Ms. Mary Aileen D. Bacalso (AFAD-Philippines)

In Argentina, there is a level of commitment of the organizations of children, the mothers and the grandmothers of the disappeared. The level of persistence, knowledge and participation of the general public is high. People participated in the events, such as the 30th anniversary of democracy in Argentina. If we compare the situation there with many Asian countries, it is very different. I want to ask. What are the factors why these things happen? I mentioned in a newspaper interview in Buenos Aires that I envy the struggle of civil society organizations in Argentina. The situation here in Asia is different. What can contribute to the level of participation and awareness? What are your recommendations for Asia and Philippines? Both of you mentioned the different roles of the church. In Argentina, the role of the church was negative during the dictatorship. In Chile, the church was supportive to the struggle for human rights, what could you recommend to us here in Philippines?

Mr. Sisto dos Santos (HAK Association-Timor-Leste)

The reality of reconciliation was in 2001. Timor-Leste established the transitional government and launched reconciliation. Today, most Timor-Leste's leaders say that the second reconciliation was promoted by Nelson Mandela. Reconciliation today is challenging. We generalize reconciliation but it is already there. There is no political will to process the past. What will they benefit from the reconciliation? Why did the victims and families never complain about reconciliation?

Atty. Roberto Garretón (Chile)

I do not have sufficient knowledge on the elements why in Latin America there is a strong demand for truth and justice and not in Asia. The dictators are as cruel here as they are there. The level of violence could be comparable, that could be an answer. Is there greater tolerance for violence against people in some countries? This is something you should ask yourselves. In Latin America, where we attained independence in 1825, for all Latin American countries we have had 200 dictatorships. We asked for accountability and punishment but there was never a desire for a truth commission. This only happened when the dictatorship in Argentina ruled. They called for truth, accountability and a truth commission. There were brutal and bloody *coups* before, then Chile submitted to these demands.

The culture of human rights is catching fire in Africa. I will also never dare to enumerate the answers. I can give a solid answer why the Chilean church was good and not in Argentina. In the northern part of Brazil, they had a progressive church during the dictatorship but in that same state there was a fascist leadership among the Catholics. In Uruguay there was no culture of participation of the churches. I have no reasons to explain it. In Argentina, there were bishops who stood up against the violations but they were assassinated. They killed the bishops in Chile. Nine (9) priests were assassinated but no bishop was killed. In Chile, we are thankful to churches in general, they stood up against the dictatorship.

Reconciliation is a beautiful word, but I want to see a fully reconciled Chile. I want to see the beautiful notion. There are negative notions also – to pardon the criminals. It is not between victims and those who caused it. There is a state that supported the violence against the people and those crimes were committed by fellow human beings. Some civilians supported the reconciliation process in many countries but we have to agree to take into account the victims in order to become a reconciled nation, or else we are inflicting pain on the victims again. If we forgive the state that killed, that is inflicting pain on the victims, that is not reconciliation. The state can now reconcile with itself, but this is not about pardon. The crimes committed are too serious. These cannot be condoned. Should I forgive the state for committing violations against the people? There must be punishment or else there cannot be reconciliation.

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FOUND: THE STORY OF LUIS ALONSO OF EL SALVADOR

Film Showing

Luis was wounded and about 5 or 6 years old when taken by El Salvadorian Army forces. He was carried by his elder brother together with other members of the family when they were caught during military operations. At gunpoint, his elder brother was asked to give Luis to the Army in exchange for the safety of all the other members of the family. It was Luis who pleaded to his brother to let him go. Luis was brought to a military hospital for treatment and later put on adoption. An American couple adopted him and brought him to the United States. His adoptive father filmed his growing up years since he left El Salvador but as he grew up the memory of his real identity was buried psychologically because of the painful experience. Eventually, he was traced by his parents and after some time of denial, he finally decided to go back to El Salvador to meet his biological family.

The film showed that in El Salvador, the disappearance of children was organized by the military and they were taken in for adoption. It showed the deep scars inflicted by the forced disappearance of Luis on him and his family. It also showed that the healing process is not easy but the story leaves so much hope and promise to inspire families in similar situations to keep on searching for their disappeared children.

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Session 10:

Search and Reunification of Disappeared Children: Difficulties, Successes and Challenges

SPEAKERS



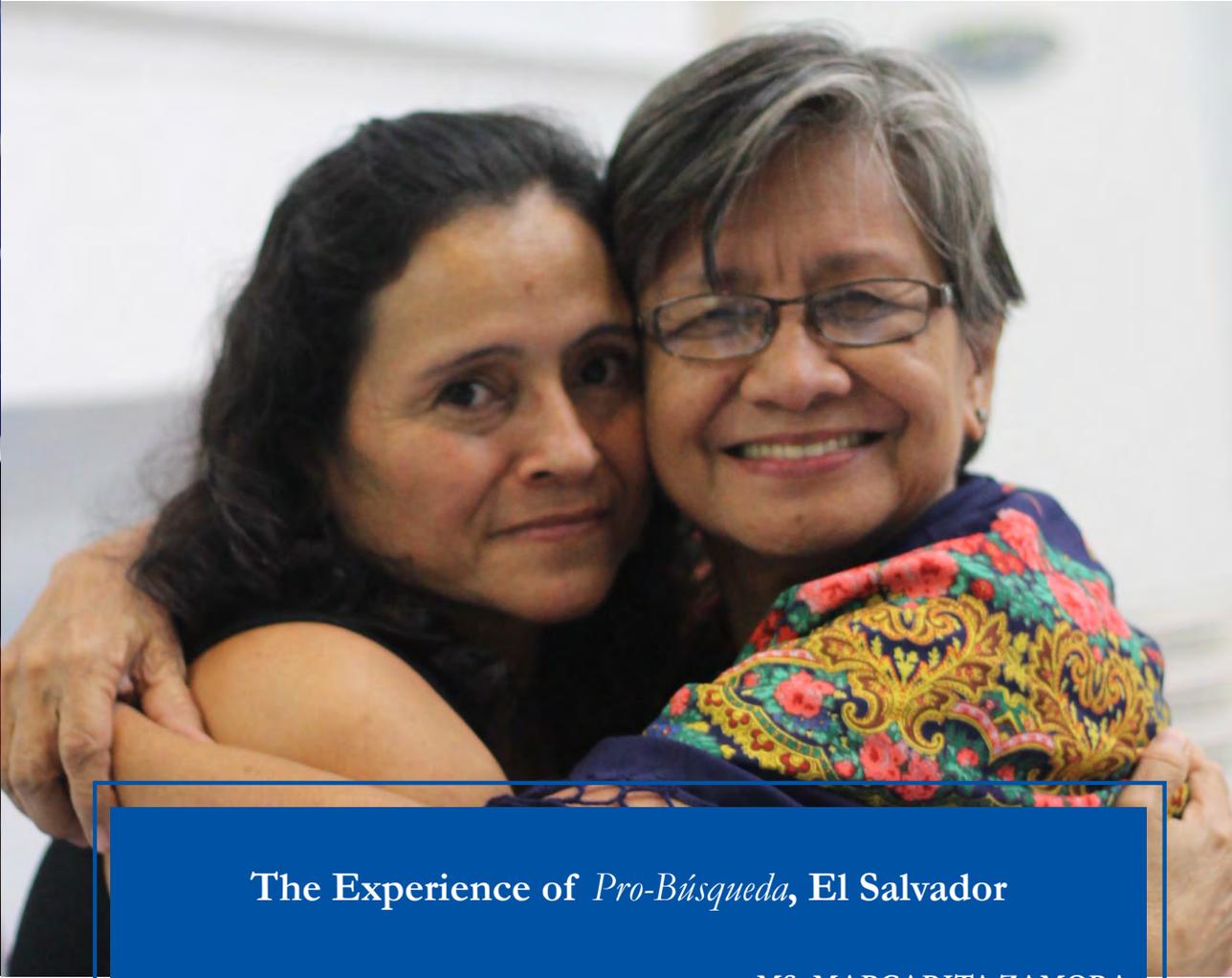
The Experience of *Pro-Búsqueda*, El Salvador
Ms. Margarita Zamora



The Experience of *Liga Guatemalteca de Higiene Mental*, Guatemala
Mr. Marco Antonio Garavito



The Experience of *Centro de Estudios Legales y Sociales (CELS)*, Argentina
Atty. Alejandro Rua



The Experience of *Pro-Búsqueda*, El Salvador

MS. MARGARITA ZAMORA

We have similar experiences in Latin America on the children who disappeared as a consequence of the civil war. The film shown yesterday talks about family reunification and was produced by our association. We are an association of families, children and parents who work for the historical memory so these will not be forgotten and will not happen again.

Pro-Búsqueda was founded in 1994 with some relatives of the disappeared and through the initiative and support of the Jesuit Priest, Fr. Jon Cortina. He identified himself with the cause of the Salvadoreans and he almost gave up his life for this cause. He later died of a heart attack.

In 1994, the first five disappeared youth were found. They disappeared in the operations carried by the army in El Salvador. The relatives of the disappeared went to Father Jon Cortina to continue the search. We thought that if these children were found alive, maybe some other children are still alive and they are somewhere. The main principle of our work is research and documentation, which are the core work of our association. We do DNA profiling and documentation work.

These are keys we use to find the disappeared and also a way for the children to access justice in the Inter-American and national levels. We have realized two sentences against the Salvadorean state and have achieved two favorable judgments. Psychosocial support is a key part of the process being carried out by the association to help the relatives. They have all sorts of sufferings because of the disappearance of their children. Without having the association, we would not have attained what we are today. It is important for the relatives that some of the disappeared youths are found. In most cases, the relatives started the search but they are too sick and old. It is important to educate the new generation for them to continue this effort.

The association has a unit that works to influence the policies on the national and the Inter-American level. We do this through the support of the relatives and families and also from like-minded organizations. On the research and investigation of the cases of forced disappearances of children, we go where people are. We go to them wherever they are to get the information on where and how the children disappeared. We have some results of these investigations. Out of the 944 total cases, 392 have been resolved. We know where these children are but the rest have not been found yet. Every year, through public campaigns and with the aid of the mass media, we find 10 to 20 cases. We resolved 392 cases despite the difficulties we met to find the specifics of these cases. It is important for relatives to experience this achievement. We found 55 cases where the children died when they were separated from their families. It is still necessary for the relatives to know the truth and to not wonder anymore of what happened to their disappeared loved ones or where they are. There are still 542 pending cases. We value the disappeared and it is vital for the relatives to know that there are still things to do and there is progress in our direction.

Majority of the cases found and reunified happened inside the country. The children grew up with the same people who killed their parents and they took the children pretending that these kids were their own children. No legal adoption process was followed; the children were simply appropriated.

These are the countries where the children were found: 172 cases in El Salvador (including the 55 cases where children were found dead), 71 cases in the US, 19 cases in France, 15 cases in Honduras, 39 cases in Italy, 4 cases in Belgium, 3 cases in Switzerland, 4 cases in Guatemala, 2 cases in Belize, 2 cases in Mexico, 1 case in Monaco, 1 case in Nicaragua, 1 case in Canada, 1 case in Holland, 1 case in Spain, and 1 case in England. There is diversity of cases on the disappeared children. The children are brought to different places. It is important for us to find the children who might be in other countries. They must find their origin.

Genetic Bank

The bank of genetic profiles is another significant component. We are the only organization that handles our own genetic bank since 1995. This is owed to the international support and effort of Fr. Jon Cortina. The DNA bank fulfills the international requirement in the area of genetic forensics. Despite the fact that we are only a small association, it matters that we have this success. Today, the bank has 1,358 genetic profiles.

It is a great success for us even if many of these relatives have different illnesses. They continue to suffer since the disappearance of their children. At least we know we can identify

using the DNA test even in the cases where we get bad news. One can tell the news and the parents can deal with the death of their children.

Stories of Success

We have resolved 392 cases of disappearances of children due to armed conflict. We discovered that the children were stolen during the operation of the military. The people live with what little they have and they are among the poorest and the ones affected by the process. We have gained the autonomous management of our DNA bank and have 28,000 adoption files which will aid us in resolving the pending cases and find the children in different countries. We have notes and articles including the photos published previously in the local journals. Some children were shown in these reports by the media to help finding other children. But most of the parents have no access in finding their children. These children were declared abandoned and can be adopted by the military, which was what they did.

Pro-Búsqueda, presented witnesses to show that during the conflict in El Salvador, the disappearance of children was orchestrated by the government. It was done using a systematic approach to take children away from the family and the acts were pre-meditated as shown by the pattern.

Difficulties and Challenges

There are other issues as well such as the denial of access to files owned by the military. We are also facing the failing health of parents. The military must be obligated to open their files. The files of the Red Cross will also help to locate the children. The Red Cross was directly involved in the adoption of children when they transferred and promoted their adoption knowing fully well that they had relatives who could take care of them. The government agreed, although there is data that can facilitate the return of the children to their relatives. We are trying to investigate and search the lawyers who made money out of these adoptions so we can ask for justice for these cases.

Another challenge is the difficulty in obtaining funds. All those working in the NGO know it is not easy to get those resources especially in the political context of El Salvador.

The Amnesty Law prevents us from accessing justice but the opportunity challenges the constitutionality of this law. We are attempting another approach to have this law reversed but it is not easy. We also filed cases through the national justice system, for the case of Serrano-Cruz sisters, for example. We have obtained rulings through the Inter-American Court of Human Rights. Finally, there is a judgment on these massacres carried out by the military and its elite forces supported by the US. It was a million dollar war financed by US for El Salvador but we do not get the cooperation of the armed forces for our search. We get to some low level military people on some cases of disappeared girls taken out during the massacre but we are not able to reach the higher officers. The National Search Commission created through an Executive Decree is doing work similar to what *Pro-Búsqueda* is doing.

In the area of family reunification, it is easier if we can say the reasons for the disappearances. Some youths know they have been disappeared in the context of military operations and were taken to different places. This is especially true for those children appropriated by the

military that grew up with a different reality. Some who were found accused their parents of being the reason for their disappearances and difficulties.

Reunification of Families

There are cases where children grew up in other countries such as the case in Italy, where the person traveled from Italy to El Salvador thrice with the objective of finding relatives. He saw his mother murdered but still had hope that his relatives were still alive.

The Contreras brothers grew up in El Salvador but are suppressed emotionally and are detached from reality because the adopted parents gave them a different story. The case of Marina Lopez resulted in being successfully reunited with her biological family.

The website of *Pro-Búsqueda* has details on our work and our association at our website (www.probusqueda.org.sv).

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The Experience of *Liga Guatemalteca de Higiene Mental, Guatemala*

MR. MARCO ANTONIO GARAVITO

There are two important things we do during our meetings in the communities. We always have meetings with relatives because of what happened during the war. We set up small tables and divide the participants into smaller groups. Then we place small groups of dolls facing the north, south, east and west to represent the disappeared children. In the middle, we put bigger dolls that represent the parents and put candles to represent the hope and light in the search.

We address distinct issues. First, the search for the disappeared children takes place in a framework of cultural and spiritual relationships within the families. Second, I want to recognize in particular the Filipino priest, Fr. Conrado de la Cruz. On 1 May 1980, he disappeared in the middle of our capital city. He was a dear friend and part of the congregation of Sacred Heart. Fr. de la Cruz struggled with the communities of Guatemala. On 1 May, after our public demonstration, he disappeared. It was the last demonstration and we decided not to go out into the streets anymore after more than 100 people were captured and disappeared. A day after the demonstration, they were found with signs from the demonstrations and were covered with blankets.

Guatemala is a small country in Latin America. It has 13 million people where the Philippines has almost a hundred million. Our country is 100,000 square kilometers in area but the phenomenon of disappearance takes place even in a small country. We have 25 ethnic groups that co-exist and many Mayans are the most affected and harmed during the conflict. Guatemala is a gorgeous country but with many contradictions in history.

