

RECLAIMING STOLEN LIVES



**ASIAN FEDERATION AGAINST
INVOLUNTARY DISAPPEARANCES**



AFAD

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Published by:

Asian Federation Against Involuntary Disappearances (AFAD)

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The Asian Federation Against Involuntary Disappearances (AFAD) is a federation of human rights organizations working directly on the issue of involuntary disappearances in Asia. Envisioning a world without *desaparecidos*, the Federation was founded on 4 June 1998 in Manila, Philippines. The Federation was established based on the common phenomena of enforced or involuntary disappearances in many Asian countries and the imperative of regional and international solidarity in order to strongly respond to the problem.

The Federation's member-organizations include:

- Association of Parents of Disappeared Persons (APDP) - Kashmir, India
- Indonesian Association of Families of the Disappeared (*IKOHI*) - Indonesia
- Commission for the Disappeared Victims of Violence (*KontraS*) - Indonesia
- Advocacy Forum - (Nepal)
- Claimants 1081 - Philippines
- Truth and Justice Commission - Pakistan
- Working Group on Justice for Peace - Thailand
- Relatives Committee of the May 1992 Heroes - Thailand

Copy Editing: Ed Gerlock

Cover Design: Richard Allan Ramos, 1st Place, First AFAD Poster Making Contest

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ISBN 978-971-92451-1-7

ACKNOWLEDGEMENTS

Our third book, entitled *Reclaiming Stolen Lives* was conceptualized and eventually saw the light of day on the eve of the 2008 commemoration of the International Day of the Disappeared. Its birth year is also the decennial commemoration of the birth of the Asian Federation Against Involuntary Disappearances (AFAD) and the 60th anniversary of the Universal Declaration of Human Rights. This book should never have been necessary if it were not for the thousands upon thousands of *desaparecidos* whose lives have been treacherously stolen from the bosom of their beloved families and from the society where they belonged.

To the *desaparecidos* of Asia and the rest of the world, whose inspiration has urged the Asian Federation Against Involuntary Disappearances (AFAD) to conceive this book and whose unknown fate has urged us to reclaim their stolen lives, from the bottom of our hearts, we express our most profound gratitude. The shadow of their memory that guides our work with each passing day has given us the courage and energy to conceive and give birth to this book lovingly dedicated to them. They will always be our inspiration in this uphill struggle for the truth, justice, reparation and the reconstruction of their historical memory.

To the families of the disappeared who, in their sufferings as well as courageous crusade to find the truth about their disappeared loved ones, have been linking arms with us in this seemingly never-ending journey towards a world without *desaparecidos*, we thank them for being a valuable source of information necessary in the writing of this book. Without their in-depth sharing of love and life in the context of enforced disappearance during our various psycho-social rehabilitation sessions, we would never have realized the magnitude of this crime against humanity hopefully never to be repeated in history.

To the Honorable Santiago Corcuera, Chair of the United Nations Working Group on Enforced or Involuntary Disappearance, who, despite his hectic schedule, took his precious time to write the book's inspiring epilogue, we give our most sincere commendation.

To the Honorable Sri Lankan Minister of Parliament Mano Ganesan, who filled in the gap, owing to our not having a member-organization in Sri Lanka, by providing us with the list of cases of enforced disappearances in a country continuously

ravaged by the darkness of this phenomenon of enforced disappearance, we convey our heartfelt gratitude.

To all the researchers and writers of this book, whose deep conviction in the cause of the *desaparecidos* and whose research and writing abilities have made it possible to put in paper and ink the dominion of cruelty of the perpetrators of injustice and the spark of light capturing the paradox of despair and the hope of the families of the victims, we convey our never-ending indebtedness.

To the rest of the members of the book committee - our editor; proofreader and indexer; researcher and our layout artist who worked at various times of the day and the night, notwithstanding their anxiety due to time constraint to ensure the completion of the project, we say thank you ever so much for your commitment to finish this precious gift of love to all *desaparecidos* of the world.

To all our partners and innumerable others who, in one way or another, have contributed to the realization of this project, we say, thank you very much, indeed.

In whatever worthy endeavor, we always recognize the presence of the One Above, the Supreme Being, without Him or Her, we would not have the capability of conceiving and giving birth to *Reclaiming Stolen Lives* – our modest contribution to the realization of a world without *desaparecidos* and the attainment of God's Kingdom Here on Earth.

THE ASIAN FEDERATION
AGAINST INVOLUNTARY DISAPPEARANCES (AFAD)

FOREWORD

In the context of justice and human rights, impunity continues to haunt the world. Impunity, in the sense that perpetrators are not being held accountable whatsoever, neither through judicial nor non-judicial mechanisms for the violation of human rights they committed, remains the reality of the day. It is rampant particularly in the regions of Asia, Africa, Latin America and even Europe.

Impunity does not merely signify that the perpetrators are unaccountable and enjoying freedom, but also entails consequences that they will continue to commit human rights violations in the future including the practice of enforced disappearances.

Asia, which has submitted the largest number of cases of disappearances to the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID), is a safe haven for the perpetrators of disappearances. War against terrorism and separatism, coupled with the implementation of a doctrine of national stability, has been the pretext of these practices.

In countries like China, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand and many more, disappearances continue to occur. This situation casts Asia now into a parallel situation with Latin America more than thirty years ago where disappearances were common. The only difference, however, is that in Latin America, there are continuing inroads in the struggle against impunity by dint of the indefatigable efforts of the mothers, grandmothers, children, sisters, brothers and relatives of the disappeared. Asia has still to prove its capacity to combat enforced disappearances beyond information dissemination drive by attaining concrete breakthroughs in the prosecution of perpetrators.

Initiatives have been taken by individual victims, victims' groups, human rights NGOs and broad sectors of civil society to address the issue of impunity in the context of the struggle for truth, justice, reparation and the reconstruction of the historical memory. Lamentably, very often, these initiatives only end with a wall of unwillingness and resistance by governments. In a number of cases, victims are faced with reprisal by the government along with very concrete expressions of impunity. In very few cases, some governments attempt to fulfill their obligations by conducting inquiries,

investigations and even prosecution. Legislations were passed, yet these attempts to fulfill states' obligations are done not for the purpose of attaining truth and justice but intended only to impress the public nationally and internationally in order to create a pro-human rights image. Unfortunately the ultimate consequences are the full enjoyment of impunity by the perpetrators.

It is against this background that AFAD humbly publishes this book entitled *Reclaiming Stolen Lives*. This book describes the dark phenomenon of enforced disappearances in Asia and AFAD's uphill efforts to respond to this scourge on local, regional and international levels. Responses of governments to the practice of disappearances and the initiatives by the victims and NGOs are also projected in order for us to know governments' positions vis-à-vis human rights and how AFAD and other civil society organizations respond. These are some rays of hope in a climate of impunity.

The statistics on the *desaparecidos* in the region, albeit speaks of only a partial number of cases, depicts not just hollow figures but of lives stolen from the bosom of the victims' loved ones. Our Federation intends to project disappearances as a social issue, presenting these graphs as concrete witnesses to this malady. A disappeared poet from Indonesia, Wiji Thukul once stated in a poem he wrote in June 1997:

*I am not a newsmaker artist
But I am always a nightmare for every ruler
My poems are not poems
They are dark words
Sweaty looking for way out in crowds.*

AFAD publishes this book for the public to be aware of and be involved in the struggle to put an end to the practice of disappearances. *Reclaiming Stolen Lives* is dedicated to all victims and relatives of victims of enforced disappearances all over the world who were plucked from their families and society as a consequence of their struggle for truth, justice and human rights.

MUGIYANTO

Chairperson

Asian Federation Against Involuntary Disappearances

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INTRODUCTION

By: Mary Aileen D. Bacalso
AFAD Secretary-General

AFAD's third book, *Reclaiming Stolen Lives* is a sincere attempt to delve deeply into the scourge of enforced disappearances in South and Southeast Asian countries and the uphill struggle of the Asian Federation Against Involuntary Disappearances (AFAD) to continue treading the long and winding road in its member-organizations' collective journey towards a world without *desaparecidos*. Linking arms with the Latin American Federation of Associations of Relatives of Disappeared-Detainees (*FEDEFAM*) and its other sisters and brothers in Africa and Europe who are equally victimized by this malady, AFAD forges on amidst internal and external threats. In the course of its journey, AFAD lost its former Chairperson, Munir who was treacherously murdered by arsenic poisoning on a Garuda flight from Jakarta to Amsterdam via Singapore on 7 September 2004. The Federation also lost its woman human rights defender in Kashmir, Aasia Jeelani who was killed by a landmine in an election monitoring exercise in the north of Kashmir on 20 April 2004.

The articles in the book dare to look into each country's complex histories of colonization and neo-colonization and their difficult transition to democracies, which up to this day, remain fragile and in fact, are characterized by rampant transgressions of basic human rights. The most despicable form of these human rights violations is enforced or involuntary disappearance. These countries' historical backgrounds attempt to portray both the common as well as distinct contexts of the dark night of enforced disappearances in at least, a significant part of the Asian continent – China, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka and Thailand. Such contexts include horrors of dictatorship coupled with internal conflicts and counter-insurgency campaigns of governments as in the case of the Philippines, Indonesia, Pakistan and Thailand; internal conflicts as in Sri Lanka and Nepal and war against terrorism especially in the case of Afghanistan and Pakistan, but this reality also exists in the Philippines, Indonesia and Thailand. In all these contexts, national security is a common justification to disappear people. What is worse is that the perpetrators, especially the masterminds, enjoy complete impunity.

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In what manner have enforced disappearances been perpetrated and have continued to victimize innumerable people in these countries principally by agents of the state and secondarily, in some contexts, by non-state actors? The answer to this question is elucidated in the book. A microcosm of the global phenomenon of enforced disappearance, the situations in various countries complemented with the long list of cases of *desaparecidos*, albeit partial, already speaks volumes about the truth that enforced disappearance is a major human rights problem in the Asian continent. Despite the magnitude of the problem, redress is not available for the victims and their families. The long list of cases, if published, would surely consume more than four hundred pages of the book, thus, instead of printing them, AFAD deems it fit to instead put them in a compact disc and summarize them in graphs. A summary in tabular and graphical forms is, however, printed to provide a bird's eye view of what is in the accompanying CD.

A crime so distinct from other crimes, enforced disappearance needs to be codified as a distinct offense in the penal code, yet in the vast continent of Asia, only the Philippines and Nepal have drafted laws criminalizing enforced disappearances. The fourteen-year old draft law in the Philippines has not yet seen the light of day despite its being filed and re-filed in both Upper and Lower Houses of Congress. The draft legislation in Nepal has yet to prove that its substance indeed, responds to the real needs of the victims. The rest of the countries in Asia, unlike many countries of Latin America which have national laws criminalizing enforced disappearances, have not even drafted national legislations to criminalize enforced disappearances.

Asian countries are, therefore, bereft of national legislations criminalizing enforced disappearances. Neither national nor regional mechanisms of protection exist in the continent. Thus, the immediate entry into force of the United Nations Convention for the Protection of All Persons from Enforced or Involuntary Disappearances which was adopted without a vote on 20 December 2008 is all the more imperative especially for Asian peoples. Significant to note is that this new international treaty provides new rights – the right of the families of the victims to know the truth and the right not to be subjected to enforced disappearances.

The United Nations Convention for the Protection of All Persons from Enforced Disappearance with an independent monitoring body for implementation was signed by fifty-four (54) governments on 7 February 2007. To this date, only four (4) Asian governments have signed. These include Azerbaijan, India, Japan, and Mongolia. None of the countries cited in the articles of the book have signed this international treaty now more than a year after the historic signing. Seventy-four (74) governments have already signed but none of the additional signatories stem from the Asian region. So



far, five (5) governments have ratified, namely: Albania, Argentina, Mexico, Honduras and France. In a continent where the international treaty is most needed, it is ironic that Asia has the lowest turnout in terms of signatures and thus far, has no single ratification.