Our country has the highest illiteracy rate in Latin America but we have an overflowing literature. We have highest level of violence ranking third in Latin America but we won a Nobel Peace Prize. We have prizes in literature and peace – a country full of contrasts.

Between 1960 and 1966, Guatemala was chosen as one of the geographical places where counter-insurgency policies were tried in an *ad hoc* lab. The country was chosen because we are indigenous peoples. The idea to have a counter-insurgency laboratory in the ethnic communities is racist. 250,000 people were killed out of 8 million population due to the conflict. There were 699 massacres well documented such as the massacre of *Cuatro Pueblos* community in the north. In broad daylight and in a market area, there were 400 people killed by the army.

One million people out of the 8 million population were displaced and forced to leave their communities by going to Mexico. Four hundred forty (440) villages were completely erased from the map due to repression. Until today, these communities are not yet rebuilt. During the conflict, these communities were burned by the military. The conflict left 250,000 people disappeared and killed. 200,000 were orphaned; their mother, father or both were killed. 45,000 people were detained and disappeared. A significant number is that 83% of these victims were Mayans. The war had a very racist connotation.

Last year, we started the genocide trial against General Rios Montt for his atrocities. We requested a judgment of genocide. At first, the case was rejected but we filed the case again. The jacket I am wearing now is the jacket of Ixil indigenous people who started the legal fight against General Rios Montt. We wear this jacket to observe important occasions.

The *Todos Por El Reencuentro* Program

Five thousand (5,000) children who disappeared suffered an enormous amount of psychological pain due to the conflict. In the case of Guatemala, we have a complex language map. Our country is still large. It is not easy to go to communities due to challenges in transportation and communication.

We started the program of reunification to support the relatives. It is important to search and find the disappeared children. This may seem easy but it is the human and cultural background that is behind the search.

In 1999, we started this project and identified the objectives:

1. Search and find the disappeared children
2. Conduct psychosocial accompaniment for the families of the disappeared
 - This is the core of the program because a great majority of the people who come

to our work might not be able to find their children but if they are engaged in the process, these relatives will heal their own suffering which they have endured for years. We cannot have a program for reunification if it is not clear that the psychosocial support is the core of the program.

- Contribute to the sensitizing of the issue through the media.
- Discussions on war and massacres were made but the cases of disappeared children were not included. This is the problem of society. We aim to place this subject under the public radar and fulfill the peace agreement between guerillas and the government. The documentation of the disappeared children should also be continued.
- The government should continue the search but until today, the government has done nothing. Our civil society pushes the government to continue the process.

Principles of Work with Families of the Disappeared

It is a human problem. This is a problem of society even if our objective is political; we still consider the social reparation. We do not want our members to become mere statistics. These people have identities and names. We find the human part of the process; these people are ready to fight and struggle. This is the primary element – the humane sense. We must give comfort; ensure the presence of the elements of trust and support. Sometimes, relatives leave the organization when they do not feel supported.

It is a long drawn out process. The victims of political violence need a longer process. Two years is not enough and we cannot let them expect too much on finding their children. We must give long term objectives. This principle began in 1999 and it has been 15 years but relatives say we must not stop and we must continue. Now we have extended the program for another 5 years. Time is very important for the relatives.

The families have to be the principal subjects in the search efforts and political lobbying. The subject and the leader must be the relatives. We cannot speak on behalf of the victims but we must give voice to those who have no voice. We must be brave, make demands and make noise. Victims must be the center of the process. They must be the main actors. We must continue to urge the government to take responsibility and solve these problems.

It is important that the government assumes its responsibility and collaborate in resolving this problem. It should take responsibility because it caused all these problems. It must be held responsible. The civil society cannot solve the problems the government created, hence, we must push the government.

The intervention cannot be given from an urban and centralized vision. Finally, we do not have a program from our perspective as urban non-indigenous people when we work for the indigenous people in communities with different cultures. Their perspectives, logic and ideas must be promoted in finding their children. This is not simply a police and detective work but far more complex. If we only search and find, that is a detective work but that is not what we are. The reunification is a work which is far more complex.

How to plan the reunification of the children? What to do after reunification? The process does not make sense unless we support the children and families. After reunification, we cannot leave them. The process is emotional afterwards. There are questions and issues that is why the psychosocial support must continue. The questions for other siblings, inheritance issues, the sharing of inheritance with other siblings need also to be addressed. We need to work hard, these are very complex processes, and we must think carefully from the very beginning.

The Reunification

We are investigating 1,300 disappeared children from the armed conflict. Due to financial limitations, we focus on areas most affected by the war. Of these disappeared children, 60% are boys and 40% are girls. When they disappeared, they were around 3 to 10 years old. Now, they are about 45 years old. This creates a problem in reparation because the relatives will remember them as if they are still kids. Their mourning process is frozen; they lost the children when they were young but the children are now grown up. All of these things are what we need to understand. We have the documentation from the beginning of the search until reunification.

The biggest cases that we have are in Italy, France and Spain. In 1982, there were 250 adoptions but not all of them are reunited with their biological families. In Italy, we have 14 children waiting to meet their families.

We have managed 400 reencounters. Out of these cases, only 3 have been found dead. The children must be alive somewhere. The 401st encounter will happen in 7 October. These encounters happen in different communities.

The subject of organization and participation of relatives is strategic. We have micro-regions for this program through the participation of relatives and their organizations. We are not only searching but we are also engaging in political actions in different areas as initiated by the relatives and families. We cannot do everything; the relatives formed an association with 500 members. The logo for their community association intended for re-encounter is in the middle of their dolls. In the Mayan culture, the dolls will take the pain away. They put the dolls under their pillows at night and these dolls will take away the pain. The dolls are tools to alleviate their pain. The candle gives energy and spirituality to our nation. During the activities, they bring their dolls and put them on the table. These are symbols for the search and for spiritual commitment.

Above all, we must help rebuild the citizens who have rights in their society. These relatives were alone before but now they are part of the community and they are engaged in the search and in some political actions. The enforced disappearance was enacted to take away the control of peoples' lives and the ones left behind. That is the objective of the counter insurgency program. Our aim is the opposite, we want to bring back life to the relatives and victims so that they participate and assert their rights. These past 15 years, we have been supporting this search and political struggle.

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The Experience of *Centro de Estudios Legales y Sociales (CELS)*, Argentina

ATTY. ALEJANDRO RUA

This presentation is on the search for disappeared children. These children were detained in clandestine buildings where people were tortured and detained for years. They have different characteristics; some of them were tortured with their parents and some were born in captivity when their pregnant mothers were kidnapped. There are children born but their relatives do not know of the birth of these children. The problems started during the period of repression. The children were taken along with their parents. These occurred during the first year of repression.

Some parents search for their pregnant children who were kidnapped. The *Madres de Plaza de Mayo* became also *Abuelas de Plaza de Mayo*. They organized themselves to search for their children and grandchildren.

There are stages that have contributed to this process. First, the return of children kidnapped during the dictatorship in 1979. The Operation Condor is still ongoing. A couple from Uruguay was taken in Argentina and detained in a clandestine detention center by the Uruguayan military officers working in Argentina. The Argentinean military gave places to Uruguayan military where they can kidnap and torture. The abducted couple was taken with

their children. The father was killed, the children were taken to Uruguay and the mother has never been found. The children are believed to be taken to Chile. We did not know then but in the end, the little children were found abandoned in the square, in the plaza. Their photos were shown in the news. Some families adopted them and took care of them.

Due to the support of organizations from Brazil, the news and pictures were widely shared. They saw that the children were found in Chile. Upon learning this, the adoptive family in Chile returned the children to Uruguay. Today, there are 115 children found; the first of these disappeared children were found in 1979. The children were given to an orphanage where they could be adopted later on in Argentina. The *Madres de Plaza de Mayo* knew what was going on. During the abduction of the parents, sometimes the military left the children with the neighbors or they took the children with the parents.

One of the measures taken by the mothers is to ask the Supreme Court not to allow the adoption process until there is an investigation on how these children were obtained. However, the government did not respect the judgment of the Supreme Court.

There was the same challenge in 1979. The kidnappings were denounced in the Latin American Courts of Human Rights, not primarily for prosecution but at least to find resolutions for these cases. When democracy was restored in 1984, the first publication, the *War Booty*, was released by Mothers of Plaza de Mayo. There were already 25 cases of restitution of children taken by the dictatorship. The children were kidnapped while their parents were disappeared. These children were given to an orphanage.

That was the first year when the corpses were recovered. There were many women. We tried to find out if these women had babies before they were killed. The *Madres de Plaza de Mayo* have experts who help enormously in understanding the problems in Argentina. One of the experts showed a way of identification using forensic science. There are ways to find out the history of what happened to the victims. This person is the founder of the Argentinean Forensic Anthropology Team, the organization that helped greatly in identifying the bodies found. They also found ways to determine if the women gave birth or finding the remains of the babies by examining if there is a dead fetus inside the womb. These problems of kidnapping are not acceptable to the society. The people should know this. The policy of impunity supported the persistence of the crimes.

Another milestone was attained in 1986 when the National DNA Bank was created. Until today, we still use this. This is helpful to determine the identity of the kidnapped children. The contributions of the *Madres de Plaza de Mayo* was instrumental for the realization of the International Convention for the Rights of Children. Some of the provisions and articles in this Convention were approved through the lobby and work of the *Madres de Plaza de Mayo*.

In 1982, the National Commission for the Right to Identity was created and today it has the same task for the continuity of the search. In 1995, twenty years after the beginning of the organization, some have been found and returned. This also includes the organization of children and youth. The whole organization participated in the encounters. The entire generation, children, youth, and uncles get together in these organizations. They incorporate the younger generations while using new types of technology and communication for the search. Now, universal jurisdiction has been recognized.

There are rock concerts, theater for identity and many other creative activities. The search for identity has become the social part of the search. In 1998, an organization that works for the historical restitution of the children born in captivity was established. A public fund devoted a task force supported by the *Madres de Plaza de Mayo* to sustain the search of children. In 1999, the first possibility of the search for justice has become continuous for the persecution and punishment for the criminal acts of Videla judged in 1985. He was sent back to prison because of committing enforced disappearance of children.

A judge declared, for example, the pardons of these government officials unconstitutional so that they were reinstated. The Mothers agreed with the National University of Argentina to have a bank of information for the families, to support the reencounters, and to facilitate monetary reparations for the families not only for the parents but also for the children. This process resulted in the commemoration of important dates. The 24th of March 2005 is the National Day for Memory, Truth and Justice. The 21st of October is the National Day for the Right to Identity.

There are some problems when children reach 18-20 years old and are beginning to become adults. The possibility of using their DNA could be difficult because most of them do not have the awareness of the way they had been brought up and educated. Many of them do not want to be reunified with their biological families because of the type of upbringing they had been given. There is a law that regulates the use of DNA and the right not to participate, and to oblige these people to participate.

After all the initiatives, there are rulings achieved through the judicial process. In 2010, one in the main detention centers had been rendered a judgment. In 2011, there was another judgment that condemned top military authorities and the military government that had been involved in the systematic abduction of children as tools of repression. There are 115 children recovered, majority are found alive. Some of them have been able to maintain the ties of those who adopted them, some have cut the ties because their identity was suppressed and they were obtained through criminal identity. This process has lots of international support and many children must be found in the future.

In relation to the subject, we have two bits of news today in Argentina – the recognition of *Madres de Plaza de Mayo* by the United Nations and the death yesterday of one of the members of the *Madres de Plaza de Mayo*. She is one of the most well-known members who had been part of a recognition and reencounter with her disappeared child. There is enormous joy in a reencounter, which is shared by society. The 115 disappeared children have been found and now they are adults. They have become symbols for the need for support in the search. Now, this is a new generation and we look for the rest especially now that there has been recent publicity for children born between a certain period. For instance, the professional football players in Argentina during the World Cup supported the campaign of the *Madres de Plaza de Mayo*. Weeks later, more adults verified their identity. We hope more children will be found in the near future.

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OPEN FORUM

Mr. Sisto Dos Santos (HAK Association-Timor-Leste)

In our experience, we facilitated the surfacing and eventually, the reunion of two (2) children with their families. Their families thought they were dead and have already built graves for them. After being reunited, there was a problem since it is difficult for us to facilitate their ritual and traditional ceremony.

Atty. Yati Adriyani (KontraS-Indonesia)

Indonesia is now a democratic country but impunity continues – there is no justice and there is no reparation for victims. Now there are big political parties in our country and they give support and get support from our society. Last election in July, the General that violated the rights of people almost won during the presidential election.

In your experience, is there a political party supported by perpetrators? The perpetrators actually tried to use the economic approach and reconciliation. How about in your country, is this also happening?

The DNA banking is also interesting. We can use this to help the reunification of children. In Indonesia, the DNA test is an expensive approach. Do you have any recommendation on how to start this initiative or how to establish linkage with other organizations? This will resolve the disappearance of children in Timor-Leste.

Mr. Winston (IKOHI-Indonesia)

Years ago, in Timor-Leste and Indonesia, they set up a body called Trust and Friendship Commission. One of the recommendations is to find the children separated from their parents. Last year, the human rights bodies in Indonesia and Timor-Leste, the National Human Rights Commission of Indonesia and the Ombudsman in Timor-Leste followed up the recommendation of the Commission of Truth and Friendship and they agreed to investigate the atrocities committed in the past. Yati and I are members of the Working Group. We helped follow up this recommendation. Mugi and Yati now are also helping. This is a politicized issue. It has been eight years since the recommendation and the issue is not moving. These are recommendations of the two governments. Is it possible for Argentina, El Salvador and Guatemala to contact the National Human Rights Commission in Indonesia and Ombudsman Body in Timor-Leste? They will be pushed to become more active and will facilitate to hasten the case. The experience of Latin America will help. KontraS and IKOHI will contact and help to facilitate.

Mr. Mugiyanto (IKOHI-Indonesia)

In Indonesia, this is a bilateral Commission that must be established to facilitate the search for children. There are different political contexts, in Latin America and Indonesia. This is not a mainstream issue unlike in Argentina. The issue has become a subject of national discussion. There are also groups who oppose the idea of reuniting. What framework do you suggest and the roles of the government? What is the role of the government, other institutions, and media that may facilitate the progress? This is an expensive activity, including the search, encouraging massive public support and data banking. How about the resources?

Mr. Marco Antonio Garavito Fernandez (*Liga Guatemalteca de Higiene Mental-Guatemala*)

There are many factors. I want to start with a single principle, each case of the family needs to be considered as a case in itself. The mistake that we commit is to think of the relatives and their needs as if it were just a general case. But we must consider each case differently. We must be near the relatives, work with them. Mugi is proposing. But it is difficult to have a political and legal process first before starting this with the families. I suggest put your sight on the families a lot, in a deep way, work with them. If we start with DNA testing, this is jumping ahead, if these relatives will push to look for their relatives.

There is the symbolic cultural aspect. I remember the three cases of disappeared children whom we found. It was difficult to exhume and bring the bodies to their communities but the relatives brought a Mayan priest and a wooden cross. They had the presence of whole ceremony where the child was buried. Through that ceremony, they recovered the spirit and they took back the spirit to their community. It is never just the body, it is the spirit that is the most important thing. This can give light to a cultural point of view, from Indonesia to Timor-Leste. It can be done symbolically. Even the reencounter can be done symbolically. The reason why we have the term “reencounter with the truth” is because, in most cases, we cannot reencounter it physically. The families will know that they have the children and they are still alive.

For us, the little symbols are dolls, symbols of children who disappeared. We have to emphasize the human aspect of our work. We can find mechanisms beyond what we have done due to cultural differences. A reencounter might not happen but families will accept this.

Another case, in 1982, is that of a woman who was part of the armed struggle in Guatemala. She got pregnant and was wounded in a battle. She was taken to Mexico to recover and give birth. She recovered from her wound but she lost her two-month old baby. She was ordered to go back to a guerilla unit. We searched for the child for five years in a Mexican community. We found the boy, he was 15 years old then. We could not tell him that he is living with the adoptive family. The adoptive parents said the mother can visit but must not tell him that he is her child since it will destroy the child. I asked for a picture and I gave it to the mother but explained to her that the child will suffer a lot. The mother agreed and said it is important that her child is alive and she is content with that.

This is symbolical. The families will come with initiatives to deal with their pain and this is a decision we must make. Is this a political effort alone? Sometimes we must set aside the political aspect for the purpose of reparation and healing. In Latin America, we do not have the support of government. We do not even talk about that in Guatemala. We are closer to you in this. Someone said that they have a good president but a bad parliament. Some, the opposite situation exists in their country but in Guatemala, both the parliament and president are bad. We do not get government support and we do not talk about government support.

Gen. Molina is a perpetrator and he is responsible for the genocide against the Ixil people. Now, he is the President of Guatemala. They will not give support and they want us to forget this. This might be going against the wall but focus first on the families and they will make progress.

Ms. Margarita Zamora (Pro-Búsqueda- El Salvador)

The story of Luis Alonzo, after the reunification was that he returned to his country. He is from El Salvador but he is a North American citizen. We, the relatives and organization, join in the process of re-encounters. There is only one young child in France who lives back with the biological family in El Salvador. The rest remain to live with their adoptive parents but it is important that they recognize their biological families. We cannot push these children to live with their biological families. There is a break in their development and they live with their adoptive parents. In another case, there are children – ten and twelve years of age. These are cases of minors abducted but they cannot remember anything. We found children who were only 15 days old when they were abducted from the arms of their parents and their parents were murdered. We resolved the cases thru DNA tests. It is also important that the families understand that they cannot get their children back. This is the reality, it is important to know the truth and this can be painful.

We have always demanded. But these children grew up with other families and they do not know their origins. We always find ways for parents to tell their children the truth in a process that must be participated in by adoptive families. The decision must be harmonious. Having opposing ideas will not help.

We have cases that children are told that they have different parents and that is painful since the children did not go through a process. The families must be organized and later, the DNA test can be done. In 1994, we were organized and the DNA bank started in 2005. Fr. Jon de Cortina helped us to establish the DNA bank.

At the beginning of the process, DNA samples were taken and sent to a laboratory in the United States. It is important to find the links and right connections especially people who know the subject because the bank must meet criteria in documentation. We cannot do that without following the protocols, processes, and criteria that must be met. Historically speaking, the country that has the longest history is Argentina. All we can do is support you. We are the little angels of America.

Atty. Alejandro Rua (CELS-Argentina)

Argentina has specifics that we want to share. It is a large country with exiles from different countries, both from World War 1 and World War 2. It has had military dictatorships that curtailed our freedoms, but it has no repressive violence like the dictatorship we had in 1976 and 1983. That was not the norm. The abduction of children is inconceivable. Our country has no doubt about the need to find and punish the perpetrators. The search for children has never been questioned. The enforced disappearance of adults is different. It is inconceivable that those disappeared children have been assassinated. Even the relatives who know that children were born under captivity still want to find the children. The difficulties in reencounter exist at different levels especially that we have new policies now. A family adopted a child from an orphanage. How will the family deal with the reality that the disappeared children will recover the stories that happened before they were adopted? Some children are adopted by families who themselves are responsible for the killing of their biological parents. These children believe differently as if they are now the children of those who kidnapped their parents. There is no possibility of reencounter but the families that kidnapped them must be brought to trial. A person who is around 20 or 30 years old will face that the parents they thought as their biological parents are the ones who kidnapped them and must be convicted and they will be introduced to their biological families.

We have different approaches depending on the age of the child. Those who are 20 to 30 years old will have a lot of refusal to accept the reality. These children might be around 30 to 34 years old, they will pass their last names on to their children. Some are looking for their identities, since they must pass their last names to their own children. We are very thankful in Argentina. Even if it is painful, we are advancing in the process of dialogue and truth. The sons and daughters are no longer children. They can share their traumatic and difficult experiences but these are all liberating as they recover their identities.

We try to recover support. They have no voices, they are isolated and they do not get support. But the situation is not always like that. In 1990 to 2000, when impunity reigned in Tucuman, a province in Argentina, the military chief, a general, was judged but he was not condemned because of impunity laws. He ran for office and was elected by the same region that he subjected to repression during the dictatorship. The same political discourse is happening, repression still exists. One of our artists from Tucuman never went back to that place but society supported him. We also have repressive parties and people support them even after knowing they were repressors.

Ms. Mary Aileen D. Bacalso (AFAD-Philippines)

Are there cases of children who disappeared and most probably children whom you are looking for who refuse to undergo the DNA tests? What are the effects of this refusal to their biological parents?

What are the efforts conducted by your organization to inform society about what happened in finding the disappeared children and reuniting them with their families? Are there cases when children and parents asked for confidentiality and not making their cases public? On the adoptive parents, did they know the circumstances of disappearance, or did

they know those who participated in killing the biological parents? Are there cases like these? When does the work of organizations end? Margarita said there are cases which are difficult to continue and to follow up.

Dr. Edita Burgos (*Desaparecidos* and FJBM-Philippines)

The enormity of the damage done to parents and to society is indescribable. Can you comment on the concept of forgiveness founded on justice? How do parents cope and must forgive even if they are confronted with emotional turmoil and revenge?

Atty. Melissa O'Donnell (HAK Association-Timor-Leste)

In relation to the experience in Timor-Leste, the families that we are working with have a level of awareness. In psychosocial efforts you are engaged with, the families are happy knowing their children are still alive. Do you encounter situations when parents do not think that their children are still alive? Do you still continue with the process of search in this case?

Mr. Marco Antonio Garavito Fernandez (*Liga Guatemalteca de Higiene Mental-Guatemala*)

The work of the search for the disappeared lies with the family, the process starts and ends with them. It is a basic ethical principle that we must consider. It begins with the families from the moment the case is taken up. The psychosocial work is not only psychological, it is more than that. Telling their stories of finding their disappeared relatives is the first process. From the moment that we think that we find the disappeared or the truth of what happened to them, we start the reencounter even if it will not take place physically.

There must be a continuous support and process. If the family will find the person, this might become complicated. In Guatemala, the families never accept that their children are dead. In the Mayan culture, they have this belief attached to their dreams. For the last 30 years, they are dreaming about their children and that is an important factor because they believe their children are still alive and only live elsewhere.

A man who looked for his child called us and said not to look for his disappeared child, as the child is dead. This information is according to a bird. In villages, the people have a canary and there are papers. We ask questions and the bird will pick up a paper. Through that process, the man received the answer when the bird picked up a paper that said, "do not look for the child, the child is dead." But for the rest, we must continue our search and motivate the families to have the energy go and continue their search. The organization helps them not to become dependent.

We do not have problem of forgiveness, which is in the middle of the search. When they search for their children, they say they do not look for guilty people; they are looking for their children. Maybe, after finding their children, they can work on political justice but the immediate concern is to find the disappeared children. We went through judicial process, filing the *writ of habeas corpus*. That is where our role may end or may not end. First things first.

In 2006, we facilitated a meeting for all those reencountered with the families. Each family made a plan on how they will communicate via mobile phones. They find their own strategies. To think that we must guide them may not be the right way.

When we do the first reencounter, we did not have any idea of what would happen. I spoke to Fr. Jon Cortina in El Salvador. The people involved speak different languages, Fr. Jon said they would support. Remember, life will open and does not interfere with the dynamics. We might be giving too much. We can just be there if they need us. Life opens in its own ways. Life might open slowly, that is an important lesson. They have their belief that little dolls will take away the pain.

Ms. Margarita Zamora (*Pro-Búsqueda*-El Salvador)

In terms of confidentiality, we have cases when these young people asked for confidentiality. They did not even know if they will meet their biological parents. There are children who grew up with their adoptive parents who killed their biological parents. One parent killed four members of her family and they took her. They took this person to study in the air force, to go the same way like the adoptive father. This person met those persons in the video, the youth discovered that her family had been found by *Pro-Búsqueda*. She insisted on answers from her adoptive father, how she was taken and where. The father almost died and her mother told her not to ask her father again. She was one of the first children whom we took a DNA sample. The family was looking for a girl. Her DNA is important for us. All of these profiles of the children who want to reencounter with their families are important. They are emotional and want to know about their origin and answers to their questions.

In creating the possibility that the child is alive even if the parents think the child is dead, the possibility of finding a child alive is minimal as these children disappeared during military encounters. The dead children have been found but we must keep our hope alive, this is another possibility. The context of cooperation is important, so we have a sense to know what type of process is needed. The most important thing is to know the truth even if we think the person is dead, he or she may not be.

The opening of military archives will facilitate the validation of facts. We can find out how many children were abducted during their 12 years of military operations. Where will we go? That, we do not know. The needs of the family must be considered because in many of the cases, there is a language barrier. Communication is not definite whether reintegration is completed or not. Another is finding support from other countries, such as in the US, the groups of young people that have been found must come together and share their experiences.

Atty. Alejandro Rúa (CELS-Argentina)

On Aileen's question, there has been a lot of history related to the subject in Argentina and it is dependent on the judicial process. How do we proceed now? There are cases of children who went through the judicial process with their parents. The judge told them they detained the parents and they took the child. The courts are part of that process. From that time, the experience of Argentina in dealing with the subject became more humane. All dilemmas remain, these children who do not want to be reencountered with their biological parents. This is a big problem to approach but we try to resolve it. There are children who do not want to be reencountered and some children do not want to give their DNA samples. The people who abducted the children cannot be forced to get the DNA samples from these

children. The DNA samples can be obtained from the hair in the places where they live. The punishment of the perpetrators is important. These are the same people who brought up these adopted children. These are crimes related to enforced disappearances that pretend to attain reconciliation without justice. These are crimes related to enforced disappearances that pretend to attain reconciliation without justice. These are unacceptable. The problem with children is in the same way not different from the reaction of the Argentinean society.

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Workshop

Workshop Questions

1. Identify the lessons/insights learned from the presentations.
2. Which strategies/approaches used in the experiences shared can you possibly apply or replicate in your own country/region?
3. Which are not possible and why?
4. Identify immediate doable activities that you think can be planned in the immediate future and the proposed mechanism of coordination with AFAD/ICAED.

Results of Discussions

1. Documentation of case history and developing cases
2. Public awareness campaign
3. Time now for AFAD and ICAED to play a role in Indonesia
4. A very great experience to have a conference for the relatives

5. It is important that families of the disappeared will come together and share their experiences.

Public awareness and consciousness-raising campaigns using all means available:

- Need to scale up use of social networking like Facebook and Twitter;
- Use of “stars,” cultural icons, writers, poets, musicians, painters, singers is very effective;
- School curriculum: It needs to become part of the culture and history taught in schools;
- Popularized versions of reports of human rights defenders through cartoons, short stories, and animations;
- Intriguing images on the Internet e.g. posters;
- Animated books for children depicting cases of enforced disappearances from different countries that can be shared on Facebook. This could be a project for AFAD if funds can be gathered. This can be done both at the national level in the national language with people who are well-known in that country. There can also be an international project with cases from different countries;
- International campaigns can help governments who are not moving to act;
- Scale up information sharing across countries among groups of human rights defenders to help raise awareness about other countries’ cases as well as learn lessons from them;
- Foster technical assistance across countries and across human rights organizations to help share the details of each case on how to implement strategies;
- Contacts can help identify specifically about concrete cases; through the information-sharing platform, one can find out where help is needed and where others can help;
- If there is a common space, specific information or support requests can be processed and shared;
- Summary of best practices put together by AFAD in an understandable language;
- During the International Week of the Disappeared, parliaments across the world can put up pictures of disappeared people;
- Try to get donations even if minimal from World Solidarity Fund of the UN to give visibility to the cause.

Suggestions

- On the documentation of case history of enforced disappearance, this will be operationalized by every participating organization
- For AFAD to consolidate the summary of best practices, translate the proceedings of this conference and distribute to participants from different countries.
- Observe quality control before sharing the documents to make sure that everything is consolidated.

Caroliza Tulod-Peteros (AFAD-Philippines):

For the proceedings of this conference, we can highlight and elaborate the discussions. This is doable. AFAD has to look for funds for this.

Melissa O'Donnell (HAK Association-Timor-Leste):

The organizations will have difficulty in getting funding but with assistance of AFAD who has reputation of working on similar projects, AFAD can possibly assist us. Another way is to communicate via Skype.

Wadih Al Asmar (FEMED-Lebanon):

The existing Truth Commissions of different countries can give rich historical ideas. The process of putting this up can be shared with the associations of families and other organizations.

Alejandro Rua (CELS-Argentina)

This exchange needs a common space so we can make use of the results. A common space for us to access will be helpful.

Roberto Garretón (Chile)

It is an interesting idea to include the Truth Commission. This body has been used to document the violations of human rights during the period of dictatorship. First in Argentina, then there are others. Every end of a dictatorship, there is always a Truth Commission except in Brazil, but you cannot set up this commission for disappeared people.

Each country has different situations such as in Timor-Leste. In El Salvador, the commission was set up by the Salvadoreans and people from other countries like Colombia, Venezuela, and United States. It can be like that. In Guatemala, two international groups were nominated through which one can get a great team to create this Truth Commission but this must be set up by the government. Setting-up a commission in a different country is not a good idea. Setting up a Truth Commission for Indonesia will not make sense, just an example. It is the civil society that needs to move and propose it to the government and ask other governments to see if they can receive support for the proposal but it should be the government who must set the commission to clean the image of the country.

Civil society must propose that. The members of the commission can be from Timor-Leste and other countries. That is a good combination but expensive. Having foreigners in the commission is expensive since the foreigners must live in Timor-Leste.

Caroliza Tulod-Peteros (AFAD-Philippines):

What is doable at the AFAD level is the publications of a book, finding funds for technical assistance, make use of technology and link for a common space for sharing of information or via Skype or other ways to share information for technical assistance. Will AFAD take the lead in putting up this one or will there be another? How about ICAED?

Mary Aileen D. Bacalso (AFAD-Philippines):

All these things on what AFAD can do and cannot do, we will talk this over in the Congress because we will have a congress and we will review all these suggestions.

Caroliza Tulod-Peteros (AFAD-Philippines):

The kit will serve as temporary reference for the documents discussed in this conference.

Feedback of Participants on the Conference
Question: What is good in this conference and what must be improved?

Atty. Samia Islam (Odhikar-Bangladesh)

This conference shared to me useful lessons that we can use in Bangladesh. The AFAD Secretariat, Carol and the moderator are very helpful.

Mr. Marco Antonio Garavito Fernandez (*Liga Guatemalteca de Higiene Mental-Guatemala*)

I thank you for sharing these days with me. There are many lessons I will take home. The human aspect is a sensitive part; it is important. We should consider doing this again because the solidarity that we have formed is vital. The regimes are close to each other and we must do that too. We must do another exercise similar to this.

I want to make a request. Three days ago, there was statement made by the Court of Human Rights saying the Government of Guatemala has not implemented the recommendations for the eleven cases. The government has not implemented the resolutions of the International Court of Human Rights. The Government of Guatemala is completely against the interest of the victims. On Tuesday, I will meet with the victims. The government is being criticized despite the lack of human rights and the lack of fulfillment of responsibilities in Guatemala. I need your support and solidarity so I can share this document. We will be satisfied if we get your support. Thank you.