The attitudes and positions of most of the governments above mentioned vis-à-vis the international treaty are presented in this publication. While China and India actively participated in the negotiation process, they were part of those UN member-states which insisted the inclusion of national security as impediment to the right to truth and justice and objected to the establishment of new rights. Indonesia was silent for a long time during the negotiation process and at the latter part, its position was ambivalent. However, it promised in a high level segment session of the UN Human Rights Council that it would sign the Convention and reiterated the same promise in other venues, but has done little to fulfill the promise. The Philippines, which was often absent during the drafting and negotiation process, said nothing because accordingly, it was still studying the text and had no instructions from the capital. It was only during the UN General Assembly level when the text was already final that the Philippine government mentioned that it wanted to include in the definition of enforced disappearances those cases perpetrated by non-state actors. However, at that advanced stage before the Convention's adoption, it was too late to change the text and the Philippine government, after all, was well aware of the fact. Afghanistan and Nepal, being non-members of the then UN Commission on Human Rights, were absent and did not send observers even if they could have done so. Despite our incessant lobbying for Sri Lanka's presence, considering its former resolution in favor of the establishment of the then United Nations Working Group to Elaborate a Draft Legally-Binding Normative Instrument for the Protection of All Persons From Enforced Disappearance, a representative from Sri Lanka was present only during the last session in 2005 September, but said nothing.

The living witnesses to the phenomenon of enforced disappearances are the families of the disappeared. While the *desaparecidos* are stripped of their most basic of rights, their surviving families suffer from the pangs of psychological and emotional trauma as a result of the disappearance of their loved ones. Yet like the *abuelas, madres y hermanos* of Latin America, there are exceptional families of victims in Asia who raise fists and go beyond their state of victimization by transforming themselves into human rights defenders.

- Ms. Ding Zilin, whom this writer personally met in her home in Beijing some years ago, a symbol of the undying love for her beloved son, continues to seek truth and justice not only for her murdered son but also for countless

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other victims of the gruesome 1989 massacre in the Square of Tiananmen, which ironically means, in its literal sense, "Gates of Heavenly Peace."

- Ms. Edita Burgos, mother of Jonas Burgos, a Filipino *desaparecido* who was abducted by armed men more than a year ago in the heart of Quezon City, is another symbol of a mother who turns her grief into courage as she perseveres in leaving no stone unturned to find her disappeared son by daring to face the perpetrators of injustice and bringing her case and the phenomenon of enforced disappearances to national and international authorities.
- Ms. Angkhana Jeelaphajit, wife of disappeared lawyer, Somchai Neelaphajit, in search for her husband and in the fight for truth and justice, accompanies other family members of the disappeared in Southern Thailand in bringing their stories to the United Nations Working Group on Enforced or Involuntary Disappearance (UNWGEID).

These three faces of courage may not be representative of the thousands upon thousands of family members of the disappeared in Asia. But their exemplary commitment to the cause of their loved ones captivates the hearts of many other family members of the victims and encourages them to imitate their good examples. The fruits of their labor will, in a not-so-distant future, bring light to the battered lives of victims and go a long way towards breaking the cycle of impunity.

Mindful of the reality that majority of the family members of the disappeared in Asia come from poor families and who have not yet transcended the devastating effects of enforced disappearance, AFAD has devised various levels of psycho-social rehabilitation programs with the themes, to wit: "Healing Wounds, Mending Scars" enacted at the regional and national levels; "From Victims to Healers" and "Cycle of Healing" both carried at the national levels. All these culminated with an internal summing-up of the three year program entitled "Sharpening our Healing Capacities Towards Empowerment."

As stated in the book, the psycho-social rehabilitation program, which the families who have benefited from truly appreciate, has to be complemented by local efforts using local resources in the sense that many other families of the *desaparecidos* cry out to be healed from the festering wound caused by the crime of enforced disappearances. It goes without saying that these efforts for inner individual and collective healing should simultaneously go with the holistic endeavor to search for the truth, to attain justice, redress, reparation and to reconstruct the historical memory



of the disappeared. After all, individual healing is an integral part of social healing, enforced disappearance being both an issue of the family and of the greater society.

The articles on the various countries speak of the families' various ways of responding to their problem in an organized way through their membership in their national organizations which are affiliated with AFAD. For instance, as they honor their disappeared during traditionally commemorated events, they use these venues to express their sentiments and to air their demands to their respective governments whose agents are the alleged perpetrators of the crime committed against their disappeared loved ones. Reporting cases to authorities and filing cases in court are accomplished in some countries such as the Philippines, India, Indonesia, Nepal, Sri Lanka and Thailand. However, breakthroughs have still to be achieved in this regard.

In a nutshell, AFAD's decade of journey towards a world without *desaparecidos* is a significant part of the book. It is an attempt to consolidate the gains of the Federation since its founding on 4 June 1998. It also humbly presents its own internal and external problems in its noble crusade to champion the cause of the *desaparecidos* and their families so that never again will this crime be repeated and that the generation of today and tomorrow will savor the much-cherished dream for a world without disappearances. The Federation indefatigably fights for the realization of a world wherein no mother, no father, no son, no daughter, no brother, no sister will ever ask the same nagging question: "Where are you?" It is no easy journey and in the Asian context when the issue of enforced disappearance does not yet enjoy a strong public support, more often than not, it is a lonely struggle. Many things, therefore, cry out for attention.

AFAD opts to march along this long road to truth, justice, redress and the reconstruction of the *desaparecidos'* historical memory. As the song, "Long Road to Freedom" goes, "*if you walk in love with the wind in your wings and cover the earth with the songs you sing, the miles fly by.*" Thus, a piano piece on AFAD's theme song, "Long Road to Freedom" is incorporated in the book. Singing the song as the Federation walks along the less trodden road to justice will facilitate a meaningful journey and will, amidst stones, rocks and thorns that may bar the way, make this struggle for a world without *desaparecidos* as significant as its end in itself. As the music goes,

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*"We'll keep fighting on
Till we find the truth
Till we find justice
Desaparecidos
We'll keep fighting on
To honor your memory
To comfort your family
And we will be with you once again...."*

The book ends with an epilogue from no less than the Honorable Santiago Corcuera, the able Chair of the United Nations Working Group on Enforced or Involuntary Disappearances. Giving AFAD encouragement to continue the journey, Honorable Corcuera realistically points out the difficult situation in Asia vis-à-vis enforced disappearances, the breakthrough of achieving the international treaty and the fact that it has not yet been entered into force. In view of this, Honorable Corcuera reiterates the commitment of the United Nations Working Group on Enforced or Involuntary Disappearances to fulfill its humanitarian mandate of working on individual cases and call the attention of governments to respond to cases and general allegations and thus, save lives.

Reclaiming Stolen Lives aims to portray enforced disappearances perpetrated in the name of the state; the evil brought about by this crime against humanity manifested in both the stripping of the most basic of rights of the *desaparecidos*; and the crime's act of depriving the victims' families and society of women and men who potentially could have been socially productive and added further contributions to the creation of a better society and a better world.

This publication is, in itself, a call to all member-states of the United Nations to immediately sign, ratify and implement the United Nations Convention for the Protection of All Persons from Enforced or Involuntary Disappearance.

Finally, the Asian Federation Against Involuntary Disappearances likewise calls on all peoples of the world to link arms with the families of the *desaparecidos* and be one with them in hoping, in dreaming, in struggling and in journeying towards a world when the right not to be subjected to enforced disappearances is fully respected.

Reclaiming Stolen Lives is AFAD's precious gift to the *desaparecidos*, their families and society – a modest attempt to contribute to the gargantuan task of social transformation.





AT THE HEART OF TIANANMEN ...

By Rosa Bella M. Quindoza



At the Heart of Tiananmen: Involuntary Disappearance in the People's Republic of China¹

By Rosa Bella M. Quindoza

Introduction

In China, as in most countries in the Asian region, the phenomenon of involuntary and enforced disappearances is viewed as one of the alarming human rights issues which threaten "the very existence of a civilized society." The phenomenon involves "arrest, detention, abduction or any 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 the refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law."²

A total of one hundred fourteen (114) cases of involuntary disappearance – most of which occurred between 1988 and 1990 and 1995 and 1996– were reported in the past to the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID). The figure, however barely reflects the thousands of students, labor activists, and intellectuals who protested and were arrested, injured, or made to disappear or die in the government crackdown of 1989 and the Tibetan monks who were arrested in Nepal and were handed over to the Chinese authorities in more recent years.

As the world anticipates the 2008 Summer Olympics to be held in Beijing, the PRC continually confronts violent protests in Tibet and other human rights issues such as death penalty, torture, enforced disappearances, freedom of speech and access to information, persecution of opposition, campaign for a free Tibet, and relations between mainland China and Taiwan. In 2004, Nobel Peace Prize nominee and founder of the Tiananmen Mothers,³ Ding Zilin spoke of the alarming implications of the 2008 Olympics preparations for the issue of involuntary disappearances and other human rights violations in China:

"...Beijing is undergoing a makeover in preparation for the 2008 Olympics. The whole city is like a big construction site with resettlements everywhere. Many traces are impossible to follow;



therefore it is difficult to find even just one trace.”⁴ Since 2001, when Beijing was elected Olympics host city by the International Olympic Committee (IOC), until the round-up for the Beijing Summer Olympics,⁵ the world monitors and campaigns for China’s improvement in terms of recognition and observance of human rights in the country.

This article provides a glimpse of the context and extent of involuntary disappearances on the general peace and human rights situation in China, its impact on the families and relatives whom the victims left behind, the government’s response to the situation, and recent developments on the phenomenon in China and in the international community.

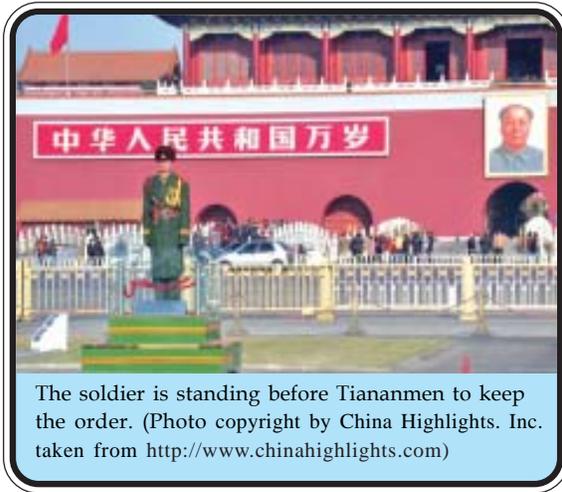
Context and Extent of Involuntary Disappearance in China



The People’s Republic of China is the largest country in the East Asian region and one of the five largest in the world, and has the highest population of 1.3 billion. When the long running civil dispute between the Communist Party of China (CPC) and the *Kuomintang (KMT)* ended in 1949, the defeated *KMT* retreated to Taiwan and nearby islands while Communist Party Mao Zedong proclaimed mainland China as the People’s Republic of China. From then on, PRC was run by the CPC under a single-party system whereas Taiwan and surrounding islands came to be known as the Republic of China.⁶

After only a decade from the proclamation of the PRC, China suffered from a series of “economic failures” which led to Mao Zedong’s ouster as party leader. Despite the turnover of control to his successors Liu Shaoqi and Deng Xiaoping, Mao Zedong retained significant influence over the CPC. In 1966, the former party leader ushered a campaign “to continue the revolutionary class struggle” but was viewed more as a way “to regain control of the party [leadership].” Known as the Cultural Revolution, it was characterized by power struggles within the party and between rival factions which resulted in massive “social, political, and economic violence and chaos, which grew to include large sections of

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Chinese society and eventually brought the entire country to the brink of civil war.⁷ The situation of political struggle and social unrest in China worsened as the Chinese regime continued its tight control over all aspects of society.

On 5 April 1976, a historical protest against the repressive Chinese regime was staged at the Tiananmen Square⁸ in Beijing. It was a result of the government's policy that limited the period of public mourning on the death of Zhou Enlai, the Chinese premier who was involved in a political power struggle with

other senior leaders in the Politburo of the CPC. The strong public sentiment was felt among thousands of Chinese mourners who gathered and placed wreaths at Tiananmen Square. Viewed as a threat to the current regime and to the forward movement of the cultural revolution, the public gathering was stopped by the government, commemorative materials were removed public security officers cordoned off the area, prevented the people from approaching, and drove the people away from the monument. It came to be known as the April Fifth Tiananmen Incident.

Interestingly, the Tiananmen Square was also the venue of the May Fourth Movement in 1919. The student-led cultural, political, and anti-imperialist movement was fueled by the rise of Chinese nationalism and by the public discontent with the Treaty of Versailles settlement. The May Fourth Movement was recognized to be the major force that promoted the spreading of Marxism in China, and set the ideological foundation that established the Chinese Communist Party (CCP). The CCP declared that May Fourth was an anti-feudal revolutionary group started by the students and sustained by the working class in the latter period of the movement.