Ms. Margarita Zamora (*Pro-Búsqueda*-El Salvador):

Thank you for being here, thanks to AFAD. It entailed a lot of work so that we could be here. It is important to see the realities of the people who are here. We should take the case of others. When they said in Spanish, we are the little boys of America, still we have a big heart. We have the solidarity and great inspiration that we can use for our work. It is important for us to reproduce what we have here and share it with the organization at home. We have associations of families behind us, we share with families, and we know that each one of us can share and reproduce the documentation of what is happening. There are a lot of people who have this experience that we went through before. We suffered the worst but we can contribute to planting the seedlings of change.

Atty. Yati Adriyani (*KontraS*-Indonesia)

Thank you to the AFAD Secretariat. I have heard various examples that we can reflect on for our country. The things that I heard here made me more sure. After what we experienced in Indonesia, there are important lessons to deal with in terms of impunity.

Atty. Alejandro Rua (CELS-Argentina)

I want to say thank you for a very interesting meeting. I take a commitment to strengthen the solidarity links. Argentina is very hopeful now. It had also an experience of desolation and we were looking for solidarity at one time. Those of us who are part of the way can share the experience and return the solidarity that we received during the most difficult times. There is no other way; international solidarity is the key. The local answer must be supported by an international response of solidarity. This meeting and the contacts we have are important. We can strengthen them as we return to our work in our country. Remember, many people here need our help.

Atty. Mandira Sharma (Advocacy Forum-Nepal)

I want to thank everyone for your active participation. What we have achieved in our struggle started with the initiatives of Latin America, such as the experience of Argentina makes all of us hopeful even from a distance. What happened in Argentina and Chile is also happening in other countries. These sharing will help our work on the ground. I wanted to thank all our friends from Latin America for sharing their experiences, especially to Roberto, who shared information on crimes committed.

Dr. Irina Krasovskaya (We Remember Civil Initiative-Belarus)

What we are doing is fighting the government and dictatorship. This is very good for all of us to be here and find time together. We stand by each other, this activity here is supporting each other and moving forward. We do not need to prove something. The kind of people that we have here show us that we are doing the right thing. Every time I complete an event like this, I always have a good feeling.

Atty. Gabriella Citroni (Track Impunity Always-Switzerland)

I appreciate everyone for my short time of being here. I share this feeling that we have learned and it charges us; it is psychological. We have our struggles, this is inspiring and we find our courage.

Mr. Sisto Dos Santos (HAK Association-Timor-Leste)

I have not communicated well but something pushed me to talk with you all in this exercise. When Melissa helps us in Timor-Leste, I find more confidence in communicating. I have limitations but I have commitment to continue what we have started. On 10 September, I met Melissa and Ruth of FEDEFAM. This struggle in Latin America, Argentina, and Chile makes me want to meet you all. When I heard that Margarita of El Salvador would come here, it makes me more inspired to be here. That is why when I told Yati, “*Is it possible for us to continue with this struggle 50 years from now, like what Roberto is doing?*” Consistency is not completing the project that the donor is funding us. Maybe one day, no one will support us because they are tired. But I hope we remain in our struggle.

Mr. Khurram Parvez (APDP-Jammu and Kashmir)

Very inspiring, Sisto. As always, you have shared to us positive energy. I was feeling guilty because my community has been flooded and the rest of the members of relatives’ houses have been flooded. When I heard Atty. Roberto Garretón would be here, that made me eager to join. It is more criminal to lose hope in fighting the crimes perpetrated against us. The experience of everyone, especially of Latin America, has inspired us. There are other experiences from Lebanon, Iraq, and Africa. We do not hear these often. We can share more about what we have experienced. I can share our Kashmir experience. Listening to others, this is a different conference. We want to absorb and listen more.

Atty. Melissa O’Donnell (HAK Association-Timor-Leste)

I am privileged to be here with you since most of us are from countries with experience in human rights violations and I feel so privileged. I cannot walk away from this commitment and having heard all of the things you have shared, I thank you.

Mr. Wadih Al Asmar (FEMED-Lebanon)

Thank you to AFAD and to Aileen. All of us mainly in Lebanon, we have worked since the early 1990s. We are used to doing this. We have this conference every year but this is a reminder for our commitment. Since the day that we sat down and listened to the *Madres de Plaza de Mayo*, we continue to share our commitment. Enforced disappearance is not simply a missing case. It is not an accident; it is a global concern, a person is purposely arrested and held *incommunicado*.

Atty. Roberto Garretón (Chile)

One must ask: Why are we in a subject of human rights if this is not happening to us but happening to other people? We must change our activities to devote ourselves to these tasks. We are fighting against powerful people, against governments. Nobody violates the

rights of the rich. They are practiced in abusing rights of others; they assassinated and they disappeared others. Politically, I was an opponent, with brutality I saw the planes bombing the urban center of Santiago. I saw the bombs falling. I saw the burning of a place in Santiago that changed me – my mission, my profession of being a lawyer. I used to be a labor law justice but that is over. I opted to look for prisoners to know where they are. The word disappeared did not exist either. We worked with tribunals because Chile was at war. The fact, if you think I did this because of solidarity, you are wrong. It is not because I was enraged but because of indignation. I cannot bear seeing all the injustices done to people. When I sat in front of the Committee, I saw some hope but I saw even more pain. Many people from the government are involved.

A family from Uruguay was found in Chile. I was part of that case. These children arrived in our office in Chile. Why were we involved? We were and we are because of indignation and because we are unable to bear this injustice. We are encouraged by the trust of the victims. They put their hopes in us. The majority of the victims are communists, socialists, or masons. We are from the church but we work together. There is a spirit and a feeling that we cannot quit because of violence and lies. The dictatorship lied; so many judges lied; people were detained. The lies that international communism will pull down our country were lies of the dictator. Solidarity is important. Not all have this the way Chile had. The international solidarity, a lot of it is a universal political subject, by Indonesia, for example. But other countries never showed this kind of solidarity. Vietnam had it, and Chile, too. Later, people supported Guatemala and El Salvador but only at the end. This is part of our struggle....I must be a lawyer. In this task, I cannot think about winning and losing. I cannot be a lawyer outside the fight for human rights.

Human rights were discovered in the 18th century. Before that, we had no thoughts about human rights. In the 20th century, which is the best part of human history due to many reasons, we receive solidarity even if there are brutal wars. We do not look at wars; we suffer because of war. We suffer for Iraq, Timor-Leste, and Chile. This is new in human history.

AFAD is a product of culture, of friendship and of defeating indifference. It is our problem, not a problem of other people. I am happy to be here. I rarely say no to an invitation, to meetings for human rights. Next Saturday, I am arriving in Timor-Leste. Next Saturday I go to Panama. This is my life. Sometimes, I say brutal things but that is the truth. The person who was interested in my life was Pinochet. Even worse, he had a good influence on me. The good thing is to put an end to him. That is the way it has been. Life has many changes for me. I also enjoy things during this seminar. Sharing values and listening to stories I have heard for 41 years. I heard stories in Congo where I was there for almost nine years in missions I have done work in Latin American countries like the Dominican Republic. Everything is enriching. I am thanking all for understanding, for the work, and listening to all of you who have given me courage again. A person that gets involved in human rights never stops.

Ms. Mary Aileen D. Bacalso (AFAD-Philippines)

Thank you for coming here from far-away places, traveling between 30 to 40 hours from Latin America. We did not send a general invitation. I spoke to each one of you through

Facebook, Gmail, and Skype. Everyone is important. With your participation and wealth of experience, this is a success. I thank all members of the Secretariat who are here Carol, Ron, JB, Toni, Mabeth who finished all these preparations. I thank NED for funding us, HIVOS for giving us money at the last minute to make sure more Latin Americans can participate three weeks before the conference. To bring us to our countries, the challenge is for follow up for AFAD and ICAED work. Thank you all for your support and participation. Thank you also to Milabel for being here despite the flood.

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Approval of the Conference Statement

Ms. Mary Aileen D. Bacalso (AFAD-Philippines)

The statement is an attempt to capture the discussions we had during the last four days. It is long because we do not want to exclude any situation on enforced disappearance of any country that is represented here. I have consulted individuals and some of these paragraphs are completed by Atty. Garretón and some of you added paragraphs for other countries.

Final Statement

17-29 September 2014, Manila, Philippines – We, the participants in the conference on “Sharing Best Practices in Advocating Legislation Against Enforced Disappearances” coming from organizations from Argentina, Bangladesh, Belarus, Chile, El Salvador, Guatemala, Hong Kong, India, Indonesia, Lebanon, Nepal, Philippines, Thailand, Timor-Leste and the United States of America have convened in Manila, Philippines, the first and only Asian country that has enacted a law against enforced disappearances, but has not yet signed and ratified the International Convention for the Protection of All Persons from Enforced Disappearance (Convention).

Organized by the Asian Federation Against Involuntary Disappearances (AFAD), this inter-regional conference, which aims to share best practices in advocating legislation,

has gone beyond sharing of experiences on legislation. This sharing of experiences has transcended discussion on legislation and comprehensively tackled the imperative for truth, justice, reparation, memory, and guarantees of non-repetition.

We highlighted the gains during the last years of struggle against enforced disappearances. We emphasized that these are fruits of the permanent work done by the families of the disappeared and their organizations, of the national and international solidarity. We emphasized the peaceful efforts in obtaining truth and finding disappeared loved ones in as much as we give recognition to the importance of consistency and the love for the victims.

The search for the disappeared persons were committed in the context of repression characterized by the cruelty and cowardice of public agents, protected by guaranteed impunity and in official lies that denigrate more the perpetrators rather than those who are affected.

We lament that until now, many states in the Asian region are not yet parties to the Convention. This is ironic because Asia is the continent that submitted the biggest number of enforced disappearances to the United Nations Working Group on Enforced or Involuntary Disappearances (UN WGEID). States have to guarantee all of their citizens that they would never again be vulnerable to violations of the right to life, to physical integrity and should guarantee the access of victims and their families to justice and adequate reparations.

We likewise declare that crimes against humanity such as enforced disappearances should never be investigated and tried by military tribunals.

In the course of our inter-change of experience, we reflected on the situations of specific regions and particular countries. In the Asian context, the Philippines is the example of a country that criminalizes enforced disappearance through R.A. 10353 or the Philippine Anti-Enforced Disappearance Act of 2012. It has the record of being the first and only country in the vast region of Asia to have this law. With the law's Implementing Rules and Regulations, the spirit and letter of the law have now to be fully implemented. Yet, two years since the law has been signed, no case has been filed yet. With the recent capture of retired General Jovito Palparan, accused for being the mastermind of the disappearance of two lady students of the University of the Philippines and of many other cases that occurred during the Arroyo administration, filing a case of enforced disappearance is imperative.

Bereft of strong human rights instruments for protection to avail of, Asian human rights defenders especially in Southeast Asia push for a strong mandate of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and demand them to particularly tackle cases of enforced disappearances, one of which is the case of the disappearance of Lao development worker, Sombath Somphone. Yet the principle of non-interference is invoked by ASEAN states when they are called upon to take positions on particular cases. If the AICHR is to be true to its mandate, it should take positions on specific cases.

In Indonesia, thousands of enforced disappearances and killings during the 1965 massacre remain unresolved, such as the cases during the eve of the fall of Suharto. The assassination of the former AFAD Chairperson, Munir, remains unresolved. The former government failed to fulfill its promise to ratify the Convention. We join our sisters and brothers in Indonesia to call on the new government to give utmost priority to justly resolve

past cases of human rights violations if it is to learn from its dark history of dictatorship and move on to a genuinely democratic government.

Timor-Leste, a new country which acquired its independence only more than a decade ago, is stained by the blood of those who were killed and disappeared during the Indonesian occupation. One third of its population were killed and made to disappear and more than 4,000 children were forcibly taken during the conflict and believed to have been brought to Indonesia and whose identity has been changed, thus depriving these children of the knowledge of their historical identity. The truth about what happened to them remains unknown up to this day. To this end, the government must be serious to expedite the establishment of the bilateral Commission on Disappeared Persons. A breakthrough in this regard is important if Timor-Leste has to move on as an independent country, learning from its bloody history.

India, Pakistan, Nepal, Sri Lanka and Bangladesh since long ago have been on the pretext of countering insurgencies, subjugating people to enforced disappearances and the work of human rights defenders in these countries has been made difficult by their governments. The importance of documentation was highlighted through the reports like “Alleged Perpetrators” which was produced by APDP in Kashmir, which aims at focusing on the individual culpability of the government forces responsible for enforced disappearances. It was observed that till States do not relent impunity for the armed forces, the campaign of naming and shaming the individual perpetrators would surely create some kind of deterrence.

The case from Nepal of Colonel Kumar Lama, in which Advocacy Forum has been successful in getting him arrested in the United Kingdom under the principle of universal jurisdiction was discussed. It was observed that this strategy of filing cases in different countries who have laws allowing the universal jurisdiction and human rights violations should be explored.

Our representative from the *Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos* shared about the existence of the Inter-American Court for Human Rights, which rendered a sentence pronouncing the state of El Salvador responsible for the disappearance of the Serrano-Cruz sisters. The state complied with reparation measures, which include among others, a public act of recognition of state responsibility, the publication of the sentence, the proclamation of a Day dedicated to disappeared children, providing medical and psychological attention to the families of the disappeared. Many other cases in other parts of Latin America have been presented to the Inter-American Court for Human Rights, which brought concrete achievements to the victims and their families.

The *Liga Guatemalteca de Higiene Mental* has been working on the search for disappeared children during the last fifteen years. Despite having an absence of support from the government of Guatemala, more than 400 children who disappeared have been found and have been reunited with their biological families. We call on the government to cooperate with the *Liga* in this important effort as part of the dream to attain genuine and lasting peace.

We have shared the situation in Argentina and Chile, which both experienced the dark years of dictatorship resulting in enforced disappearances. Never during the time of dictatorship could the victims imagine that one day, they would realize the end of the dark

years of repression resulting in a series of actions to search for the disappeared, to prosecute the perpetrators and to attend to the devastating consequences of enforced disappearances. So impressive is the level of organization of families of the disappeared and so commendable is their persistence that they are able to attain concrete victories in court. In Chile, the downfall of Pinochet manifests the triumph of good against evil – a clear indication that with courage and determination, human rights violators shall have their day in court. On the part of the Grandmothers of the Plaza de Mayo of Argentina, the finding of the 115 grandchildren and their consequent reunion with their biological parents are sources of human gratification, worth the commendation by the international community.

We have also learned about the situation in Belarus, the only remaining dictatorship in Europe, a country where enforced disappearances occurred from 1999 – 2000. Four famous politicians and public activists were kidnapped by a “death squad.” The fate of the victims are unknown. Despite the demand of international organizations and the decision of the UN Human Rights Committee, the government did not investigate these cases properly.

The Euro-Mediterranean Federation of Families of the Disappeared (FEMED) speaks of enforced disappearances in Morocco, Algeria, Lebanon, Turkey and many other countries. In Libya, Syria and Iraq, enforced disappearances are on-going in huge numbers. In Lebanon, many disappeared persons are believed to be detained in Syrian prisons. In Turkey, enforced disappearances are committed in the context of the Kurdish Party of Workers’ struggle for independence. In Morocco, despite the Equity and Reconciliation Commission, dozens of families are still waiting for the truth of the whereabouts of their disappeared loved ones. In Algeria, families continue the struggle for the acknowledgement by the government of the issue of enforced disappearance and for the establishment of the truth.

In our four-day conference, we shared and reflected on the distinctness and the commonality of our situation and our response. In so doing, we have identified lessons:

- We underscored the vital importance of documentation as the most basic requirement in our search for truth and justice and in our campaign to get the widest possible support in this difficult work;
- The importance of forming associations of families of the victims in the struggle for justice and of ensuring that the struggle against disappearances in whatever ways has to be owned by the families of the victims and the rest of society;
- The work against enforced disappearances is jointly done by victims, lawyers and other members of civil society;
- On the aspect of reparation, it is important to fully maximize existing forms of reparation and not limit these to material and monetary aspects. Reparation of dignity of the victims for a damage done because of human rights violation is of paramount importance;
- Media and communication work are very important to disseminate information and to make enforced disappearance a social concern;

- In view of the global character of the crime, international solidarity is imperative to strengthen a response. This will complement the work at the national and regional levels;
- In Asia, the signing and the ratification of the Convention and the recognition of the competence of the UN Committee on Enforced Disappearances should be given prime importance.

We conclude this four-day conference on the eve of the 41st anniversary of the declaration of Martial Law in the Philippines, with the hope that as the dark days of the repressive regime are over, in the not-so-distant future, the remaining repression and darkness would disappear.

Losing our hope is a bigger crime than the actual crimes perpetrated against us. Therefore, in this conference, we resolve that we are the agents of hope.

The Conference Participants

Advocacy Forum-Nepal
Asian Human Rights Commission/Asian Legal Rights Commission-Hong Kong
Asosiasaun HAK-Timor-Leste
Association of Parents of Disappeared Persons-Jammu and Kashmir, India
Atty. Roberto Garretón (Chile)
Centro de Estudios Legales y Sociales-Argentina
Citizens' Alliance for North Korean Human Rights-South Korea
Conflict Victims' Society of Justice-Nepal
Euro-Mediterranean Federation Against Enforced Disappearance-Lebanon
Families of the Disappeared-Sri Lanka
Families of Victims of Involuntary Disappearance-Philippines
Free Jonas Burgos Movement-Philippines
Human Rights Claims Board-Philippines
HURIDOCS-Switzerland
IKOHI (Indonesian Association of Families of the Disappeared)-Indonesia
International Commission of Jurists-Southeast Asia
Justice for Peace Foundation-Thailand
KARAPATAN-Philippines
KontraS (The Commission for the Disappeared and Victims of Violence)-Indonesia
Liga Guatemalteca de Higiene Mental-Guatemala
Odhikar-Bangladesh
Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos-El Salvador
Track Impunity Always-Switzerland
We Remember Civil Initiative-Belarus

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Epilogue

This book is a powerful tool for reflection and action, for international solidarity between grassroots organizations and families of the disappeared, for accountability from State actors in particular the executive, legislative and judiciary branches; for awareness of lawyers, academics and citizens from all walks of life.

In my personal capacity as well as on behalf of the UN Committee on Enforced Disappearances, I congratulate the Asian Federation Against Involuntary Disappearances (AFAD) for convening such an inter-regional event with a lot of hard lessons and best practices in the fight against impunity, according to the so-called, “Joinet Principles” across the world.

The International Convention for the Protection of All Persons from Enforced Disappearance needs three very simple pre-requisites to be fully efficient.

- First, universal ratification from all United Nations members and the lobbying of AFAD is particularly necessary for signatures and ratifications in Asia, considering the obvious imbalance in the membership of the Convention since no continent escapes the complexity of the crime of enforced disappearance.
- Secondly, domestic legislation to implement the legal framework of the Convention with its safeguards and protective measures, like *habeas corpus*, while also adapting the criminal code to new incriminations and strict definitions, such as crimes against humanity. The comparative perspectives of lawyers during the interregional conference were very useful to address gaps of protection. In this regard, the Anti-Enforced or Involuntary Disappearance Act of 2012 in the Philippines should be a promising step towards full international commitment and ratification of the Convention.
- Thirdly, a vibrant civil society for advocacy and early warning, according to article 24, section 7 of the Convention which stipulates that “Each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.” The UN Committee on Enforced Disappearances (CED) needs the input of NGOs for information, such as shadow reports, and to trigger the mechanisms of urgent appeals in order to find a disappeared person “as a matter of urgency.” The Convention also provides protective measures to react to intimidation or reprisal against persons involved.

On all these topics, the book illustrates the challenges for human rights defenders and the eagerness of AFAD to fulfill its noble mandate. I am grateful for this wonderful contribution to the common goal of all stakeholders and for this collective commitment for the sake of truth, justice and dignity.

I pay tribute to the courage and dedication of the AFAD members.

Professor Emmanuel Decaux

President of the United Nations Committee on Enforced Disappearances (UN CED)

Appendices

Appendix A

Enforced Disappearance in Some Parts of Europe: Emphasis on the Republic of Kosovo

Association “Shpresimi,” Republic of Kosovo (FEMED)

Dear participants of this Congress, whose work is very promising for many families of the disappeared all around the world –

Greetings! I am wishing you a fruitful work throughout your humanitarian mission.

I will try to present to you briefly the situation of disappeared persons in the Republic of Kosovo, which belongs entirely to the period of the unequal war between the military, police and paramilitary forces, and the Kosovo Liberation.

The history of the occurrence of disappeared persons in Kosovo originated in the early days of the intervention of the international community forces in response to the humanitarian crisis caused by the politics of Slobodan Milosevic, the criminal of the Balkans. Under the regime of Milosevic, hundreds of thousands of people were deported from their ancestral lands causing the greatest exodus of the century in Europe.

How did forcible disappearances of Albanians in Kosovo begin? Extraordinary revenge from Serbian police and paramilitary fell on the unprotected population in villages and cities of Kosovo. In my speech, I will mainly focus on the methods of disappearances in my hometown, members of my community whom I have known personally. The same methods were followed all over Kosovo because it adhered to the same policy of extermination against Kosovo Albanians from the same political leadership, the same military and police commands, during a period of less than three months. More than 13,000 civilians – men and women, old people and children were ruthlessly executed and massacred by paramilitary forces. Many of the families believe that someone violently took their loved- ones as missing persons and they believe they are still alive somewhere. This was because, after mass executions, the dead and some who were still alive were taken and transferred to different locations in Serbia.

The lost traces of the crime! Aware of the danger of prosecution for war crimes after mass killings of entire families, victims were taken and moved by assassins to other locations and buried. Feeling unsafe because they could be detected, and in an effort to hide the traces of the crime, most of the victims were exhumed and transferred more than 400 kilometers away from the crime scene to the territory of Serbia. Mass killings, extrajudicial executions, burning the dead bodies including those still alive, hostages of war, enforced disappearances, forced deportation of the population, the destruction of the economic welfare, and cultural heritage are more than a proof of genocidal Serbian policy towards the Kosovo Albanian population during the 1998-1999 war. All these acts are not only the consequences of war but the goal of war itself, as a continuation of Serbian hegemonic politics against the Albanian population to displace them from their lands and change the structure of the population.

Activities of Kosovo associations, international organizations and the UN Administration After the war, Kosovo was under the administration of the Security Council of the United Nations. The issue of disappeared persons was called a reserved right of this administration. Even today, it continues to be a reserved right under the administration of EULEX (European Union Rule of Law Mission in Kosovo).

The UN Security Council in June 1999 through Resolution 1244 established the Interim Administration Mission in Kosovo. The mandate included the following:

- Demilitarizing armed groups
- Providing security for all communities in Kosovo
- Monitoring the border
- Facilitating democratic institutions
- Facilitating parliamentary and municipal elections
- Building government capacity

(Source: <http://www.betterworldcampaign.org/un-peacekeeping/missions/kosovo.html>)

In August 2008, the UN mission transferred its authority to the government of Kosovo and to the EULEX. The transfer has allowed the Kosovar government to assume responsibility over its country and its citizens, while the UN mission continues to provide support and guidance to the government and EULEX.

(Source: <http://www.betterworldcampaign.org/un-peacekeeping/missions/kosovo.html>)

Immediately after the war, families were organized into non-governmental associations and together founded the Association of Missing Persons that served the purpose of finding and researching disappeared persons and identifying mass graves that resulted from violence and executions by the army, Serbian police, and paramilitaries. The International Committee of the Red Cross (ICRC) began identifying missing persons according to statements from family members of disappeared persons. The ICRC in cooperation with the Associations of Families of Missing Persons gathered and verified the names of missing persons from the families. This was only the beginning of a long journey which became more and more difficult because of other barriers. The passing of time meant losing evidence of the crime and also witnesses. Due to lack of information about the whereabouts of their loved-ones, the families of the disappeared suspected that the Serbian regime aims to hide the traces of the crime frequently. According to the Geneva Convention regarding human rights and freedoms, concealment of information of kidnapped, killed and disappeared persons is a violation of humanitarian law and human rights and freedoms.

Relatives constantly explain their demands to domestic and international bodies concerning the fate of missing persons and raise public awareness and institutionalization of interventions. As the Associations of Missing Persons had no impact on local and international bodies, it believes that a government commission must be established that will deal with the fate of missing persons. This commission will also include a member from the Association for Missing Persons.

The insistent demands of families for support from international institutions resulted in the discovery of several mass graves of Albanians from Kosovo in Serbia as in Batajnica, Petrovo Selo, and Perucac. We are currently working on the opening of the mass grave in Raska, where it is supposed to contain around 300 remains of people killed and missing during the war. We think it is still possible to find more mass graves in the territory of Serbia.

Significant contributions on the identification of remains have come from the International Commission on Missing Persons (ICMP) working in collecting blood samples from living relatives of missing persons to use in DNA testing. So far, more than 846 remains have been found and identified but we are also looking for more than 1,700 missing persons who are assumed to have been reburied in Serbia.

Continual pressure from associations of families with missing persons and the absence of a legal act regarding missing persons forced the Government and Parliament of Kosovo to proceed with the law which defined the status of missing persons and family members.

Although the law for missing persons is not perfect and still incomplete, it has significantly improved the situation of the families. The law for missing persons was especially welcome for orphaned children who receive certain benefits and financial and material rights.

Our experience in resolving the fate of missing persons orients us in many ways. This is very important for us to succeed in resolving the fate of missing persons.

1. Insistence of the families' association to clarify the fate of missing persons
2. Existence of political willingness by government's respondents to clarify the fate of missing persons
3. The pressure of international organizations for the protection of human rights towards countries with significant problems of missing persons

As a preventive measure, it is a requisite for the increased engagement of the Security Council of the United Nations against the warring states with respect to international conventions on human rights.

We ease the spiritual pain of families of missing persons by helping them to find their loved ones and preparing an eternal resting place for them while bringing to justice the perpetrators of the crimes.

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Appendix B

Conference Next Steps, Reflections, and Evaluation

The following section presents the post conference next steps, some reflections, and the results of the evaluation as discussed during the conference.

Next Steps

To put in context the proposed next steps, it is helpful to review the objectives of the conference, and see how these next steps support the set objectives.

Conference Objectives	Lessons learned	Strategies
Participants will be able to share experiences and lessons on the importance of and strategies in campaigning for domestic legislation against enforced disappearance	Marco (Guatemala): The importance of sharing experiences as an opportunity to rethink personal experiences through others and hearing their experiences. This gives the assurance that we are not alone and we can also extend our gesture of solidarity.	
	Mandira (Nepal): These exchanges with Latin American participants enrich and help many of us because of what has been achieved there especially regarding documentation. The experience facing and challenging amnesty laws is particularly interesting for me as a lawyer.	<ul style="list-style-type: none"> i. Documentation ii. Facing and challenging amnesty laws
	Irina (Belarus): There are three concrete things I have learned that I must now implement:	<ul style="list-style-type: none"> i. During dictatorship – (1) documentation is fundamental; (2) preparing cases beforehand, even if not yet possible to lodge in court; (3) importance of public awareness campaign. ii. After dictatorship – (1) creating a human rights committee; and (2) considering the issue of reparation and what that might look like.

Appendices

Conference Objectives	Lessons learned	Strategies
		<p>iii. Organizing their association/organisation – using the conception of Guatemala, we need to consider not simply finding the person but focus more on working with families and society and creating the foundation of a strong society.</p>
	<p>Melissa (Timor-Leste): Helped open up knowledge, ideas and perspectives and equipped me with information that can bring out and focus the ideas of local leaders</p>	
	<p>Group reports: Need to utilize information shared in various campaign activities.</p>	<p>i. Important to produce popularized versions of reports of human rights defenders through cartoons, short stories and animation</p> <p>ii. For the families of victims to form an association for the struggle for justice. It facilitates the struggle for truth, justice and reparation. It is difficult to fight for justice as separate individuals. Associations will strengthen and provide unity for victims</p>
	<p>The importance of the work between lawyers, advocates and families of victims. Lawyers are limited only to legal matters but the psychological aspect of the victims should be the concern of pertinent professionals</p>	<p>Solidarity among victims</p>

Conference Objectives	Lessons learned	Strategies
	Public awareness and consciousness-raising campaigns using all means available	<ul style="list-style-type: none"> i. Work with the media to communicate with the public. ii. Need to scale up use of Facebook, Twitter, and other social networking applications. iii. Use of celebrities, cultural icons, writers, poets, musicians, painters, singers is very effective. iv. Use of intriguing posters in the web.
	The importance of the internationalization of the issue and the need to share experiences. Disappearance is not a common isolated crime. We cannot treat disappearance as only a local case. It is a crime against humanity and a concern of all humanity.	<ul style="list-style-type: none"> i. Sharing experiences among countries is very important ii. Foster technical assistance across countries and human rights organizations to help share the details of each case and on how to implement strategies.
	The important work of truth and reparation for victims – For perpetrators, we should address their formal accountability and also their accountability to the victims. It is important for future prevention not only in Timor-Leste and Indonesia but all over the world.	Address formal accountability of perpetrators as well as their accountability to the victims in truth and reparation work.
	The importance of having laws on reparation based on the experience of Chile such as law on reparation, extra judicial execution, with compensation, monthly compensation, non obligatory for children of human rights violation for military service, law for those fired from work, pension, etc. Another is giving reparation for those detained.	Advocate for varied laws on reparation for specific victims.

Appendices

Conference Objectives	Lessons learned	Strategies
	The importance of instilling historical memory based on the experience of Chile so people will remember.	<ul style="list-style-type: none"> i. A law requiring the establishment of monuments in all parts of Chile ii. Human rights need to be integrated in the school curriculum

Conference Objectives	Next Steps
Facilitate the formulation of comprehensive civil society action plans to strengthen national legal norms against enforced disappearance at the national, regional and international levels through panel discussions and practical workshops	<ol style="list-style-type: none"> 1. AFAD and its member organization in Timor-Leste, Asosiasaun HAK , IKOHI and KontraS in Indonesia in partnership with <i>Pro-Búsqueda</i> of El Salvador will conduct a five-day skills exchange meeting. The objective is to learn from the <i>Pro-Búsqueda</i> experience in the search and reunification of children with their biological parents. This will either be in Dili or Jakarta. A funding support has already been secured with OAK Foundation.
	<ol style="list-style-type: none"> 2. Results of this meeting will be used as input in the lobby work within Timor-Leste and also Indonesia to encourage both governments to act on the search and reunification of disappeared children. It will help in its media campaign work to reach out to affected families and the greater public who might be able to provide information and support for this effort.
	Indonesia has a new President, this is the time to propose something to our new Government with support from international friends. This is the time for AFAD and ICAED to play their role in Indonesia. Argentina is also very prominent in Indonesia and can be utilized for that.
	Need to focus our advocacies at the UN level and also with the relatives. Otherwise, our strength will dissipate.
	<ol style="list-style-type: none"> 3. Marco: Immediately upon returning to Guatemala, the results of this conference will be shared with the organization and the families of the disappeared who are scheduled to meet. It will help them feel less alone and allow them to know they have helped many others through their experiences.