As a result of the 1976 incident, the Chinese government's Gang of Four – which was made up of senior government leaders and headed by Jiang Qing, wife of Communist Party leader Mao Zedong – recognized Deng Xiaoping's influence to the public and reportedly attempted his ouster. Deng was an ally of the Zhou Enlai and was then carrying out the daily duties of the Premier. He was placed under house arrest in Guangzhou until October 1976, after the death of the Party leader and the fall of the Gang of Four. Deng was then brought back to Beijing where he emerged as the supreme government leader in 1978.

With Deng Xiaoping's return to the government, he led a series of economic and political reforms that seemingly reduced government control over many areas of society. However, despite the reforms, the people, particularly the students and



intellectuals still felt the Communist Party's significant social and political controls. As such, the Chinese government continued to eliminate perceived threats to the stability of the country – or more correctly, of Chinese communist rule. Incidents of government action against what the state branded as terrorists, political opponents, and journalists, and of custody and regulation of the press, regulation of religion, and suppression of independence and secessionist movements continued to occur.

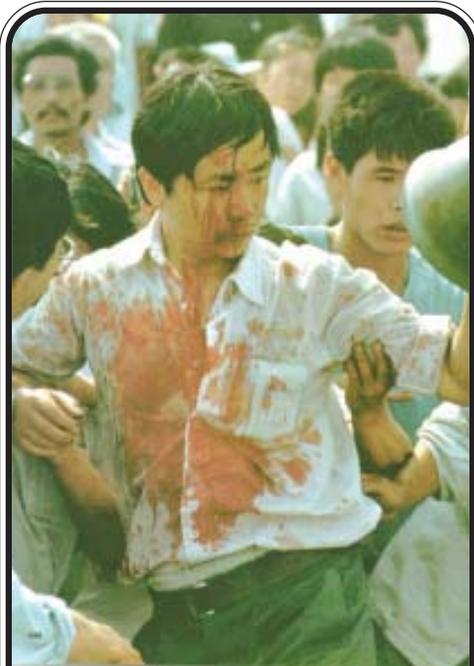
In 1989, the death of a pro-reform official led to another series of demonstrations⁹ staged at Tiananmen Square by students, worker activists, and intellectuals in protest of the authoritarian regime, corruption, and existing economic policies of the Chinese Communist Party. The peaceful protests in Beijing and in other cities throughout the country called for much-needed democratic reforms. However, the government's response to the impending protests was a crackdown characterized by a series of arrests of protesters and their supporters, government ban and control of foreign press coverage of the events, house arrests and purging of sympathetic party members. In Beijing alone, the military crackdown resulted in a minimum of 200-300 victims (government figures) to as high as 2,000–3,000 (Chinese student associations and Chinese Red Cross figures). Ms. Ding Zilin, of the Tiananmen Mothers, once declared that the actual number of victims “remains an enigma [that is] difficult to solve.” On 4 June or after 15 days of martial rule, the Chinese military put a violent end to what was regarded as the largest pro-democracy demonstration in China. The “violent suppression of the Tiananmen Square protest caused widespread international condemnation of the PRC government.”

Another significant issue in the discussion of Chinese politics and involuntary disappearances is the practice of Falun Gong. Following the “principle of Truth-Benevolence-Forbearance, practitioners devoted themselves to the cultivation of their inner selves and the improvement of their mental and moral quality.”¹⁰ Elements of the Chinese government, in the early years of the Falun Gong practice (i.e., early 1990's), acknowledged and even commended the latter's benefits for people and society. Some government officials even became practitioners of Falun Gong and their support fueled its expansion. However, some party members took offense in the increasing popularity of the Falun Gong, evident in the large number of practitioners within and outside China.

The Chinese government then campaigned against the Falun Gong movement. The campaign took



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A bloodied Chinese protestor, one of those who are either hurt, killed or disappeared during the Tiananmen Square Massacre on 4 June 1989. (Photo taken from <http://www.cnd.org>)

several forms, from discrediting the Falun Gong to party members who were also practitioners, to violent assaults and arbitrary arrests and detention of Falun Gong practitioners. During this first wave, 45 practitioners were detained. In the second wave of nationwide arrests, the Chinese authorities detained all Falun Gong key leaders capitalizing on the belief that the fall of the key leaders would result in the collapse of the membership. But the Falun Gong group did not easily yield to persecution.

Thousands to millions of practitioners from all over China and the rest of the world gathered at the vast Tiananmen Square to stage peaceful petitions and physical demonstrations of the beneficial effects of the Falun Gong practice. However, the Chinese security forces met these peaceful appeals with violent and heinous acts of continued random arrests, detentions, disappearances, tortures, and killings. Up to this day, Falun Gong practitioners suffer persecution from the Chinese government. A Falun Gong human rights group documented twenty-one (21) cases of enforced disappearances of Falun Gong practitioners and more

cases of other human rights violations.

Considered as one of the earliest centers of civilization, China is now recognized as an emerging economic, political, and military superpower¹¹ not only in Asia but in the world. In the more recent years, economic security is becoming equally, at times more important for China in terms of national affairs and international relations. The government of the People's Republic of China (PRC) once declared that it aspires for a "peaceful, stable, and prosperous world" and as such, devotes itself to a modernization drive towards peace and development.¹²

However, China is also confronted with the challenge of "launching and balancing the right mix of political and economic reforms." In fact, some of the efforts at achieving economic development have resulted in "social discontent and protests" in China as political controls remain tight. Continuing public discontent can be gleaned from the figures officially released by the Chinese government. Seventy-four thousand (74,000) protests were recorded involving 3.5 million people in the year 2004. This figure shows a significant increase from the 58,000 protests in 2003.¹³

Throughout the long history of political turmoil in Communist China, the phenomenon of involuntary disappearances has figured as one of the serious rights

violations perpetrated by state elements, particularly by security forces. Furthermore, this phenomenon became one of uncertainty for the victims' families and impunity on the part of security forces and the government, in general. As previously mentioned, the 114 disappearance cases which were transmitted to the UNWGEID pale in comparison with the varying accounts of foreign media, student organizations and the relatives of the disappeared. From the accounts of a group of mothers who later organized themselves to seek information, vindication, and compensation for their lost or killed children during the 1989 military crackdown in Tiananmen Square, the number of cases of disappearances climbed as high as 4,000 but only thirteen (13) cases were officially documented.

In its latest annual report, the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID) noted that of the 114 transmitted cases, eleven (11) have been clarified on the basis of information provided by the source, while seventy-two (72) cases have been clarified on the basis of information provided by the Government and thirty-one (31) cases remain outstanding¹⁴ during the whole period of review of the year 2007. Furthermore, two of these cases were classified under the urgent action procedure. "The first case concerned Lopoe Adruksang, a Tibetan monk who was arrested at Lithang County Public Security Bureau and taken to an unknown location. The second case concerned Lobsang Thokmey, who was reportedly arrested in connection with a political protest in his hometown" on 19 August 2007.



Of the 31 remaining cases, the government replied to only seven (7) through three (3) communications dated 12 February, 10 May, and 6 June 2007 respectively. "For six cases, the Working Group found that the responses did not contain sufficient information to clarify the fate or whereabouts of the disappeared persons. In the communication dated 6 June 2007, the Government reported on one outstanding case, indicating that the victim was being held at the detention facility of the Lhasa City Public Security Office and legal proceedings were instituted against him."¹⁵ The UN Working Group on Enforced or Involuntary Disappearances declared that the

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information was equivalent to a clarification as long as the source did not raise an objection for a period of six (6) months.

A stark contrast of gross and callous human rights violations while holding powerful international human rights membership and commitment is illustrated in the case of China. On the one hand, the human rights provisions in the constitution do not ensure “significant protection against criminal prosecution by the State” and political freedoms remain tightly controlled by both central and local governments.



Ding Zilin , co-founder of The Tiananmen Mothers. (Photo taken from <http://www.duckdaotsu.org>)

Foreign governments and international organizations are critical of China’s rampant “human rights violations including systematic use of lengthy detentions without trial, forced confessions, torture, mistreatment of prisoners, restrictions of freedom of speech, assembly, association, religion, the press, and labor rights.” Just as China is regarded as an emerging world leader, it also leads in capital punishment, “accounting for roughly 90% of total executions in 2004.”¹⁶ Human rights issue is one of the factors that drive independence movements in Tibet.

On the other hand, China has been a permanent member of the United Nations and the UN Security Council since the 1970s and consistently supports the role of the UN in maintaining international peace and security under the guiding principles of the UN Charter. The position of China in the UN was originally occupied by the Republic of China. It was through UN General Assembly Resolution 2758 that “the PRC was recognized as the sole legitimate Chinese government with overwhelming support from two-thirds of all UN member-states including approval by the Security Council members.”¹⁷ Moreover, China was elected to the Human Rights Council by 140 votes and will retain its seat for three years (2007-2009).¹⁸ This apparent power enjoyed by

China in the UN contradicts government policies and actions towards human rights issues, particularly those of the fate of the *desaparecidos* from the 1989 military crackdown.

Ding Zilin stated that “[i]nternationally, people and countries have started to focus on the economic and political developments in China, but are paying less attention to human rights and democracy. Politicians globally are also starting to forget that China still does not have political rights and civil rights .” The PRC government continues to contend that the notion of human rights should take into account “a country’s present level of economic development, and [should] focus more on the people’s rights to subsistence and development in poorer countries.”¹⁹

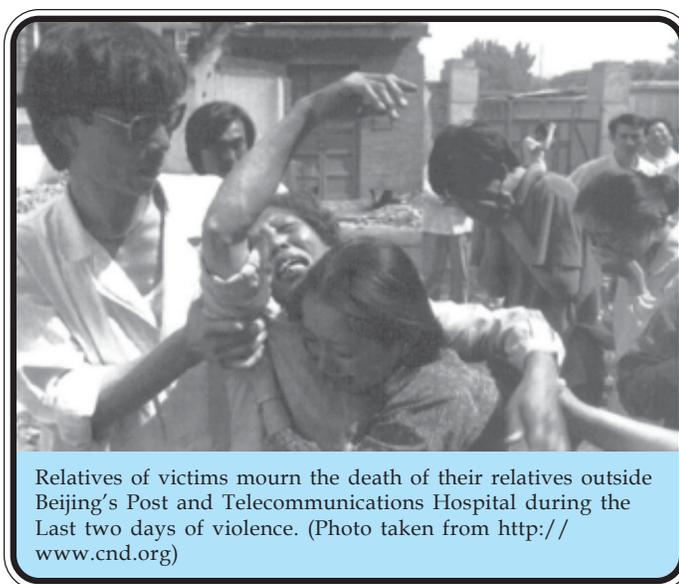
Impact of Enforced Disappearance on the Victims' Families and Their Response to the Situation

"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.'²⁰

These statements of Ding Zilin aptly described the impact of the disappearance on the *desaparecidos'* families, relatives, and friends. Indeed, the phenomenon weighs and pains more heavily on the memory of the victims' loved ones, and translates into a "history [that] seems [to be] frozen" in time brought about by uncertainty.

Several testimonies²¹ of mothers of university students involved in the 1989 Tiananmen Square protests similarly recount the family's endless search for more than 400 bodies in numerous hospitals around the city and nearby cities. The long days, weeks, months which turned into years of search translate into anxiety, fear, suffering and sorrow. The families all felt the physical and psychological exhaustion from the uncertainty of the fate of their disappeared loved ones and from the government's response to inquiries on the whereabouts of the victims through interrogation, threats, violent detentions, or house arrests. But nonetheless, their profound love will keep their search for their loved ones or for justice even against a formidable opponent that is the state. For the victims' families, there is "great agony to see a loved one go" and in having no means to help or rescue them. The families were appalled "to realize how the government could use such atrocity on its own people."

No less than the founding leader of the Tiananmen Mothers, Ding Zilin, declared that the predicament of having a son who was already dead or who is still alive but whose whereabouts were unknown was like living in hell even after two years



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Falun Gong members with human rights groups calling on the Chinese Communist regime to end the prosecution of Falun Gong practitioners within China and other parts of the world. (Photo taken from www.clearwisdom.net)

from the incident. She lamented that the agony of losing a loved one into the unknown felt like “dying,” and “painful living,” and “wandering back and forth between life and death.”

The phenomenon of enforced disappearances would have greatly affected the economic aspect for most families since most of the protesters were students, laborers, and intellectuals, who were or would have been one of the main income earners in the family. The physical searches and the legal remedies that the families have to undertake can add greatly to their burden.

Most of the families refused to accept the government’s official account of the disappearances, injury, or deaths and instead they collected the real names of real victims and recorded individual stories. They demanded to have a dialogue with government and proper investigation, and that the government would recognize its crime and undertake measures to rectify it. Families would write to the central government to demand opening up the June Fourth case for fair and reasonable account and to be able to reassess the incident with the end in view of bringing about true democracy.

The gravity of the fate of the victims and the sufferings of their respective families became instrumental for them to choose to break silence and to bond, keep in touch, and look after other people, especially mothers, who shared the same fate and who needed care and support. Particularly for Ms. Ding Zilin, her bereavement was turned into advocacy and activism for the causes of the disappeared and the families who were left behind.

Ding Zilin, mother of then 17-year-old Jiang Jelian who was one of the first batch of students killed in the 1989 massacre, gathered herself “out of her despair by taking action to seek justice.” She formed a network of “150 families who had lost sons and daughters” during the 1989 military crackdown.²² The network which came to be known as Tiananmen Mothers, demanded from the Chinese government to produce a full report of the June Fourth Massacre and to form an investigatory body and identify and punish the persons responsible. Early on, there was hesitation on the part of Tiananmen Mothers to speak of the cruelty of the Chinese government towards the protesters in 1989. But as the Tiananmen Mothers started to tell their stories, Ding

Zilin, in a testimony and an appeal for the June 4th Missing Persons declared that these stories are a “very small part of what we could put down on record.”

China’s share of the phenomenon of involuntary disappearances illustrates that at the heart of all the agony and suffering for the disappeared son, daughter, father, and loved ones are the mothers and wives who were left behind. And at the core of all the advocacy and fight for justice are the women who continue to search for their disappeared loved ones. Cheung and Lai (2003) declared that the Tiananmen Mothers have demonstrated a very fitting example of the Chinese saying, “to turn grief into courage.” Moreover, the Tiananmen Mothers crusade is filled with many characteristics of a mother’s heart – those of patience, goodwill, selflessness, and genuine sacrifices that entail time, energy, and even life itself.

In the year 2000, the official campaign of the Tiananmen Mothers was launched. The campaign demanded for:

1. “The right to mourn peacefully in public;
2. The right to accept humanitarian aid from organizations and individuals inside and outside China;
3. No more persecution of victims, including those injured in the shootings and the families of the dead;
4. The release of all people still in prison for their role in the 1989 protests; and
5. A full, public accounting of the shootings of the June 4 massacre to end impunity for the perpetrators of this crime.”²³

The members in the network provide support for each other and work together to gather information about what really happened in those tragic weeks of protests and violent attacks of the Chinese military forces. In addition, the network collects and distributes humanitarian funds donated to assist the injured and the families of the dead. The network also worked to systematize the documentation of the violent crackdown by collecting the names of real victims and recording their



Tiananmen Mothers celebrate Chinese New Year together in Hongkong in 2008. (Photo taken from <http://www.hrichina.org>)

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individual stories. However, the efforts of the Mothers have been met with either silence or persecution from the Chinese government but this response does not easily discourage the Tiananmen Mothers to give up their fight against the cycle of impunity and gross violations of human rights of the Chinese government.

In October 2002, the Tiananmen Mothers joined the Asian Federation Against Involuntary Disappearances (AFAD), a federation of human rights organizations



Tiananmen Mothers capitalize on holiday to get together and discuss plans for their advocacy. (Photo taken from <http://www.hrichina.org>)

working directly on the issue of enforced disappearances. The Tiananmen Mothers received support and encouragement from AFAD as it shared the “sorrow, agony, and struggle for justice for the victims and liability for the perpetrators” of the Chinese mothers. However, the mothers and families of the victims found it “very difficult to establish direct communication [and coordination] with AFAD or its members” primarily

because of language barriers. The Tiananmen Mothers Campaign Group in Hong Kong then served as “a bridge to fill in the gap between Ding and AFAD or its members.”²⁴

In March 2004, when the Hongkong-based Tiananmen Mothers Campaign Group submitted individual cases of enforced disappearances to the UNWGEID, Ding Zilin, and two other network members, - Zhang Xianling, who lost her 19-year-old son, and Huang Jinping, who lost her 30-year-old husband - were detained for engaging in what the government described as illegal activities sponsored by foreign entities. They were released later in the week but placed under close surveillance or what advocates described as house arrest in the run-up to the 15th anniversary of the protests.

In addition, the Chinese government forces monitored all forms of communication and even instructed them not to speak with other activists, with foreign media, and with other human rights organizations. The security and communication problems faced by Tiananmen Mothers made it impossible for them to communicate with AFAD and vice-versa. The Tiananmen Mothers Campaign Group informed AFAD of the situation and then the Tiananmen Mothers ceased to be a member-organization



of AFAD. Despite this, AFAD continues to commemorate the June 4th Tiananmen crackdown which coincides with the former's founding anniversary.

In 2006, the Tiananmen Mothers called for "a process of truth and reconciliation" that would promote an admission and change in the government's position over the suppression of the Tiananmen Square protests of 1989. Continued campaign, advocacy, and commemoration are also lodged in the internet to reach a wider audience. Related to the causes of the Tiananmen Mothers and the victims of the Tiananmen June Fourth massacre, documents have been produced. Some of these documents were: video materials on the testimonies of the mothers/families and footage of the June 4 massacre; video recording of Ding Zilin's appeal on the fate of the June 4th missing persons; and the book entitled "Tiananmen Papers" which captured "the Chinese leadership's decision to use force against their own people – in their own words" through a day-to-day account of events leading up to the June 4 event and several days after.

The Tiananmen Mothers network's efforts did not fall on deaf ears in the international arena. The demands for accountability and liability have been joined by other calls, open letters, and petitions from various organizations and individuals who were all advocating for the promotion of human rights. There are also several international/regional organizations of families and relatives of victims of the *desaparecidos* as well as international human rights organizations that link, assist, and work with local Chinese networks which advocate justice for the disappeared and other victims of human rights violations.

In China, the Falun Gong Human Rights Working Group or FalunHR has been closely monitoring human rights violations and has been actively documenting and collecting cases of violations against Falun Gong practitioners since 2001.²⁵ Throughout the years, it has submitted over ten thousand such cases to the United Nations, to world governments, and to international human rights organizations. It maintains a presence at the worldwide web for information dissemination, networking, and documentation of cases, and mounting of appeals and petitions for governments and individuals.

The UNWGEID was the first United Nations human rights thematic mechanism created with a universal mandate to serve as a channel of communication between family members of victims of disappearance and their respective governments. The UN Working Group is primarily tasked to assist families in determining the fate or whereabouts of their family members who, having reportedly disappeared, were placed outside the protection of the law. In addition, the UNWGEID assists in the sufficient documentation and identification of individual cases of disappearance and clarification of the incidents with government authorities.

The Amnesty International, a worldwide movement of people who campaign for internationally recognized human rights for all, is in solidarity with the Chinese people in monitoring, documenting and advocating the human rights situation in the country. AI urges the authorities to allow full public debate about the events of 3-4 June 1989. This is an important step towards securing justice for the victims of the crackdown and their families. Amnesty International also calls on the Chinese authorities to release those imprisoned in connection with the 1989 protests, to carry out a full, independent and impartial investigation into the crackdown with a view to bring the perpetrators to justice and to compensate the victims or their families.

Chinese Government's Response to the Phenomenon

The Chinese legal framework is closely related to the phenomenon of enforced disappearances and the general issue of human rights as it basically lays the foundation for recognition and promotion of these rights. The March 2004 constitutional amendment provided for state recognition and protection of human rights.²⁶ There is an "on-going although slow-moving revision of China's Criminal Procedure Law" to include the replacement of Re-education through Labor, a system used to detain hundreds of thousands for years without charge or trial, with a new law on the Rectification of Illegal Behavior.²⁷

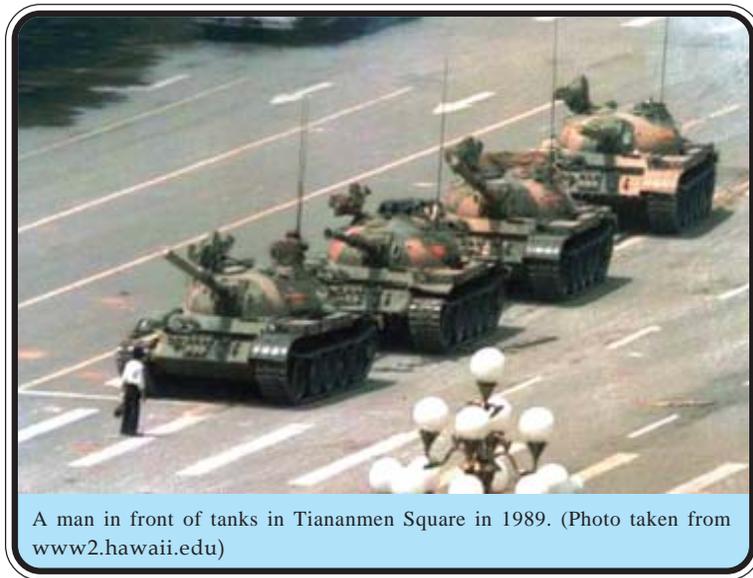
In 2003, the Chinese government issued a set of unified regulations on the standardization of law enforcement procedures for public security institutions. These laws defined, among others, legal means for gathering evidence and time limits on investigation of suspects. In the succeeding year, regulations prohibiting the use of torture and threats for confessions in interrogating a suspect were issued. "Planned reform of several laws can bring Chinese legislation regarding criminal procedure and justice system in greater conformity with international standards."²⁸ Also, a law that requires the Chinese Supreme Court to review and ratify all death sentences given by lower courts was enacted, thereby minimizing the possibility of miscarriages of justice.

In the international level, the Chinese government is a signatory to 22 human rights instruments, including five of the seven core conventions. Having signed the International Convention on Civil and Political Rights (ICCPR), China is now in the process of "amending its Criminal, Civil, and Administrative Procedure Laws and deepening judicial reform to create conditions for ratification at an early date."

China also ratified the Convention on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Racial Discrimination; Convention against Torture; CAT Optional Protocol; Convention on the Rights of the Child; Convention for the Elimination of Discrimination against Women; Optional Protocol to the CRC on the Sale of Children; Child Prostitution and Child Pornography; Protocol



and Convention relating to the Status of Refugees; and Convention on the Prevention and Punishment of Genocide. It has signed the Convention on Civil and Political Rights and OP to the CRC on Children in armed Conflict. It has communicated with various Working Groups or Special Rapporteurs," particularly that of the UNWGEID.²⁹ In addition, the Chinese Government actively cooperates with the Office of the UN High Commissioner for Human Rights as well as the special mechanisms of the then UN Commission on Human Rights.

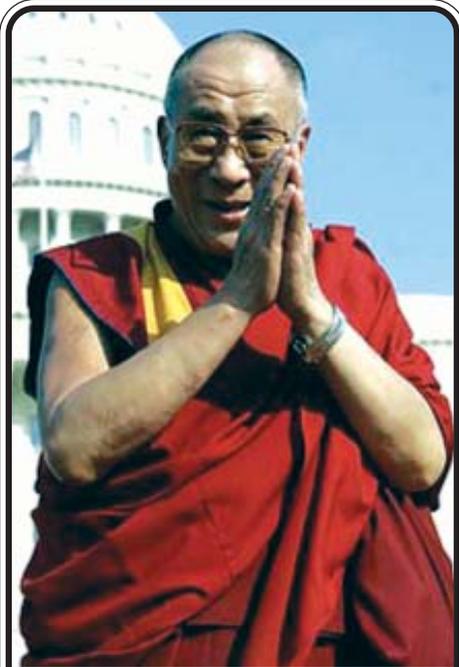


The Chinese government describes basic rights as "positive rights" (food, shelter and clothing), which, when granted, will improve the people's standard of living and realize these basic rights. It also adheres to the belief that a strong state has the primary role to achieve social stability and economic prosperity. However, the government has acknowledged the importance of protecting human rights and has taken steps to adopt national laws and to bring its human rights practices into conformity with international human rights norms.