Conference Objectives	Next Steps
	<p>4. To document oral histories of the families of victims so that when they die, their stories are not lost.</p>
	<p>5. Do a review/analysis of the different laws on enforced disappearance that might be useful for others wanting to implement laws against enforced disappearances.</p> <p>Note: there is a 2010 study on the best practices on criminalizing ED released by the UN WGEID and Gabriella was involved in the preparation of the study. She would be happy to share it.</p>
	<p>6. Draft a policy on <i>lustration</i>, defined as the restoration of credibility to a government by the purging of perpetrators of crimes committed under an earlier regime. Mugi and Roberto suggested to formulate a policy or call for human rights violators not to seek public positions in government such as president, MPs, mayors, etc.</p>
	<p>7. In terms of networking, focus on bilateral cooperation because each country has its own specific issues and priorities.</p> <p>Marco – this concept of bilateral cooperation needs to be further explored. We can take advantage of technology to share ideas and would love to share more, and we have much more we can share than we were able to speak about during the conference.</p>
	<p>8. Hold a similar conference but the participants would be the relatives/families of the disappeared so they would know they are not alone.</p>
	<p>9. Scale up information sharing across countries among this group of human rights defenders to help raise awareness about other countries' cases as well as learn lessons from them.</p>
	<p>10. Summary of best practices put together by AFAD in a readable language.</p>
	<p>11. Put up a common space for specific information or support requests that can be processed and shared.</p>

Conference Objectives	Next Steps
	<p>12. Produce an illustrated book for children featuring cases of enforced disappearances from different countries that can be shared on Facebook. This could be a project of AFAD if funds can be gathered. This can be done at the national level with the national language as the medium, promoted by prominent or influential people in the country. For the international level, it will contain cases from different countries.</p>
	<p>13. The Secretariat will create an e-group for participants especially to motivate them and follow-up on their plans.</p>
Conference Objectives	Outcome
<p>Provide networking opportunities for organizational and individual advocates against enforced disappearance through knowledge sharing and solidarity building activities within the conference.</p>	<p>Alejandro(Argentina): I understand that the most significant part was to link up and share experiences and information about the situation in each region aside from providing help and showing solidarity between organizations within the network and the network itself.</p>
	<p>Margarita (El Salvador): The papers were presented according to plan. Everyone learned something new from the speakers and participants. I have learned and reinforced my knowledge both at the personal and the institutional levels.</p> <p>The idea of creating a space to network and establish contact with each other and other participants seems very timely as there is much that can be contributed from each organization through this network and this strengthens institutional relationships.</p>
<p>Generate important input for a training module on effective campaigning for domestic legislation against enforced disappearance to be published by AFAD in 2015.</p>	<p>The proceedings will guide AFAD in the formulation of a module on effective campaigning for domestic legislation against enforced disappearance.</p>

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Reflections of Participants

This section shows how some of the participants, through their reflections, were significantly touched by the sharing of experiences and interactions among each other during the conference. Some are culled from the evaluation results while others sent in their brief reflections, printed here in full.

Mr. Sisto dos Santos (Timor-Leste)

Disappearances in Timor are a bit different from the experience of Chile because the perpetrators of disappearances are in Indonesia. Both governments – that of Timor-Leste and Indonesia have a good relationship; they are in cooperation with each other. This is what we are pessimistic about in working for truth because most of the 4,000 disappeared children of Timor are believed to be in Indonesia. Their names and identification were changed. This is why I am very much interested in the sharing from El Salvador, their important work for Truth and Reparation for victims.

Mr. Wadih Al Asmar (Lebanon)

Victims should express what they need and they must do political advocacy at the national level or at the international level if possible. Many organizations, because of impunity at the national level, seek justice in other countries like in Spain, France, Germany, Italy, among others.

Atty. Samia Islam (Bangladesh)

The context in Bangladesh is very different from Latin America, Indonesia, Timor-Leste, and Philippines because there is no armed conflict or civil war. Bangladesh is still struggling with the present situation where others are dealing with the past. Between 2009-2014, 151 people disappeared in Bangladesh because the current government cannot tolerate different views. The identities of victims tend to be political leaders, labor leaders, students and farmers. It is a misuse of State power – security forces take money from influential political parties to disappear people. The government will not admit disappearances or abductions.

Atty. Alejandro Rua (Argentina)

Buenos Aires, 18 November 2014

Dear Aileen and friends from AFAD,

I am writing you, having spent sufficient time to assess the importance of the meeting we had in Manila last September.

The organization of the Conference has been an achievement in itself and deserves warmest congratulations. We have made it possible for all participants to have a fruitful

exchange of information regarding the situation in each of their regions. And at the same time, it has allowed us to learn about our own experiences and to recognize these.

In this line of work, Argentina has an outstanding track record in the battle for Truth, Justice, Memory and Reparation. It was valuable and useful.

The way that the conference was organized, in such a way that it was possible for us to expand our knowledge and experience in the various campaigns for truth and justice for the disappeared, was indeed, valuable and useful. We strengthened our perceptions about the value of solidarity based on shared experiences, as well as our own regional experience.

Literally, from across the world, on behalf of the Center for Legal and Social Studies, it has been my great honor to share in the various sessions the developments in our experience in Argentina, both at the local and international levels, in the court as well as other areas of struggle for nearly four decades.

It is essential to maintain our expectations. The exchange of information and experiences between local and regional organizations were enriching. We had indicated the conclusions of the Conference, therefore, it is our commitment to honor them.

Again, I say goodbye with the greatest appreciation for the hard work of your organization. The task of organizing the conference was commendable.

Atty. Roberto Garretón (Chile)

As a speaker, in my talks, I spoke of technical aspects (declarations, treaties, etc.); strategies of NGOs; of the principles of solidarity; the truth as the main or only tool in the fight of the defenders. I explained the progress in North America, Central and South. I value other experiences.

In terms of methods shared, I insisted that the work for human rights, being humanitarian, is especially political. There must be persistence in every complaint and claim. There must be an optimistic focus, knowing that someday, justice and truth will win. We can never abandon the task!

On the value of solidarity based on shared experiences:

Learning from the experiences of Chile, Argentina, Peru, Uruguay and appreciating the role the religious communities played and the solidarity work of the victims and their families, I can say that impunity ended in these countries. Unfortunately, this is not the case in Central America and Mexico.

What could be the gaps and challenges?

Distrust of the law and politics because good results are not immediately seen is clearly an inadequacy and to overcome it is a huge challenge. Technically, there has been great technical and organizational progress since my last interaction with AFAD in 2001.

What could be its immediate applicability and replicability?

This question is not clear to me. Our values (rights) are definitely applicable immediately, as well as the demand for them. But enforcement is not immediate and one of our goals is to make enforcement immediate. Replicable? I don't know the concept. If you are referring to implementing procedures used in other countries that have shown good results, of course it is important.

In terms of possible areas of cooperation, I think that all participants are available to disseminate and expand what we discussed at the Conference.

Ms. Margarita Zamora (El Salvador)

The touching story about the events in the Philippines, while different in context, is very similar. It affects the same social classes. I have said that we are the majority in the world. We are always suffering from all the atrocities that different powers of the state impose on us. Knowing the history of great personalities who gave their lives to change others and their culture is important. My idea was reinforced. It is easier to fight for the defense of human rights when you think about the common good and not for personal benefit. It is easier to be willing to serve and not be served. By helping others, you help yourself, too. This must be remembered in our efforts to exert pressure on the state to ratify the convention on enforced disappearances and to commit itself to respect and enforce it.

It is important to make known the efforts made by organizations of human rights defenders working on finding tools that ensure the non-recurrence of grave human rights violations. States must take responsibility by signing and enforcing the Convention. The continuation of enforced disappearances in countries, even though not systematically, shows clearly that the power of states continues to be used against the vast majority of the population that is dispossessed in various fields. What was innovative in the conference is the sharing of knowledge on achievements, challenges and difficulties as this gives new tools to organizations that are in a different situation. It is important to have prior knowledge to find methods that facilitate the transfer of experience. It is also necessary that the participants give us the task of investigating more about the culture of the participating countries to facilitate integration.

We must seek ways that those who had the opportunity to participate in different conferences of AFAD may unify efforts to support the campaigns for truth and justice for victims of enforced disappearance with emphasis on the non-recurrence of these acts.

It makes us stronger as our countries share experiences on progress regarding the defense of Human Rights through the different ways of struggle where the victims are involved and act as a fundamental part of the organization.

Solidarity is a value that transcends borders and strengthens human rights advocacy organizations. Solidarity opens new opportunities that we cannot lose. It unites us and makes us stronger every time.

Gaps and challenges include the management of funds and the closure of some agencies. The lack of systematization of experience in various topics of work is also another gap.

The reluctance of the competent institutions to conduct investigations in order to exhaust the location of perpetrators and use all their sanctioning capacity against these perpetrators is something to consider as a gap. What we also lack is a team of prosecutors and decision-makers trained in human rights to investigate other actors involved in human rights violations.

It is important to ensure that the state creates a databank of genetic profiles to identify remains of both children and adult victims of enforced disappearance and DNA testing. This requires a cross-functional team that involves various sectors such as the police, prosecutors, and victims and survivors.

The immediate applicability of the activity is the establishment of contacts with similar organizations in nearby regions where the economic aspect serve as a facilitating rather than a limiting force that hinders coordination and exchange between organizations of victims of enforced disappearance. This is important so as to strengthen ties of solidarity between organizations. Rest assured that the themes of the conference will be shared during staff meetings and workshops that will be conducted with families in areas of the country that the organization serves.

The organization and public advocacy are both national and international. In the fight against enforced disappearance and against impunity, there are commonalities in different Latin American countries, especially countries that work on similar cases related to the search for disappeared children. We can coordinate and share with these countries so that we can support common efforts

Mr. Ron de Vera (Philippines)

After attending AFAD's conference on sharing best practices, I had a few realizations that I consider very personal. To give context to my sharing, it is important to note that I am the son of a *desaparecido* and that I dedicated my time to human rights work only recently; I spent a majority of my adult life employed in the corporate world.

My father is a victim of enforced disappearance in the Philippines during the Cory Aquino regime. He was a freedom fighter, a community organizer, loving husband, and dedicated father. One irony I've had to live with is that my father was taken from me on Fathers' Day in 1990. I was nine years old.

I would grow up with an awareness of how the government uses enforced disappearance as a tool of repression. This state-sponsored act turned my formative years into a roller coaster ride. One minute, it would throw me into the outrage of demanding that my father be returned alive. The next minute, I would curl up in the soothing assumption that he was gone forever. It was an ordeal not suitable for a typical nine-year old. And in this ordeal, I felt alone.

It is under these circumstances that, after attending AFAD's conference, the following realizations unfolded in front of me.

Enforced disappearance has many faces

Meeting advocates from many parts of the world and hearing their stories helped me realize that the form of enforced disappearance the Philippine government employed in abducting my father is but one of many. Enforced disappearances in different countries may target different people for different reasons.

I am not alone

Just seeing how many participants were in attendance, and knowing that they represent families, advocates, and organizations made me realize that I was not alone in this ordeal. I've always *known* I wasn't alone. But seeing these participants, hearing their stories, and spending time with them actually made me *feel* I wasn't alone.

I can actually do something

When I left the corporate world, I was pursuing an idea, a dream, that I would be able to contribute my skills and talents for the promotion of human rights. I wasn't sure exactly how but I pursued it anyway. When I saw the presentations of the resources speakers and heard the ideas of other families of the disappeared, I knew my decision to get involved in human rights work was the best decision I could make. . *I can actually do something*. This is perhaps the most important realization that I took away from the conference.

In closing, I think it is important to ensure that activities like these always have a sustainability plan. While it is great that we, participants, have significant realizations, it is just as important to have venues and opportunities to translate these realizations into impactful actions. We reflect, but we must also act. And that, of course, is a responsibility shared between the individual and the movement that the individual serves.

Ms. Toni Serrano-Soriano (Philippines)

Given the opportunity to attend the best practice conference, my knowledge about enforced disappearance widened. With speakers like Roberto Garretón, Gabriella Citroni and others, I got to know how the said case has been dealt with by governments and CSOs. It is very inspiring that despite the on-going cases, the struggle to stop it is continuous, with efforts from national, regional and international levels.

Being a daughter of an active human rights worker and a development worker who was a political prisoner during the Marcos regime, the aim to support the same advocacy with them has been realized last year after graduation. And where I am now has been a right decision for the start of the journey. Being able to help the victims of human rights violation, specifically those of enforced disappearance, not just in the Philippines, but around Asia, is truly a blessing and a challenge.

I have always kept in my bag the doll that Marco Garavito gave as a symbol of the disappeared children in Guatemala. It was heart-breaking when Marco told the story, as with Margarita's story, and the singing of Amina for her disappeared husband's birthday. These left a message in my heart... to continue what I am doing now... and help them in the search for their disappeared loved ones, search for justice, and to join envisioning a world free from enforced disappearances.

Ms. Caroliza Tulod-Peteros (AFAD-Philippines)

The four-day conference was filled with lessons and new insights drawn from the presentations of speakers and the inputs from the participants during the open forum and small group sharing and workshops. It expanded my knowledge and understanding of the experiences of Latin America particularly Chile, Argentina, El Salvador and Guatemala.

I took down some of the striking statements and phrases by the speakers particularly those from Latin America and my reactions/feelings from what they said.

I was a young student in the last few years of the Marcos regime and became involved in the anti-dictatorship struggle so the sharing from Latin America was interesting. As a graduate student of social development, I have been motivated to learn more. The presentations widened my understanding of development issues in those countries.

Let me start with *Señor* Roberto Garretón, a man filled with energy at 72 years old. He spoke with wisdom and powerful words drawn from a wealth of experience in his participation to free their country from dictatorship.

In his presentation on Strategic Litigation, I found the following very important and must always be remembered:

The strength of women.

“Since fear was so strong, the organization was born with 20 people, if I remember correctly, all of them were women. Soon thereafter, it had more than 1,000 relatives as members.”

Their experience shows the valuable role of women in searching for truth and justice for their loved ones. Their courage can be attributed to their nurturing roles as mothers, wives, or sisters of the victims but they deepened their involvement. I believed many of them saw their political participation as their own contribution to liberate their country from dictatorship. *Señor* Roberto stressed the political dimension of the struggle of the victims of enforced disappearance.

The victims' organization is essential so it can take an active role in the search for truth and justice.

When I heard this, I was reminded of some of the members of FIND who are always invited in the organization's events as well as those of AFAD. However, they were always spectators... part of the audience. They need to be given substantial roles depending on their respective capacities.

So during the activity organized by AFAD in the second anniversary of Sombath Somphone's disappearance, some relatives who were part of the audience were asked to speak and some of them stood up and shared their thoughts and feelings.

No one should be marginalized because of their ideas, religion, gender, sexual orientation or race.

We all need to keep this in mind always. Even among human rights defenders, there are various levels of acceptance and tolerance because of the respective cultural traditions that we grew up with.

Keeping our credibility is essential: as advocate of human rights or a human rights NGO not only cannot lie, but also does not have the right to make mistakes.

I very much agree with him. But what if indeed, a human rights NGO made a mistake? I failed to ask him. In my own view, the next step would be to humbly accept the mistake, face the consequences and harvest the lessons learned.

In the struggle for truth and justice, you have no right to get tired. Always be hopeful, for to lose hope is the greatest sin.

It was about persistence. He said that since day one when he decided to challenge the dictatorship, he kept filing cases in court and he lost all of these cases. He did not lose hope. One day he won and it led to other victories.

In between formal sessions, *Señor* Roberto had a lot of stories shared. One of such I found amusing was the invitation of then President Marcos to Gen. Pinochet to visit the Philippines. While on his way to the Philippines, Pres. Marcos cancelled the invitation because of pressure from the US; that his visit will not be good for the image of the president. Gen. Pinochet was forced to land in Fiji to refuel. At that time, Fiji was ruled by a democratic president; his plane refuelled but the staff of the refuelling station refused to assist them.

I never knew this happened. So I did a quick search on the internet and read some articles about the visit and its political implications. What he shared brought me back to our own history and added my knowledge of that important struggle in our country.