In recent years, the Chinese Government has invited to China the Special Rapporteur (SR) on Freedom of Religion or Belief; the Working Group on Arbitrary Detention; the SR on the Right to Education, and the SR on Torture. (It) has given responses in a highly responsible manner to the communications from all the special procedures of the HRC as well as those transmitted through the 1503 Procedure."

In addition, the Chinese government presented an *aide memoire* in connection with its election to the Human Rights Council in June 2006. The *memoire* pledged that it is committed to the promotion and protection of human rights and fundamental freedoms of the Chinese people. The National People's Congress has adopted nearly 300 laws and regulations related to the protection of civil and political rights, ensuring complete freedom of the Chinese people in movement, employment, access to information, religious belief and ways of life. In 2004, the statement that "The State respects and safeguards human rights was written into the Constitution by the National People's Congress, defining the position of human rights in the overall national development strategy."³⁰

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Tenzin Gyatsi, the exiled Dalai Lama, who challenges the Chinese Communist government to Free Tibet. (Photo taken from mailonline, 25 April 2008)

“The Chinese government holds that owing to differences in social systems, level of development, religious and cultural background as well as historical tradition, it is natural for countries to differ on human rights issues. China has all along advocated dialogues and exchanges between countries based on equality and mutual respect, which will enable them to enhance mutual understanding, broaden consensus, learn from each other and make progress together.”³¹ The UNWGEID recognizes the cooperation and hopes that it will lead to the clarification of outstanding cases.

There were some noted cases of the Chinese government providing compensation to the victims of the June Fourth brutal crackdown. A news report³² states that “Although the Chinese government never officially acknowledged wrongdoing when it came to the incident, in April 2006 a payment was made to the family of one of the victims, the first publicized case of the government offering redress to a Tiananmen-related victim’s family. The payment was termed “hardship assistance,” given to the father of a student who was held by the Chinese Army that dispersed the Tiananmen protestors. The woman was reportedly paid approximately \$8,700 USD, which is quite a significant amount in China. This has been welcomed by various Chinese activists, but was regarded by some as a measure to maintain social stability and not believed to herald a changing of the Party’s official position.”

During the three-year negotiations on the United Nations Convention for the Protection of All Persons from Enforced Disappearance, according to the Asian Federation Against Involuntary Disappearances, whose representative was present during the whole drafting process, the Chinese delegates were against the treaty as a form of instrument and instead opted for an optional protocol to the ICCPR. Declaring that national security should take precedence over the right to truth, they particularly opposed the provisions on the right not to be subjected to enforced disappearances, right to information, right to justice, and right of the families to form associations. The Chinese delegates also took the position that a new treaty is unnecessary as there was already a large number of international instruments and the UN lacked the resources. They also opposed the formation of an Independent Monitoring Committee that would implement the Convention and instead recommended the use of the existing Human Rights Committee of the then UN Commission on Human Rights, which was and still is over- burdened with cases.

Despite the earlier opposition, China finally joined the consensus due to international pressure. It stated that "The adoption by consensus in the Working Group of the draft showed that such conventions should reflect international consensus and enjoy broad support. China welcomed and supported the approach of consensus on international legal instruments as a way to fully display international solidarity and cooperation..."³³

The negotiations were held between January 2003 and September 2005 through an Intersessional Open-ended Working Group to Elaborate a Draft Legally-Binding Normative Instrument for the Protection of All Persons from Enforced or Involuntary Disappearances. Headed by the late French Ambassador Bernard Kessedjian, the Working Group finally agreed upon the proposed text of the Convention on 23 September 2005. "The Convention was adopted on 29 June 2006 as the first resolution (Resolution 1/1) of the new Human Rights Council. On 13 November 2006 the Third Committee of the General Assembly adopted the text and finally on 20 December 2006, the text was adopted by the plenary of the General Assembly."³⁴

Apparently, China has overwhelming memberships in and commitments to international human rights mechanisms but ironically, at the same time, has an overwhelming number of rights violations. Until now, China is confronted with alarming incidences of enforced disappearances and the Chinese Government still exhibits a violent response even to peaceful public forms of protests and expressions and still resorts to suppression of basic freedoms.

One publication points out that the Chinese Government "does admit that it has significant human rights problems including poor access of people to the courts, widespread use of torture, lack of due process and judicial independence, as budgets are appointed by the state and the judiciary as a whole does not have its own budget." In addition, the Chinese government argues that these issues can be and should be addressed within the current one-party political system, and that fundamental political change may put at risk the tremendous economic gains that China has accomplished over the last generation." While the Chinese Government recognizes the need for reform, "it has yet to agree upon exactly what reforms and what methods to use".

The absence of genuine recognition and promotion of people's rights and respect for humanity primarily from the government is a serious concern that should be addressed before we even expect genuine observance and respect for human rights in the whole country. The Chinese Government's regard for human rights protection as having a secondary role, next only to achieving social and economic stability, of a strong state may well be a formidable wall that rights activists, advocates, and even regular citizens will have to face.

Recent Developments on the Phenomenon

Over the years, human rights violations in the People's Republic of China (PRC) remain widespread and systematic. The Chinese government continues to suppress dissenting opinions and maintains political control over the legal system, resulting in an arbitrary and sometimes abusive judicial, political, and military regime.

During the course of writing this article, recent reports on human rights issues in China have been put to the fore. In April 2008, the international secretariat of the World Organisation Against Torture (OMCT) reported a case of forced disappearance in the country from information given by the Tibetan Centre for Human Rights and Democracy (TCHRD), member of OMCT SOS-Torture network. The case involved the arbitrary arrest of three nuns from Dragkar Nunnery³⁵ namely Ven. Sangye Lhamo, Ven. Tsewang Kando, and Ven. Yeshe Lhadon who are 26, 38, and 24 years old respectively. The nuns were arrested and taken away by the Kardze County Public Security Bureau (PSB) officials for questioning after staging a peaceful demonstration in Kardze County main market square. The three nuns reportedly chanted slogans calling for the "Swift return of the Dalai Lama to Tibet," "Long Live the Dalai Lama," "Freedom for Tibet" and "Immediate release of all political prisoners," as well as distributed pamphlets calling for "Independence for Tibet."

On 19 May 2008, twelve monks of Dingri Shelkar Choedhe Monastery (Dingri County, Shigatse Prefecture, "Tibet Autonomous Region" (TAR) were arrested for opposing the "Patriotic re-education" campaign, during a night raid at the Monastery by Chinese People's Armed Police (PAP) forces and Public Security Bureau (PSB) officials. The identities of the twelve arrested monks are as follows – Ven. Khenrab Tharchin, Tsewang Tenzin, Tenzin Gayphel, Ven. Khenrab Tashi, Ven. Topgyal, Ven. Tenzin Tsering, Ven. Lobsang Jigme, Ven. Khenrab Nyima, Ven. Dhondup, Ven. Tenpa, Ven. Samten, Ven. Choedhen. A few days after their arrest, the monks' family members went to inquire the local PSB officers about the exact place of their detention and requested authorities for visitation rights. However, they were reportedly intimidated with warnings for damaging the image of the government and questioned their source of information about the monks' detention. At the time of issuing the urgent appeal, there is no information on the current whereabouts and the condition of detention of all the above-mentioned individuals.

On 22 May 2008, four nuns of Nyimo Gaysey Nunnery in Tehor Kardze County were also reportedly arrested by the local Public Security Bureau (PSB) officials for staging a peaceful protest at the Kardze County government headquarters. The victims were identified as: Bhumo Tengha, Rinchen Jamatsang, Jamgha Dolma, and Pema. "The four protesting nuns had reportedly raised their fists and protested against the recent crackdown of peaceful Tibetan protesters and the illegal detention of Tibetan people in the Chinese prisons. They also reportedly



distributed pamphlets in and around the county government headquarters calling for independence for Tibet." They were reportedly beaten with batons, kicked, punched and manhandled when they were arrested by the security forces. Another case of forced disappearance of a 21-year old student, Rigden Lhamo was also reported on 28 May 2008.

These descriptions of disappearance cases which involve arrests and detentions solely for their peaceful political and religious beliefs and the rights to freedom of expression, association, and assembly reflect the stark reality of disregard for human rights in the country. In line with their obligations under this UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it is incumbent on the Chinese authorities "to consider seriously any allegations of torture and ill-treatment and to undertake a thorough and impartial investigation in this regard."



Despite the existing cooperation of the Chinese Government with the United Nations Working Group on Enforced or Involuntary Disappearances, there are still general concerns of underreporting of disappearance cases because of reasons specific to each country. The UNWGEID, in its latest report, indicated some possible reasons such as: presence of internal armed conflict, collapse of national institutions, including the judicial system and security forces; lack of mechanisms due to conditions of poverty; lack of effective civil society organizations and activities; policies limiting the activities of NGOs, harassment of human rights defenders, prosecutors and judges, families and victims of disappearances. As in China, and in particular the case of the Tiananmen Mothers, it is imperative for the state to establish national legal instruments or at least to genuinely adhere to international treaties signed and recognized by its own government and those that will promote freedom of association, expression, and assembly for civil society organizations to draw support for their advocacies.

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There are other areas of consideration pointed out by the UNWGEID, and which may well be applied to the situation in China. A situation where armed forces are assigned police tasks, with the excuse that the police forces are incapable of coping with the maintenance of public order should be a cause of alarm as in most cases, the security forces who will be given police powers are the alleged perpetrators. The classification of short-term disappearance followed by extrajudicial execution as a case of disappearance proper, as long as such deprivation of liberty was carried out by governmental agents or private individuals, should also be considered.

In addition, as evident in the phenomenon of involuntary disappearances in China, the 2008 UNWGEID Report declares that one effective way to an “enduring and sustainable solution is for the international community to take concerted action aimed at tackling the root causes that give rise to such internal situations.” In the run-up to the 2008 Beijing Summer Olympics, the world will be overwhelmed by the greatness of the game venues and activities, but more so, the world may be more overwhelmed by the existing magnitude of the government’s disregard for basic rights of its citizens.

Ding Zilin believes that “unless China carries out political reforms, there will not be any real solution to nationwide human rights violations.”³⁶ The current Chinese leadership of President Hu Jintao and Premier Wen Jiabao is widely viewed as more liberal, but has yet to show concrete policies and actions for the vindication of the pro-democracy student movement in 1989. Ding Zilin captures the hope of the Tiananmen Mothers that the “Chinese government will have the courage to learn from history and implement political reforms.”³⁷

To an outsider, the immediate image associated with Tiananmen would be the massacre, military crackdown, demonstrations and protests, venue for grievances, and the mothers who continually struggle for the elusive peace for their lost, banished, tortured or killed children almost twenty years ago. Or the mothers who cry and fight for justice. Or the wreaths and remembrances that adorn the Square during the commemoration of various historical events.

A closer look at the Square however will tell us that it was in fact named after Tiananmen which literally means “Gate of Heavenly Peace.”³⁸ The Square is a large plaza located almost at the heart of Beijing, China and possesses great significance because it is at the center of this square where key cultural, social, and political events of Chinese history were staged. It is then with fervent hope that the grievances of the families and relatives of the *desaparecidos* be taken seriously by the government and the society; that the Chinese government will assume genuine recognition and promotion of people’s rights; and that finally the gates will be reached and open to a world of justice and peace that has long been waiting for the *desaparecidos* and their loved ones.



Notes:

¹ In this article, China refers to the mainland People's Republic of China (PRC) as differentiated from Republic of China that governs Taiwan and nearby islands.

² Definition was taken from the United Nations Convention for the Protection of All Persons from Enforced Disappearance. The Convention has already been signed by 74 countries and ratified by four UN member states. It is currently being advocated for ratification of 16 more countries for the treaty to be put into force.

³ The Tiananmen Mothers is a network of mothers and other relatives of the victims of the 1989 military crackdown. The network advocated for a full report of the June Fourth Massacre. Further discussion on the network is done in part 3 of this article.

⁴ From the transcript of "*Do Not Neglect June 4th Missing Person's Fate——Ding Zilin Appeals*". March 2004. Video Record.

⁵ For more stories/statements on 2008 Beijing Olympics, see "Critiquing the Olympic games," by Guiyang Democracy Salon; and "The real situation in pre-Olympics China," by B. Teng & J. Hu, 2007, *China Rights Forum*, 4, p. 72-79 and 87-94.

⁶ Up to this day, dispute between mainland China and Taiwan continues. The acceptance or rejection of the one-China policy is "a major factor in relations between the People's Republic of China (PRC), which governs mainland China, Hong Kong, and Macau; and the Republic of China (ROC), which governs Taiwan, Pescadores, Kinmen, and Matsu". Retrieved from http://en.wikipedia.org/wiki/One_China_Policy.

⁷ Historical accounts on China were culled from "The Tiananmen papers" by Zhang, L., (Nathan, A.J., & Link, P., Eds.), 2001; and http://en.wikipedia.org/wiki/People%27s_Republic_of_China.

⁸ The Tiananmen Square, located in China's capital, has been the historical central point of three major public protests in 1919, 1976, and 1989.

⁹ Most of the accounts on Tiananmen Square protests were culled from "The Tiananmen papers" by Zhang, L., (Nathan, A.J., & Link, P., Eds.), 2001, and http://en.wikipedia.org/wiki/Tiananmen_Square_protests_of_1989.

¹⁰ Information on the Falun Gong was culled from the website of Falun Gong Human Rights Working Group. Retrieved on April 27, 2008 from <http://www.falunhr.org/>.

¹¹ For various accounts on China as superpower, see <http://www.iht.com/articles/2007/02/08/news/fighter.php> <http://www.cnn.com/SPECIALS/1999/china.50/asian.superpower/> <http://china.usc.edu/ShowArticle.aspx?articleID=848&AspxAutoDetectCookieSupport=1>. Accessed on June 29, 2008.

¹² China's National Defense paper declares that "[t]he Chinese people are willing, together with the people of the other countries in the world, to make unremitting efforts for the lofty cause of promoting world peace and development, and for initiating a glorious future for mankind... Facts show that China is a responsible big country and a firm force safeguarding world peace and stability." Retrieved from <http://www.shaps.hawaii.edu/security/china-defense-july1998.html>

¹³ From "Amnesty International China Report", 2005. www.amnesty.org/report2005/chn-summary-eng. Accessed on 27 April 2008

¹⁴ From the 2008 UNWGEID Report, Item 80 on China.

¹⁵ From the 2008 UNWGEID Report, Item 77-78 on China.

¹⁶ From http://en.wikipedia.org/wiki/People%27s_Republic_of_China. Accessed on 7 May 2008.

¹⁷ Ibid.

¹⁸ Taken from "The Chinese Government's Attitude to and Implementation of International Human Rights Treaties" as cited in de V. Guzman, 2006.

¹⁹ Ibid.

²⁰ From the transcript of "*Do not Neglect June 4th Missing Person's Fate——Ding Zilin Appeals*". March 2004. Video Record.

²¹ Ding Zilin, Yuan Li, Yang Mingnu were some of the mothers from the Tiananmen Mothers group who recounted accounts of their disappeared sons. Culled from Testimonies of Tiananmen Mothers VCD. 2004.

²² From several documents on the Tiananmen Mothers network.

²³ From several written and video documents produced by the Tiananmen Mothers network.

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- ²⁴ From "No political reform, No hope for justice to grow on the land of China", by T. Cheung & V. Lai., 2003, In *The Voice 3 (2)*.
- ²⁵ Information retrieved from the organization's website: <http://www.falunhr.org/>. Accessed on 27 April 2008.
- ²⁶ From China Country Report 2005 by Amnesty International, 2005.
- ²⁷ Ibid.
- ²⁸ Ibid.
- ²⁹ As cited in V. de Guzman, 2006. From Amnesty International: What You Should Know; UNOCHR.
- ³⁰ Information from Aide Memoire, Chinese Government as cited in V. De Guzman, 2006.
- ³¹ Ibid.
- ³² From "China makes 1989 Tiananmen payout" by BBC News, 2006. <http://news.bbc.co.uk/2/hi/asia-pacific/4960762.stm>. Accessed on 29 June 2008.
- ³³ China's published position on Report of Working Group on Draft Convention Against Enforced Disappearance, 2006. [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/C43835359663543EC125719A005484FD?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/C43835359663543EC125719A005484FD?OpenDocument), Accessed on 14 July 2008.
- ³⁴ Retrieved July 14, 2008 from <http://www.icaed.org/the-convention/history-and-background-of-the-convention/>
- ³⁵ This is in Kardze County, Kardze "Tibet Autonomous Prefecture" ("TAP") Sichuan Province. Succeeding quotes on the case of forced disappearance are from "Report of the International Secretariat of the World Organization Against Torture (OMCT)", 2008.
- ³⁶ From "No political reform, No hope for justice to grow on the land of China", by T. Cheung & V. Lai., 2003, In *The Voice 3 (2)*.
- ³⁷ Ibid.
- ³⁸ http://en.wikipedia.org/wiki/Tiananmen_Square

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A NEW DAY DAWNS IN A PAINED PARADISE

By Erlinda Timbreza-Valerio



Jammu and Kashmir: A New Day Dawns in a Pained Paradise

By: Erlinda Timbreza-Valerio

"Be the change you want to see in this world. You must not lose faith in humanity. Humanity is an ocean; if a few drops of the ocean are dirty, the ocean does not become dirty." – Bapu Mahatma Gandhi

The princely state of Jammu and Kashmir is known for its rich gifts of nature and historic sites. The mountains, hills and valleys are covered with snow or with green plants and beautiful flowers depending on the season of the year. Known to be the dwelling of various forms of animals, birds and other living creatures, the high mountains also serve as watersheds from which rivers abundantly flow providing rich vegetation to the valleys and lowlands below including some parts of Pakistan. Most of all, the state is occupied by a winsome people as seen in photographs and video documentaries and as accounted by a number of Kashmiris this writer has already met. The state of Jammu and Kashmir has endured a pained paradise for more than five decades but a new day dawns through its people's decisive efforts.

Mothers and wives, fathers and children speak of their lingering pain caused by the disappearance of their loved ones. With their testimonies, listeners can later discern that they are deeply wounded. They say it occurred in the middle of the night when they were having their much-needed rest after a tiresome day when the military knocked on their door and forcibly took their loved ones amidst pleas and tears. Others relate that their loved ones went off to work, or for an errand or visited a friend but that was the last time they were ever seen. Since they never returned home, the families reported what happened to the State Human Rights Commission (SHRC), to the police and the security forces only to be told that the disappeared must have simply wandered off somewhere and would eventually come home.

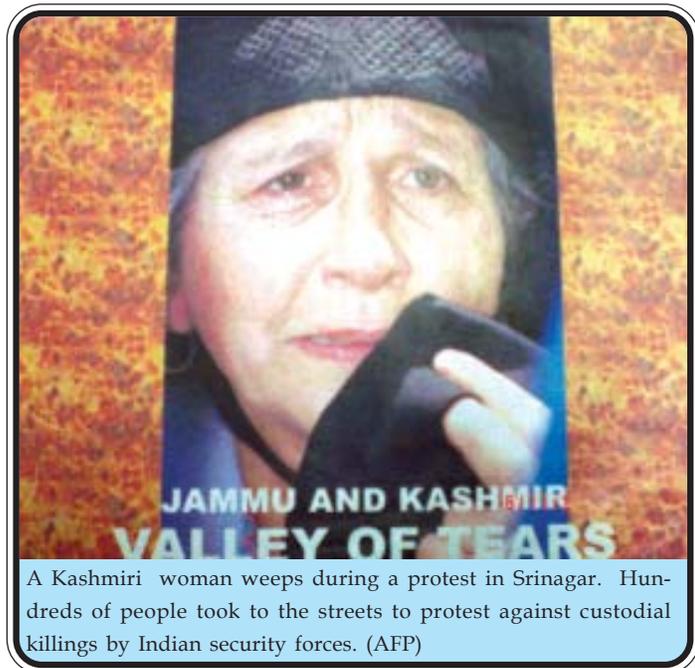
Amidst her sobs and tears, a mother cited her painful story, "The very thought of having lost my son has been a torture to me for many years. The army took one of my sons, tortured another and then burned down our house. Nothing was left to us." Family members of the disappeared in this part of the world have similar stories to tell. Another mother bravely confessed, "Since my son disappeared, I started to fear nothing. My son has to be surfaced. I have to know what happened to him. There are so many mothers like me who lost their young sons. I am a mother and I know very well how a



mother feels in losing her son." The families continue to search for their disappeared loved ones. While searching, they came to know one another and derived strength from one another. In their togetherness, they started to wage a justice campaign for all *desaparecidos* in Jammu and Kashmir. As they keep on with their justice campaign without let-up, they essentially become human rights defenders in their own right.

Jammu and Kashmir Torn Apart: The Phenomenon of Enforced Disappearance

Jammu and Kashmir have a long history as a separate territory ruled by a king. In the turn of events in the mid-20th century when the British were about to leave India after more than 350 years of ruling the country, the Muslims sought for a country of their own. The territories were divided giving birth to a new Muslim country called Pakistan, while the rest which was predominantly Hindu became India. At that time, Jammu and Kashmir were occupied mostly by Muslims which was headed by a Hindu king named Maharaja Hari Singh.¹



The Maharaja continually postponed his decision whether to join India or Pakistan. However, tribesmen from Pakistan soon attacked Jammu and Kashmir prompting the king to flee to India and ask for help. India's ruler at that time was Prime Minister Jawaharlal Nehru who agreed to rescue the people from the Pakistani attackers. That signaled Jammu and Kashmir's accession into India in 1947. As soon as the Indian forces arrived in the territory, the first war between India and Pakistan erupted with both countries claiming ownership of the territory.

When the war ended in 1949, around one third of the land remained under Pakistan's control. The Indian and military operatives then defined a border called 'Line of Control' or LOC. The part administered by India is called State of Jammu and Kashmir while that of Pakistan is called Azad Kashmir (*azad* means 'free' in the Urdu language.) The total land area of Jammu and Kashmir is 101,387 sq. km., while Azad

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Candlelighting ceremony of APDP on 3 September 2003. (Photo taken from <http://www.geocities.com>)

Kashmir has 78,387 sq. km. The state comprises the administrative regions of Jammu, which lie in the plains below the Pir Panjal range, with a population of approximately 4.39 million; Ladakh, bordering Tibet, with a population of 0.23 million; and the Kashmir Valley between the Pir Panjal and Panjri ranges, with a population of 5.44 million.² Kashmir is a beautiful valley within the state, thus, called Kashmir Valley. It is thickly populated and surrounded by some of the highest mountain ranges in the world.

Today, the people's most important industry is agriculture. Jammu and Kashmir are largely rural. From the total area of 24.15 lakh hectares, only 8.26 lakh hectares are used for agriculture with the rest forests and mountains. The people have developed a variety of agricultural products among which are rice, wheat, corn, tobacco and fruits which include apples, pears, cherries, plums, grapes, pomegranates, mulberry, peaches, apricots, walnuts and almonds. Among the vegetables, there are potatoes, turnips, carrots, spinach, tomatoes, cabbage, cauliflowers, radish, onions, etc. Other products include silk and wool from which shawls and carpets for export are produced. The state also contains deposits of minerals like coal, gypsum, bauxite, lignite, graphite, magnetic and limestone.³

India is the world's seventh largest country and second to China in terms of population. Like the United States of America, India is composed of a number of states with each state possessing its own laws and customs but in terms of national security and foreign affairs, the states obey the central government in New Delhi. In each state, the people elect a ruler who is called the Chief Minister.