I would have wished he had more time to speak to universities so that our students will have a broader understanding of our history and its connectedness to other countries, especially

during the period of dictatorships in many parts of the world during the 70's. For those of you who are interested to read about the cancelled visit, you can find it in the following links:

- <http://bit.ly/1P20B0b>
- <http://bit.ly/1Jslfjc>

From the Presentation of Marco:

Prior to the presentation of Marco, I had limited knowledge of Guatemala and its people. I learned a lot from him especially about some of the cultural traditions of the Mayan people. So I was astounded with his figures – 200,000 Mayan people were killed or disappeared. I understand that their country was the first laboratory in Latin America on the use of enforced disappearance.

I was in awe when he said that:

“In the indigenous Mayan culture, dreams are important. If they continue to dream, spiritually the child is alive somewhere, despite the fact that there had been isolated cases where they were not found.”

So I also did a quick research about the Mayan culture and how they were greatly impacted by the military operations. I learned that the Mayan people were struggling for their ancestral lands and it was the root of their struggle. They had democratically elected governments between 1944-1951 but a US backed up *comp d'état* successfully installed military dictatorship and in 1966, the Guatemalan security forces used forced disappearance as a tool to silence the opposition.

I realized how little do I know of their own struggle.

The following phrases struck me because these are good reminders for those of us in the helping profession and also provides a different perspective in looking at woundedness, coping, and ethics in helping victims.

- “Frozen mourning” – describes the psychological effects of the disappearance of their children and other loved ones. There is no closure so long as the remains are not found.
- “The most important is the human aspect.”
- “We have a bad parliament and a bad president. Our secret is the families. Work with the families.”
- “We do not have a problem with forgiveness. It is not a subject in the middle of the search.”
- “Families say: I do not want to look for guilty people. I want to know if my child is alive, where s/he is and maybe we can re encounter. Maybe the justice issue comes later. It is a popular wisdom. As the grandmothers said: “First things first.”
- “Sometimes the things that we guide them may not be the right thing. Life opens its own ways. Don't try to interfere in the dynamics of the family.” – Fr. Jon Cortina.

I especially find the quote from Fr. Jon Cortina above a strong reminder for us who are playing a supportive role. Sometimes we think the families or our partners are not yet ready for an action that they want to do and we tend to decide for them.

Further, the presentation of Marco was very powerful when he pointed to the little Mayan dolls placed in square position on the table in front of him. The smaller dolls represent the disappeared children while the bigger dolls, placed at the center, represent their parents. He told us that these are called “Take away pain dolls” and every meeting of the organization of families of disappeared victims, each one of them brings their doll/s and places them on the table to remind them of their continuing struggle for their children.

He also explained that the Mayans also place these under their pillow if they feel pain. These dolls ease or take away their pains.

The positive use of symbols and rituals to generate courage and inspiration is a very important learning from Marco.

From the Presentation of Margarita:

I was deeply touched when Margarita told all of us that she lost her mother and four siblings during the war, all of them enforcedly disappeared. She was able to transform her pain into her current work which is to assist families in the search and reunification of disappeared children.

I could not believe that during the war, the military made money by disappearing children. It was organized. She told us of the case of one child who was just five years old and was wounded when the military conducted an operation in their village. The child was in the arms of his older brother and the military forcibly took him.

Margarita showed us the video of the reencounter. The child, now a big man whose built looked like an American (he was adopted by an American couple), returned to El Salvador to meet his biological parents. I guess all of us in the audience were quietly shedding tears. I remembered Marco’s phrase – “frozen mourning” as I saw the parents crying in joy when they saw their “child” and crying again when they bid him goodbye as he returned to the United States.

I find it realistic but painful (for the families) when Margarita told us that in their reunification efforts, it is important that the family has to understand that they may not be able to get back their child again. It is important that their children have known the truth directly from their parents and they went through a process.

During the discussion on reparation, I was also touched by the exchanges between her and Mrs. Edita Burgos, mother of Jonas Burgos who disappeared in 2007. The latter shared her dilemma whether to file for reparation in light of the recently-approved law compensating victims of Martial Law. Her husband, Jose Burgos Jr., a journalist and publisher of a newspaper critical of Martial law was arrested and detained at the height of media crackdown

during the dictatorship. Their children decided that they will not file for compensation. The speaker, Chito Gascon, a lawyer and Board member of the Human Rights Victims Claims Board mandated to implement the law that encouraged them to apply as an indication of state responsibility and acceptance of wrongdoing.

Margarita shared her similar reaction when compensation was also offered for her. At first, she said it was hard; she could not sleep at the thought of the idea. However, she had children and she could not send them to school. In the end she decided to take it for the sake of her children's education.

In the same vein, Marco shared an experience in Guatemala where a daughter of a disappeared wanted the world to know that her father was a hero. She used the money to write a book about her father and what to her were his heroic deeds for his country.

From the Presentation of Alejandro:

Lastly, on the sharing of Alejandro, the importance of memorialisation was emphasized in his country. He said this was an important step so that their younger generation will remember their dark past and will carry with them the lessons of their history. He also shared that despite their victory in restoring democracy and government recognition of human rights violations committed against its people, there were certain stages in their history where perpetrators were still elected into office. From what I understood, this only speaks of the level of consciousness of the people who elected him to office.

He also emphasized the value of being vigilant always. He explained that what they achieved now – their government's conscious efforts to make respect for human rights a core principle in their governance was borne out of a long struggle. It is a fruit of their continued struggle.

The Latin American experience is very inspiring; what I learned from them urged me to learn more about world history; the rise of dictatorships; their connection with each other.

I also thanked the valuable role of the translators. They were blessed with good facility of the Spanish and English languages. They were very valuable in ensuring that everyone understands and understood each other.

Inspired by what I learned from them, especially on the indigenous dolls, I shared this to Amina Masoud Janua, Chairperson of Defence of Human Rights (Pakistan) in the succeeding AFAD Congress. I sent her a photo of those dolls which I refer as "*Take Away Pain Dolls*." A few weeks upon her return to Pakistan, we had exchanges about this ritual. She too was inspired to share it with the family members of victims of enforced disappearance. The following are our email exchanges which shows how effective was the presentation of Marco on this regard.

Email exchanges between the Chairperson of Defence for Human Rights (Pakistan), Amina Masoud Janua and myself on the “Take Away Pain Dolls” from El Salvador

In closing I would like to say that the conference was very enriching. AFAD can share its results in so many ways and I believe it can touch others too just like how Amina was touched with my little sharing done during one of the breaks in the four-day AFAD Congress. Maybe other member organizations can also think of rituals and symbols that can be used to further encourage and inspire the families to continue the search for truth and justice.

Dear Carol

How are you and all the friends in AFAD? I keep thinking about and taking inspiration from all of you and your great work.

Carol I remember a little about a story you told of dolls which are kept under the pillow for relieving the pain of disappeared loved ones. Please can you send me more details !!

I am very much interested and want to tell the aggrieved families here ; as inspiration and to keep up their spirits. Also send me links if there are of news regarding this tribe.

Best regards and hugs,

Amina

Dear Amina,

It's nice to hear from you again! Yes, the „Take Away Pain Dolls“ were shared to us by Marco from Guatemala.

Just a bit of historical information: the Mayan people from the highlands -- they were called Ixchel, they were brutally killed by the Army during the Armed conflict - 70-90% of their people were killed and they filed a case of genocide against the dictator - Gen. Rios Montt who ruled the country from 1981-1983. On May 10, 2013, a Guatemalan court sentenced him to 80 years in prison (he was already 86).

So, during these brutal years, many children were disappeared by the military and sold for adoption. The parents used these dolls to symbolize their disappeared children. I am attaching 2 photos of these dolls during Marco's presentation. In the middle are the parents and the rest of the dolls in the square are the disappeared children. He said during meetings of the relatives they always have these dolls to strengthen them. And they are arranged the way he did during the conference.

I agree with you, that maybe what they are doing in Guatemala can also inspire the relatives there in Pakistan to create a symbolic representation based on your culture and together they - relatives, can share the significance of these symbols to their struggles for truth and justice.

Warm regards,

Carol

Dear Carol,

Thanks so much for this reminder and update . I will give presentation to the families and include this very important part of dolls which take away pain in that.

Will coordinate if i needed any more details.

Thanks a million,

Amina

Ms. Mary Aileen D. Bacalso (Philippines)

The conference on *Best Practices in Advocating Legislation Against Enforced Disappearances* developed as an idea right after the enactment of the anti-enforced disappearance law in the Philippines, the first and only anti-enforced disappearance law in Asia. The idea was brought to the attention of the National Endowment for Democracy in a phone call. Ms. Sam Chanthavong, the project officer for the Philippines, was initially open to it. A brief physical meeting and series of discussions led to the conceptualization of the project, a not-so-easy process.

Participants speaking various languages from Asia, Latin America, Euro-Mediterranean Region, Europe, North America came with experiences in the struggle against enforced disappearances in particular and human rights in general. So rich were the experiences that at the end of the conference, everyone was amazed by the commonalities and the diversities of both the situations and the responses and the imperative for concrete actions in order to realize the much-desired vision for a world without disappeared persons.

One of the participants that amazed me was Mr. Roberto Garretón. I first met Roberto fifteen years ago, during AFAD's lawyers' conferences in both Indonesia and the Philippines. He spoke passionately and eloquently about toppling Pinochet who was responsible for enforced disappearances and other human rights violations in Chile. In a tone passionate and inspiring, he shared the role of the Catholic and other churches and the value of international solidarity, which contributed, in no small measure, to what Chile has now achieved. Stressing the value of every bit of documentation which would certainly be useful for both immediate and long term purposes, Mr. Garretón also emphasized the role of the media in disseminating and getting the widest possible support for the cause. What struck me and many participants the most was his note saying that the greatest crime that we could commit is the act of losing hope. Indeed, in a situation where the desired vision is seemingly far from sight, hope is one of our basic sources of strength. Losing hope is a crime, indeed. Among all the other participants, Mr. Garretón's passion for human rights left an indelible imprint in the minds and hearts of many participants.

A striking contrast to the situation in Chile is the role of the Catholic Church during the dictatorship in Argentina. Atty. Alejandro Rua shared how the Catholic Church participated in the commission of human rights violations during the dictatorship, particularly in the thousands of enforced disappearances committed during the dictatorship. In response to the dictatorship of both countries, what was common was the persistence and perseverance of families of the disappeared and other victims of human rights violations to document the cases, to ensure participation of families of the disappeared and to get international support.

I remember the ex ESMA (*Espacio Memoria y Derechos Humanos*), a place located at the heart of Buenos Aires, where disappeared people were tortured, pregnant women were made to deliver their babies whom they nursed for only a few minutes or hours because they, the mothers were killed and thrown into the ocean, never to be seen again. With Alejandro's sharing of the victories in finding the disappeared children, I continue to salute the mothers and the grandmothers of Argentina for their persistence to find these children, hundreds of whom have been found alive and reunited with their biological grandparents. I can only envy the struggle against enforced disappearances in Argentina and do what is possible in the Philippines and Asia.

In the central part of Latin America, Guatemalan representative of the *Liga Guatemalteca de Higiene Mental*, Marco Antonio Garavito shared their success in finding disappeared children. He came first to AFAD in December 2000 during the First Sharing of Experiences of Asian Families of the Disappeared. On that occasion and during this conference, he brought small dolls with him that symbolized the disappeared children during the war in Guatemala where 45,000 people disappeared. He brought these little dolls again when he came to Manila, mentioning that we can bring these dolls wherever we go. In so doing, he said that we will not forget in that country of Guatemala so distant from the Philippines, there are still children who need to be found and be aware of their historical identity and in that same country, the now elderly parents of these children refuse to close their eyes before they could be reunified with their long lost children.

What was so striking in what Marco said, which was also repeated by Margarita Zamora of *Pro-Búsqueda*, El Salvador, is the central role of the families of the disappeared in the work for truth, justice, reparation, memory and guarantees of non-recurrence. The role of civil society organizations is that of accompaniment. It is a long way to go for us here in Asia in as far as the work of empowerment of both the victims and members of civil society is concerned. Every single minute, hour, day in the cause of the disappeared should be considered a moment of empowerment.

I should say that the rich sharing on the search for disappeared children in Argentina, El Salvador, Guatemala, should be turned into an Asian experience, contextualized in the particular situations of Timor-Leste and Indonesia. Sisto of HAK shared the phenomenon of disappeared children in Timor-Leste, who were part of an annihilated population who were either killed or disappeared during the Indonesian occupation. The project for the search of disappeared children in Timor-Leste will certainly bear good fruits, taking the best practice from both the southern and central part of Latin America.

There were many other moving moments, such as the exchange of words between Edita Burgos and Margarita on the issue of reparation. On one corner of the conference room, Edita shared that she refuses to take the compensation from the Marcos' wealth on the imprisonment of her husband, who told her before he died, that it was his duty to fight against the dictatorship. Hence, no amount of money could compensate for the violation that was done to him and many other victims of Martial Law. At the other corner of the conference room was Margarita who said that she felt the same thing in relation to the disappearance of her husband and three of her family members. But her children need the money for them to move on, thus, she sincerely advised Edita to take the money.

Irina from Belarus was another great example of persistence. Sharing experiences of the dictatorship in Belarus that caused the disappearance of her husband and three others, she deeply shared about the work of We Remember and how it has been strengthened further through the joint efforts it has with AFAD and ICAED for the last several years.

Words are not enough to describe the wealth of knowledge and inspiration we received from the conference participants. Space is not enough to cite each and every one who contributed, in no small measure, to the success of the conference.

The conference was the first and only activity where a funding partner, in the person of Sam from NED participated. I am sure that it was no less than a real learning experience for her and an inspiring one as well.

From a phone call to a concept – the whole process turned to be one of the best activities, if not the best activity AFAD ever had in the last more than 16 years of its existence as a federation. It is important that this conference will contribute to the series of past and future efforts to realize the much-cherished dream for a world without disappeared persons. Let it be turned into series of efforts to sustain the work because the struggle against enforced disappearance is long-drawn.

Hasta la victoria siempre...

• • • • •

Feedback of Participants Based on Their Evaluation Forms

To help AFAD improve on its work in organizing similar conferences in the future, an evaluation form (See Appendix A) was sent via email to all the participants towards the end of October 2014. However, only very few returned their filled-out evaluation form and will not be able to provide a representative view of the majority of the participants and speakers. Hence, only their comments are included in this section.

In hindsight, it might have been better if these evaluation forms were distributed to the participants before the conference closed and prior to the handing out of conference certificates as an incentive. This is one lesson learned in running an evaluation.

Pre-conference preparation

1. Alejandro: The organization of the conference has been impeccable.
2. Margarita: The invitation was received with the time needed to prepare presentations. However, due to the economic situation of the institution, at first, we said that our participation would not be possible, making it difficult to prepare the material for the conference. But in any case, I was able to do my best.

Arrival and registration

1. Alejandro: Also the choice of the venue has been very successfully made. The same is true with matters regarding information.
2. Roberto: I did not hear complaints about the hotel.
3. Margarita: Everything related to the venue and the rest of the procedure, to me, was excellent. The information was very useful and timely. The only problem was the language barrier. In the hotel, there were no people who speak Spanish, making it difficult to communicate to resolve some needs.

Opening ceremonies

1. Alejandro: The opening ceremony has been very warm.
2. Roberto: Perhaps the ceremony was too long, but interventions were of good quality.
3. Margarita: In this section, it is important to comment that aside from the content, the speakers and the presentations were aligned with the agreed plan. The only personal difficulty for me was the language. Nevertheless, there was an effort by the speakers and there was equipment to solve and answer the questions.

I found the musical performance to be excellent. It sent a clear message from the Filipino youth, which further demonstrates the ability and effort of the youth to carry a message to its people. I found the dress and indigenous fabrics very interesting. Unfortunately, it was not possible for all the participants to show the indigenous clothing from their own countries. That would have been more interesting to share.

Session Presentations

1. Roberto: I cannot answer question 16 because I do not have command of the English language. It was very difficult to follow simultaneously the powerpoint and the interpretation. The two Spanish interpreters were excellent!