"India contains 3.3 million sq kilometer of geographical expanse, home to an estimated 1.2 billion people speaking 844 different dialects but with 22 official languages. Of the 1.2 billion population, an estimated 80.5% are Hindus, 13.4% Muslims and the rest a mixture of Christians, Sikhs, Buddhists, Jains and other religious sects. While predominantly a Hindu dominated society, India counts the third largest Muslim population in the world."⁴

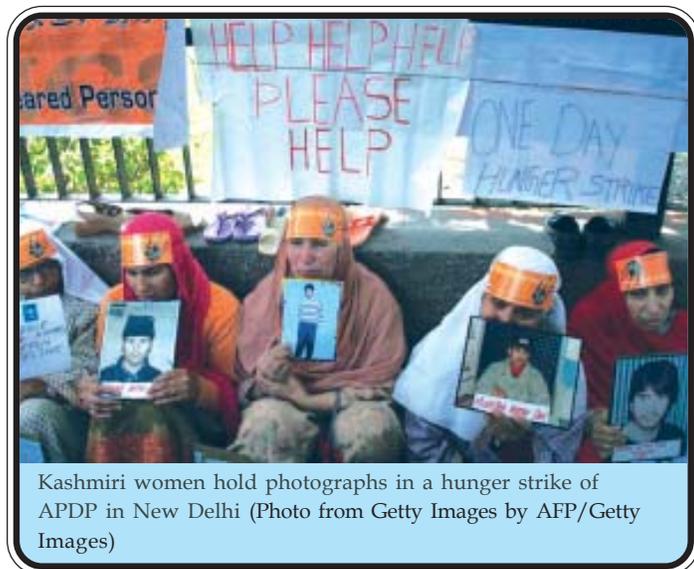
As Pakistan continued to control a large part of Jammu and Kashmir, Prime Minister Nehru reported the fact to the UN stating that Pakistan had attacked a neutral



state which had already become a part of India. He then demanded that Pakistan withdraw from the state. The UN agreed with Nehru's demand and asked Pakistan to withdraw its forces while urging India to ask the people of Jammu and Kashmir through a referendum whether they wanted to be part of India or part of Pakistan. Nehru agreed to implement the referendum but the referendum never took place as he reasoned out that Pakistan refused to vacate the area under its control. At that time, the popular leader of the Jammu and Kashmir state, Sheikh Abdullah, was a friend of Prime Minister Nehru. Both men believed in secularism, a concept that allows people of all religions and creeds to live harmoniously together. The Indian leaders along with Mahatma Gandhi believed that anybody had the potential to become a leader as long as the people elected that person. This was contrary to the position of Pakistan – where only Muslims could rule. Sheikh Abdullah along with the Hindus who were a majority in the Jammu region and the Buddhists of Ladakh decided that Jammu and Kashmir would remain as part of India rather than Pakistan.⁵

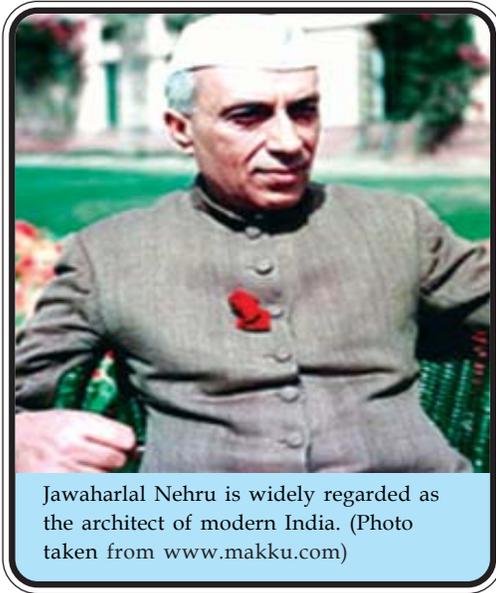
Observers note that in the Pakistan-administered Azad Kashmir, people are not really free (contrary to the meaning of '*azad*') and were never given the opportunity to learn about democracy. On the other hand, even while Jammu and Kashmir are the only states in India with its own Constitution and has been headed by an elected Chief Minister since 1965, most people feel that the central government in New Delhi has manipulated the state's politics over the years. These sentiments eventually crystallized into the people's struggle for independence. Human Rights Watch in its 2006 report cited:

"The earliest efforts to oppose Indian rule were started by the pro-independence Jammu Kashmir Liberation Front (JKLF) in 1988. It found enormous support in Jammu and Kashmir. The JKLF was responsible for some acts of violence, including the 1989 abduction of the daughter of Home Minister (later Jammu and Kashmir Chief Minister) Mufti Mohammad Sayeed and attacks on some Hindu Kashmiri *pandits*, but it also led a largely peaceful people's movement.... heavy-handed counter-insurgency efforts by the Indian government followed, with brutal crackdowns and firing on



Kashmiri women hold photographs in a hunger strike of APDP in New Delhi (Photo from Getty Images by AFP/Getty Images)

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unarmed protesters. At the same time, hundreds of young Kashmiris began to cross the Line of Control for arms and training in Pakistan. One former militant described that time to Human Rights Watch: *I was about fifteen. Still in school. I decided to go too.... Why? Well, everyone was going and they would laugh if you did not. And also, everyone had a gun and it seemed important that I should have one too, just in case.*⁶

Since 1989, the fighting has intensified in Jammu and Kashmir. In the beginning, young Kashmiris who were involved were seen as freedom fighters but later, were labeled as "terrorists." After some years, some Kashmiris decided to stop fighting. Many of those who went

back to their families in the Indian-controlled parts of the territory were abducted and killed or made to disappear by the security forces. Groups under different names evolved some of which are believed to have been trained by Pakistan to fight a *jihad* or a holy war. Some observers feel that most of these trained fighters are actually mercenaries who implement the command of their officers at all costs without any respect for the people's basic right to life.

With all the fighting directly in their midst for decades, the confusion and division among the Kashmiris have sharpened. Amidst the widening clamor for an independent nation, some want to continue with India while others want to be a part of Pakistan. With such a divided population, involuntary disappearances and other human rights violations have become daily fare for common people. Atty. Parvez Imroz, founder of the organization called Association of Parents of Disappeared Persons (APDP), has stated:

"Since 1989, when the armed conflict intensified in Kashmir, more than 8,000 people have disappeared after their arrest by the law enforcing agencies. Majority of them are non-combatant Kashmiris. Even the government has admitted the phenomenon. The new Chief Minister of J&K state, Mufti Muhammad Sayeed on 25 February 2003 unveiled what the security agencies had been doing during 2000, 2001 and 2002. Mufti informed the State Assembly in Jammu that "Three thousand seven hundred and forty four persons are missing between 2000 to 2002. 1,553 persons disappeared in 2000. 1,586 went missing in 2001 and 605 in 2002". Earlier, on 18 July 2002, the then Home Minister Khalid Najeeb Soharwardy of the erstwhile National Conference government also admitted on



the floor of the Legislative Assembly that 3,184 persons were missing in the Valley since the inception of militancy. Since 1989, different regimes have taken over the reigns. It is customary that every new government blames previous governments for the disappearances in the state and practically all the governments have shown indifference, callousness and helplessness under the prevailing circumstances..."⁷

For more than half a century already, the princely state of Jammu and Kashmir has been torn apart by Pakistan's and India's LOC with both sides heavily guarded by the security forces of each country. In both Jammu and Kashmir and Azad Kashmir, the phenomenon of involuntary disappearance and other forms of human rights violations have been reported. Amidst the conflict, the voice of the Kashmiris struggling for independence, peace and justice is becoming stronger.

Families, Relatives and Friends of the Disappeared: A Formidable Force

Human rights defenders and organizations in the state of Jammu and Kashmir assert that cases of involuntary disappearance have been occurring by the thousands in their state since 1989. Government officials cite varying figures for cases on different occasions. The families are presented with all sorts of alibis by the police when they file the disappearance of their loved ones. It sometimes takes months or even years before cases are officially entered into government records. Very often, the families are told that their loved ones were killed in battle or have crossed the LOC for training and joined the militants or must have gone somewhere in search for jobs.

Half-widows is the term given to wives of the disappeared because it is not known whether or not their husbands are alive or dead. Most of the disappeared are men who are the main breadwinners of their families. With their sudden disappearance, the wives and their



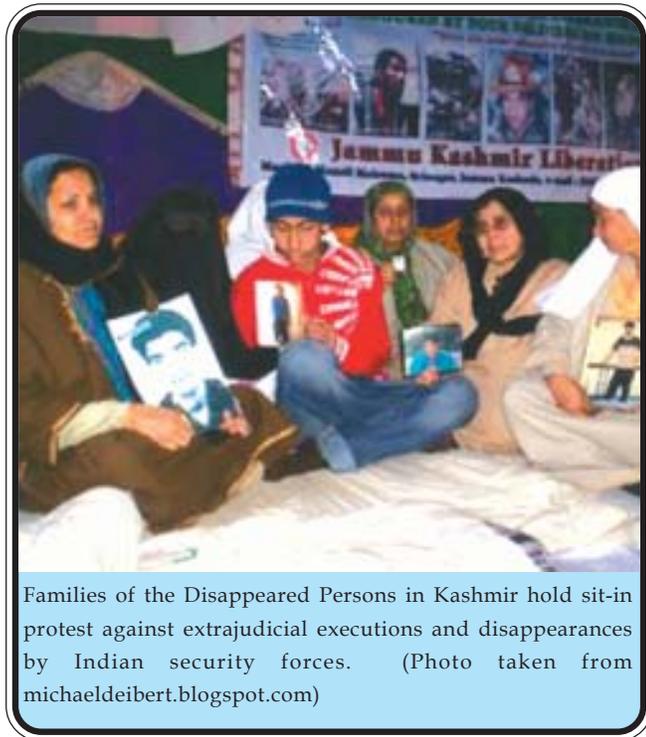
children become dependents of their husbands' parents or the women's own parents. It is not customary for the Kashmiri woman to be breadwinners of the family apart from the fact that there are hardly any opportunities for the employment of women. Some mothers or wives of the disappeared take on irregular jobs like washing clothes for other people or even begging in mosques for survival.

The unique situation of a Kashmiri half-widow may not be easily understood by non-Kashmiris. Aasia Jeelani¹⁷ wrote a very moving and revealing article on the situation of a Kashmiri woman after the disappearance of her husband. The article is entitled, *I am Waiting for the Day when my Husband will be Pronounced Dead by Law A Kashmiri Woman's Initiative for Survival*. Aasia was a Kashmiri woman human rights activist who was killed during election monitoring along with her driver in a landmine explosion in Kupwara District on 20 April 2004. In another paper, she mentioned that it had always given her joy whenever she read her write-ups in other venues. In one of her articles, she wrote:

"This story is of a Kashmiri woman whose struggle for existence has made her more realistic than before. Going through the thicks and thins of life, she knows, it's the jungle rule of "survival of the fittest in the strife-torn state of J & K. 'Is Shameema a widow or half-widow, her status remains confused. Seven years back her husband was kidnapped and till now nothing is known about him. His death has not been ascertained and Shameema waits for the day when her sufferings would ease. Today Shameema is struggling to provide food and education for her five children; she finds the going tough indeed. Life was not always a bed of thorns, there were roses too when her husband shouldered the responsibilities. Abdul Rashid Wani s/o Abdul Khaliq of Safapora Phalपुरa district Baramulla was working as an SPO (Special Police Officer) when unidentified gunmen kidnapped him. Seven years passed and there are no whereabouts of him being dead or alive. 'He is dead', says his wife Shameema, 'seven years back at the time of sowing season of rice, five gunmen came to our house and took him. Later, close sources said that he was killed, as the gunmen were actually militants,' she said hesitantly. He was working as an SPO for only one month; in fact he had not received even his first salary when he was kidnapped. In that month, seven persons were taken and later it became known that all had been killed, but no bodies were found except one girl who was shot in her house. Before working as SPO, my husband was a laborer. Had I known that the job he had taken would spell death I would not have allowed him to take up the job. Since his body was not handed over to us, we were not entitled to the *ex-gratia*. A First Instance Report (FIR) was lodged in Baramulla police station but authorities refused to provide us any *ex-gratia* or job under SRO 43. They claimed that as his body could not be found,

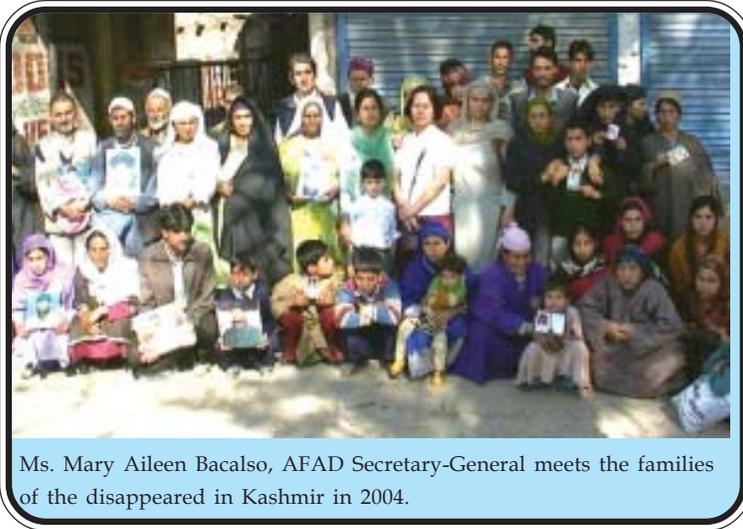


therefore, Rashid could be declared dead only after a period of seven years. I am waiting for the day, he will be declared dead. This declaration would bring life to my children. For the last seven years, life has become virtual a hell with financial constraints playing havoc on our lives. I am left with five young children to sustain, four daughters and one son. My eldest daughter Mahjabeen is 17 years old; she quit her studies after completing 10th standard because of financial problems. Next to her is my only son Parvez, 15, studying in tenth, Then Rukhsana in seventh standard, Shabeena in 6th and Zahida the youngest. Teachers tell me Parvez is a bright lad and shows lot of promise, but how long will I be able to bear his educational expenses, I don't know. I do menial jobs and earn about Rs 50 per month, but with five kids, the going is tough. I went to charitable organizations and orphanages so that they could help me. They have promised to bear the expenses of my elder daughter's marriage. In June this year, seven years will be completed and government will declare my husband dead, then I will get relief and things will improve. As of today, life is very tough, the whole burden has fallen on my shoulders and I find it tough to cope with the additional responsibilities that destiny threw at me.' This is Kashmir, in normal circumstances a woman would have prayed to see her husband alive; she would have impatiently waited for the news that her hubby is fine somewhere. If the body was not found she could have safely assumed he was alive and lived in bliss and hope, but that is not practicality. Fourteen years of war have taught women here to be practical. And that is what Shameema believes, whether her husband is dead or alive, that only time will decide... This is a Kashmiri woman's initiative for survival."⁸