Facilitation and time management

1. Alejandro: The content of the presentations motivated the interest in knowing what is happening in each región. Other subjects are important and related.
2. Margarita: Everything was accomplished according to the program and when there were changes, we were made aware.

Logistics

1. Gabi: In terms of logistics, it would be important to inform beforehand participants that on departure they will have to pay a tax to leave the country and this can be done only in local currency or US dollars (for those who do not know it from the outset may be extremely unpleasant to be running late, with no local currency and with no US dollars).

It is also important that the persons in charge of bringing the participants to the airport be informed about the right terminal of departure and wait until the participant has indeed entered the airport, instead of leaving immediately and being out of reach in case of need.

2. Roberto: Perhaps the best thing of all was the cultural and technical learning, the spirit of cooperation and building new friendships in a kind of work that is essentially for solidarity. The deficiency of the food is due to my Latin American or European and non-Asian habits. The food was also very sweet for a diabetic.
3. Alejandro: The organization and participation of the conference was indeed, excellent.
4. Margarita: I found the translation very successful and timely. I felt sorry for the person who was translating, especially during the parts where some of us talked very fast, forgetting that we had to make room for the translator, even though it was simultaneous.

All the materials provided were very significant because it had everything necessary to know the program and the speakers. The plaque of recognition was a significant detail.

The solidarity events were a very important part. Unfortunately, we were not able to take full advantage because not everyone participated.

The time was well laid out, all had the same opportunity, the papers were presented according to plan, everyone learned something new from the speakers and participants. As for the topics scheduled for four days, it seemed vastly loaded as they were themes that were quite broad. Some were not fully discussed.

I thought that my participation was very important. It was worth the effort from my organization which endeavored in every way to make my participation possible. Because my organization trusted me and supported my participation, I have learned and reinforced my knowledge both at the personal and the institutional levels.

The idea of creating a space to network and establish contact with each other and other participants seems very timely as there is much that can be contributed from each organization through this network and this strengthens institutional relationships.

What to you was/were the most meaningful part/s of the conference and why?

1. Gabi: The sharing of information among different countries. I found it highly enriching and inspiring. Best practices and past mistakes can be taken into account in the planning of future efforts.
2. Marizen: The conference was a good experience personally for me who comes from the migrants rights movement because I learned more about the advocacy against involuntary disappearances and saw the bigger picture and interconnection of all human rights initiatives. The presentations on various campaigns initiated in different countries gave me several ideas on how they can be related or applicable to the efforts of other social justice movements, such as rights of migrants. The group work and conversations during lunches and dinners were also encouraging. Several participants were enthusiastic to engage and share about their own experiences.

It was a pleasure being given the opportunity to present documentation about human rights advocacy. As Mr. Garretón said at the end of session, we should keep recording human rights violations because these records will be both historical and political documents that can reveal truth, facilitate truth and justice and influence change. Although change may come slowly, the importance of documentation cannot be underestimated

3. Marco: I believe that the sharing of experiences of organizations in different countries, and therefore learning about them, strengthens mechanisms of solidarity and is important in this time of dispersion and weakening of the efforts in the fight against the forcefully disappeared.

In the conference, I saw the interest of ALL participants to grow personally as well as collectively in the work for human rights.

4. Alejandro: I understand that the most significant part was to link up and share experiences and information about the situation in each region aside from providing help and showing solidarity between organizations within the network and the network itself. The testimonies of victims had helped us know similar situations. It strengthens us and gives us more reason to continue the struggle in defense of human rights.

Knowing that disappearances continue to occur in other countries makes me realize that this act seems like it may never end. This should motivate us to seek new allies and be more sympathetic with those who are currently suffering from the effects of enforced disappearance. We need to find ways to influence the authorities and the people who have the power to make a change.

What are your suggestions to AFAD and its partners to further improve the organization of future conferences?

1. Marco: More time could have been allocated for exchange and mutual recognition, beyond the purely structured actions of the presentations.
2. Roberto: At the beginning of the conference, there must be space for the speakers in each country to present their country's history.

As for the presentations, they should be less, in order to create more space for discussion among the participants.

On materials that are delivered in the package with information on each speaker, I suggest to translate the most important topics into the most common language of the participants to facilitate their participation in the presentations. It is important that participants know the historical places of the country to which you should do a tour with the group or with most participants possible.

AFAD has won a large space in the human rights community in Asia and should strive to maintain its prestige and leadership.

3. Alejandro: I think that it has been a great start, and I suggest to continue along this path to get to the expected results.
4. From Groupwork:
 - To give more time if there is interest in the forum for certain topics;
 - To utilize informal fora for discussion;
 - Punctuality is okay;
 - Translation is okay;
 - The interpreters must be exhausted;
 - It was well-organized;
 - There is very good exchange despite languages barriers.

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Appendix C

The Conference in Pictures

Opening Ceremonies



Sessions



Workshops



Awarding of Plaques



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Appendix D

**Sharing Best Practices in Advocating Legislation Against Enforced Disappearance
17-20 September 2014
Manila, Philippines**

CONFERENCE EVALUATION FORM

We value your ideas, views and feelings on the recently concluded conference on “Best Practices in Advocating Legislation Against Enforced Disappearances organized by the Asian Federation Against Involuntary Disappearances (AFAD) and its partner organizations. We request you to answer this evaluation form. Kindly choose your answers using the following rating scale to respond to each of the questions, where **1 is the lowest and 5 the highest**:

Strongly disagree = 1	Disagree = 2	Average = 3	Agree = 4	Strongly Agree = 5
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Please highlight your answer. Example: **1** 2 3 4 5.

Pre-conference preparation

- | | |
|---|-----------|
| 1. Invitation to the conference was sent in advance to allow time for you to prepare. | 1 2 3 4 5 |
| 2. Information was clear and complete. | 1 2 3 4 5 |
| 3. Travel and related logistical information were sent ahead of time (ticket, etc). | 1 2 3 4 5 |
| 4. Follow-up communication was adequately undertaken. | 1 2 3 4 5 |

General Comment/s: _____

Arrival and registration

- | | |
|--|-----------|
| 5. The conference venue was accessible. | 1 2 3 4 5 |
| 6. The check-in procedure was fast and efficient. | 1 2 3 4 5 |
| 7. The registration process was simple and fast. | 1 2 3 4 5 |
| 8. The conference kit provided was informative and complete. | 1 2 3 4 5 |
| 9. The profile/directory of participants was useful | 1 2 3 4 5 |

General Comment/s: _____

Opening ceremonies

- | | |
|--|-----------|
| 10. The choice of speakers was appropriate. | 1 2 3 4 5 |
| 11. The contents of their speeches were relevant and inspiring. | 1 2 3 4 5 |
| 12. The speakers delivered their presentations clearly. | 1 2 3 4 5 |
| 13. Rate the opening program and photo exhibit | 1 2 3 4 5 |
| 14. Rate the “look and feel” of the conference with the musical rendition of Filipino songs, Filipiniana attire of AFAD staff and display of indigenous fabrics on stage | 1 2 3 4 5 |

General Comment/s: _____

Session Presentations

- 15. The content of the presentations were useful and relevant. 1 2 3 4 5
- 16. The visual aids used were appropriate, clear and effective. 1 2 3 4 5
- 17. The presentations were organized. 1 2 3 4 5
- 18. The speakers were engaging, clear and insightful. 1 2 3 4 5
- 19. The pacing was appropriate for the audience. 1 2 3 4 5
- 20. Questions raised were adequately answered. 1 2 3 4 5
- 21. Workshops were enriching and generated more participation. 1 2 3 4 5
- 22. Post conference plans were realistic and doable 1 2 3 4 5

Facilitation and time management

- 23. Time was adequately managed. 1 2 3 4 5
- 24. Optimum audience participation was generated: awake, engaged, and included. 1 2 3 4 5
- 25. Program changes and decisions were appropriately explained and processed. 1 2 3 4 5
- 26. Overall momentum of the conference adequately steered. 1 2 3 4 5
- 27. Post-conference plans 1 2 3 4 5

General Comment/s: _____

Other important and related matters

- 28. Translation 1 2 3 4 5
- 29. Secretariat support 1 2 3 4 5
- 30. Rate the conference tokens:
T-shirt, bag tag, pens, certificates, plaque of appreciation (for speakers). 1 2 3 4 5
- 31. Food 1 2 3 4 5
- 32. Accommodation 1 2 3 4 5
- 33. Cultural learning (Solidarity events) 1 2 3 4 5

General Comment/s: _____

Overall rating of the conference:

- 1. The objectives of the conference were achieved. 1 2 3 4 5
- 2. Learning was substantial. 1 2 3 4 5
- 3. Topics presented were just enough for the four-day schedule. 1 2 3 4 5
- 4. Anticipated outcomes were met. 1 2 3 4 5
- 5. My participation was worthwhile. 1 2 3 4 5
- 6. Each one was given equal opportunity to participate. 1 2 3 4 5
- 7. Space was allocated for networking/getting to know other participants. 1 2 3 4 5
- 8. Areas of cooperation were initially discussed 1 2 3 4 5

General Comments:

What to you was/were the most meaningful part/s of the conference and why?

What are your suggestions to AFAD and its partners to further improve the organization of future conferences?

Index

A

- Alonso, Luis, 209
- Anti-Enforced Disappearance Law
 - drafting of IRR, 6
 - enactment, 3
 - highlights, 58-59
 - implementation, 25-26
 - proposed amendment, 121-23
- ASEAN Intergovernmental Commission on Human Rights (AICHR)
 - Principle of Non-Interference*, 68-70
 - Terms of Reference (TOR), 68-69
- Asian Federation Against Involuntary Disappearances
 - harassment of members, 14
 - legislative advocacy research, 116-20

B

- Burgos, Jonas
 - disappearance of, 25-26, 70, 93

C

- CED *see* Committee on Enforced Disappearances (CED)
- Children, disappeared
 - Argentina, 219-21
 - complications on reunification with parents, 213, 222-28
 - El Salvador, 74-76, 79, 212-13
- Commission for Disappearance and Victims of Violence (*KontraS*), 96-97
- Committee on Enforced Disappearances (CED), 87-88
- Convention Against Torture and other Civil, Inhuman or Degrading Treatment or Punishment, 89-90

D

- De La Cruz, Conrado, Fr., 215
- Dictatorship and enforced disappearance, 164-65, 181, 201-203
- Ding, Zilin, 9-10
- DNA testing, 73
 - see also Pro-Búsqueda*, genetic bank

Documentation

- challenges, 147
- definition, 145
- examples, 146-47
- purposes, 146, 149
- software, 148

Dolls *see* “*Take away pain dolls*”

E

Emilio Mignone Human Rights Award, 29

Enforced disappearance

- definition, 84, 86
- domestic legislation, 161
- effects, 85
- elements of, 18, 27, 84
- perpetrators, 84-85
- prosecution of cases, 27
- public awareness in the Philippines, 185-92
- resolution of, 26
- role of the church, 49, 61, 63-64
- search for truth, 19, 203
- state and non-state actors, 121-23, 128
- statistics, 18, 43, 54, 58, 106

Enforced disappearance cases

- Algeria, 101
- Argentina, 72-73, 164-67, 201-203
- Asia, 14
- Bangladesh, 55-56, 151
- Belarus, 22-23, 179-84, 195
- Chile, 50, 168-70, 197-200
- El Salvador, 51, 75-76, 93, 212
- Euro-Mediterranean Region, 101-102
- Guatemala, 28, 51, 73, 216
- Indonesia, 56, 81, 204
- Kashmir, 56-57, 193-95
- Kosovo, A2-A4
- Latin America, 17-19, 28-29, 48-53
- Lebanon, 101
- Mexico, 52-53
- Morocco, 101, 103
- Nepal, 57-58, 171-74
- Peru, 50
- Philippines, 58, 92
- Russia, 21

Enforced disappearance cases (cont'd.)

- South Korea, 59

- Sri Lanka, 59
- Syria, 102
- Thailand, 60
- Timor-Leste, 28, 60
- Turkey, 101
- Turkmenistan, 21
- Ukraine, 21
- Uruguay, 50-51
- Euro-Mediterranean Federation against Enforced Disappearances (FEMED)
 - activities, 101-102
 - history, 100
 - lobbying work, 102-103

F

- Families of Victims of Involuntary Disappearance (FIND)
 - activities, 110-11
 - role in the passage of the AED Bill, 107-109
 - Political Mapping (PolMap) Project, 111-115
- FEMED *see* Euro-Mediterranean Federation against Enforced Disappearances
- Fundacion de Antropologia Forense* (Guatemala), 74

G

- Guinda de Mayo*, 75-76

H

- Habeas corpus*, 76
- Human Rights Information and Documentation Systems (HURIDOCs)
 - background, 145-46, 148

I

- Impunity in Latin America
 - dimensions, 49
- Indonesian Association of Families of the Disappeared (IKOHI), 97-98
- International Commission of Jurists (ICJ)
 - initiatives on enforced disappearance, 70-71
- International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED)
 - comparison with ICCPR and Convention against Torture, 88-90
 - comparison with Rome Statute, 127, 161
 - drafting of, 157-60
 - features, 127
 - importance, 90
 - lobbying for ratification, 29
 - objectives, 126

ICPAPED (cont'd.)

- prerequisites, 242
- provisions, 86-88, 127-29
- ratification in Indonesia, 99, 161
- ratification in the Philippines, 91
- ratification process, 93-95
- role of AICHR, 71
- role of FEDEFAM, 156-57
- status, 55, 160-62

International Covenant on Civil and Political Rights (ICCPR), 88-90

J

- Jeelani, Aasia, 10
- Justice, challenges in seeking, 174-77

K

- KontraS* see Commission for Disappearance and Victims of Violence
- Krasovsky, Anatoly, 179-80, 182

L

- Lagman, Edcel, 109, 117-18
- Lama, Kumar, Col., 173
- Liga Guatemalteca de Higiene Mental*
 - background, 73
 - programs, 216-17
 - principles on psychosocial work, 217
 - reunification efforts, 218
- Lobbying, 110

M

- Madres de Plaza de Mayo*, 72-73
- Manalo Brothers (Philippines), 92
- Mementos, importance of, 205-206

N

- Neelapajit, Angkhana, 10-11
- Ng, Shui Meng, 9

O

- Oplan Jakarta, 62-63
- Operation Condor, 64, 164, 203

P

- PICOP 6 case, 104

Pinochet, Gen., 18, 174, A17

Pro-Búsqueda

background, 74-75, 211

cases handled, 75-78

genetic bank, 212-13

lobbying, 78-79

networks, 79-80

Public awareness on enforced disappearance

strategies, 191-92, 230

R

Reconciliation with government, 207-208

Reparation

Argentina, 139-40

El Salvador, 141

Guatemala, 140-41

Indonesia, 141-42

Philippines, 142-43

Reparation Law (Philippines)

description, 129-30

historical background, 130-31

provisions, 129-39

significance, 131

Reunification, 214, 218

Romano, Rudy, Fr., 67-68

S

Serrano Cruz Sisters (El Salvador), 75-77

Shui Meng *see* Ng, Shui Meng

Somphone, Sombath, 9, 69-70

T

"Take away pain dolls", 215, A20-A22

Thursday Afternoon Rally, 13

Truth Commission, creation of, 231-32

U

United States of America

role in Latin America, 63-65, 203, 206

Unsilenced, 104

W

We Remember, 183-84



"In the Mayan culture, the dolls will take the pain away. They put the dolls under their pillows at night and these dolls will take away the pain. The dolls are tools to alleviate their pain. The candle gives energy and spirituality to our nation. During the activities, they bring their dolls and put them on the table. These are symbols for the search and for spiritual commitment."

~ Marco Antonio Garavito Fernandez
Director, Liga Guatemalteca de Higiene Mental





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