Families of the Disappeared Persons in Kashmir hold sit-in protest against extrajudicial executions and disappearances by Indian security forces. (Photo taken from michaeldeibert.blogspot.com)

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Despite their very difficult situation especially those who come from poor families as seen in the life story of Shameema, the half-widows and other family members of the disappeared continue to search for their loved ones amidst repression and threats to their lives. The founding of their organization, Association of Parents of Disappeared Persons (APDP) in 1994, whose members consist mostly of mothers,

wives, children and sisters of *desaparecidos*, shows that these Kashmiri women can overcome their difficult situation in their efforts to search for the disappeared. In their continuing involvement with APDP, the families have broadened their perspective as their association campaigns for all the disappeared in the state of Jammu and Kashmir. Early on, APDP has consistently implemented its important tasks of self and organizational-strengthening, projection of the involuntary disappearance issue within Jammu and Kashmir and in the Indian society as well as lobbying locally, regionally and internationally. In fact, when AFAD was in its early beginnings in 1998, APDP was one of the first members of its core group.

APDP in coordination with AFAD periodically conducts psychosocial processing for the self-strengthening of its members and the organization as a whole. At times, the activities are in coordination with *Medecins Sans Frontier* (Doctors Without Borders) as well as doctors from the government psychiatric hospital. For the families, their loved ones may have disappeared in different situations but the long-lasting excruciating pain is like a running thread common to all. As they share their stories with one another, they know that those who are listening identify and unite with them. Deriving strength from one another, they become stronger in facing the day-to-day challenges of life and braver in giving their share in the long-drawn justice campaign for all *desaparecidos*. Taking a quick glance at the more than a decade justice campaign of the family members of *desaparecidos* along with APDP, their united voice may be likened to a steady crescendo.

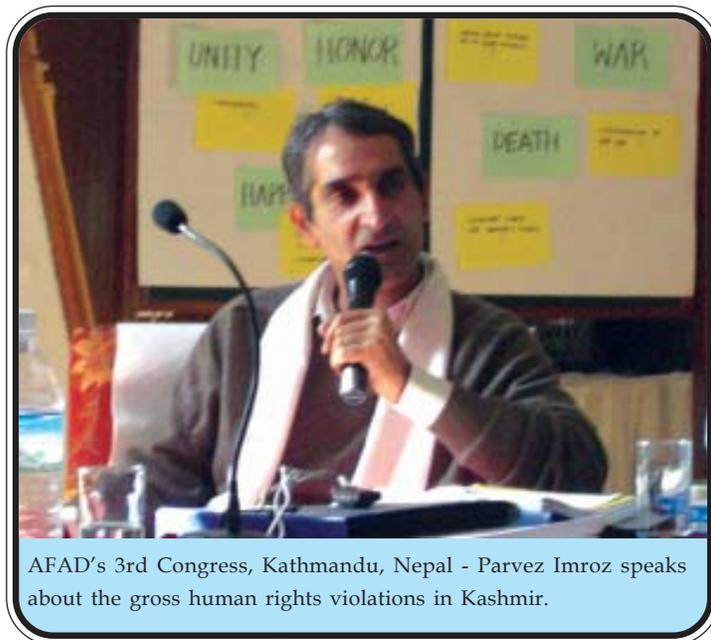
At the outset, APDP and its members were clear with their objectives. This can be gleaned from the families' responses to a psychologist questioning during a psychosocial processing session. Among their common answers were; "Our disappeared loved ones must be given back to us. Even if they have already died, their remains must be given back so that we know what happened to them and their remains are given proper burial. When a person dies, at least the family knows about



it. They have a grave that gives them courage to face another day but it is different with those who disappeared. If the disappeared person has a child, it is not even clear if the child is an orphan or not. There are families whose First Information Reports (FIRs) are not even lodged with the police. Since there are many families who lost their breadwinners and hardly have any means to survive, they should be given compensation by the government."

Exhibiting creativity and self-sacrifice, the families organized a hunger strike to protest against the indifferent attitude of the government towards their plight from 17-24 April 2003. This coincided with the visit of Indian Prime Minister Atal Bihari Vajpayee. On the last day of the strike, a press conference was organized where all the leading media outfits in Srinagar were present. This activity attracted the attention of the international human rights community which, in turn, offered them the much-needed solidarity and support.

Every year, the families of the disappeared under the banner of APDP organize an activity to observe the International Day of the Disappeared (IDD). Sometimes the activities are held in the APDP office or in public places like Hotel Taj in Lal Chowk, Srinagar and She-e-Kashmir Park in the same city. Since most of the disappeared are men as cited earlier, those who usually attend the activities are women of all ages, many of whom come from far-flung districts all the way to Srinagar. The event is sometimes maximized as a venue for the families to share their stories of pain and to exchange updates on their situation. Very often, they also reiterate their displeasure over the continuing indifference of the authorities towards their demands. On one occasion, the families and relatives lighted candles to commemorate the memories of their loved ones, bring their plight to public attention and expose the failure of the government to put an end to the phenomenon of involuntary disappearance. The light from the candles symbolized their continuing hope and also serves as a silent protest to remind the government to keep the promises they ordinarily make during elections. During such occasions, other human rights activists in Jammu and Kashmir join and give their solidarity messages. Through their statements which are usually published in leading newspapers



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and sent abroad, the APDP expresses its gratitude to the regional and international human rights community for their continuing support.

For the year 2005, APDP decided to hold its International Day of the Disappeared (IDD) commemoration in New Delhi to raise public awareness of the concrete realities in Jammu and Kashmir and to invite a wider participation and support from the Indian society. APDP cited that "this is especially since people from outside the territory are made to believe through the misinformation drive of the State and National Media Bureau that things have already drastically improved in the state of Jammu and Kashmir particularly in terms of resolving involuntary disappearance cases."

The families and APDP successfully reinstated the foundation stone for a monument in memory of all *desaparecidos* on 21 April 2005. Actually, APDP first laid the foundation stone for the monument on 18 July 2001 but security forces, who justified their action by saying that the monument laid on a government land, demolished it and even filed a case against three APDP officers. But the families and their association have already become accustomed to the harassments of security forces so that they succeeded in securing another piece of land at the Lawaypora/ Narbal in Srinagar for the reinstatement of the foundation stone. More than 200 family members including friends from civil society groups in the state and from different parts of India along with human rights activists from Denmark and Hong Kong were present during the occasion. Four (4) children who were born after the disappearance of their fathers laid the foundation stone in memory of the *desaparecidos* in Jammu and Kashmir.

The families and their association continued to meet setbacks in their arduous journey towards justice. Dilshada, one of the APDP's brave members, was killed in her house on 8 June 2003. Dilshada's husband, Ghulam Nabi Khan disappeared on 2 June 1997 while husband and wife were on their way home from Handwara in North Kashmir after Dilshada delivered her third baby at Sher Kashmir Institute of Medical Science (SKIMS). Her husband was picked up from Batamaloo bus station and his whereabouts have never been known since then. Dilshada often said that she suspects pro-government militants had abducted her husband. Just like many wives of the disappeared, she had to shoulder the responsibility of raising her three children amidst grave economic difficulties. She came in contact with the APDP in 2000. She mobilized other wives and families of *desaparacidos* during their district-wide meetings. When APDP launched a signature campaign in 2001, she traveled to distant areas to



gather as many signatures as possible. She also collected information on cases of disappearance but faced criticisms from different sectors because of her activities. On that fateful night at about 8:45 p.m., Dilshada was ironing clothes in their house when seven non-Kashmiri-speaking armed men forcibly entered and fired their guns killing her on the spot and hitting the leg of Owais, her six-year old son with stray bullets.

Still, no amount of harassment and intimidation are enough to hinder the justice campaign in this disputed territory. After wiping the tears away which come from time to time, families and relatives persist. Members lodge cases with the police and file charges in court. From April 2005 to March 2006, the association started to conduct "sit-in activities" every 25th of the month. With this public assembly, the families and relatives of victims once again registered their protest against enforced disappearance, disclosed what happened to their missing loved ones, demanded concrete action from the government and expanded their alliance with human rights groups from the various districts of Jammu and Kashmir.

Another important development is the formation of the Jammu and Kashmir Coalition of Civil Society (JKCCS) composed of human rights organizations from different Indian states. Since its inception, the coalition has been calling on the government of India and Pakistan to honor the Kashmiris' right to self-determination. One memorable activity sponsored by the JKCCS was held in Srinagar on 20 April 2005, the first death anniversary of human rights activist Asia Jeelani. On that day, the JKCCS declared 20 April as a day of solidarity in memory of all those who disappeared and were killed to ventilate the people's sufferings at the hands of government security forces and reiterate their call for self-determination.

On that day, representatives of JKCCS-member organizations from different states of India travelled all the way to Srinagar to personally bring their commitment of solidarity to the Jammu and Kashmir people. Similar activities were held by member-organizations of JKCCS in their own states and also AFAD with its member-organizations in their respective countries and other human rights organizations in different parts of the world. Organizations, federations and solidarity groups from European countries, Latin America and other parts of the world sent their solidarity messages. The memorable day ended with families and relatives of victims, lawyers, journalists, students, doctors, other human right activists forming a human chain and lighting candles as their tribute to the martyrs and heroes of Jammu and Kashmir and to the Kashmiris who continue to be victims of oppression.

The Nameless Graves and Mass Graves in the Uri Area

While APDP has documented around 1,000 cases for the association, there seems to be a mystery surrounding the fate of the thousands of other persons believed

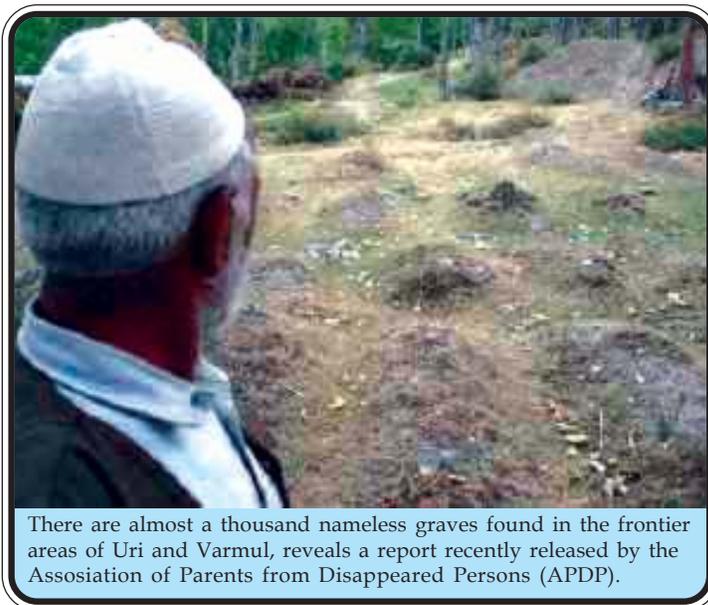


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to have disappeared since 1989 to the present. Thus, APDP painstakingly continued to put bits of information together until it learned about the existence of nameless graves in different places of the Uri Area in 2005. Thinking that those who were buried there must be among the beloved *desaparecidos* the families had been looking for, APDP immediately formed a team to conduct a fact-finding mission in the area. The association managed to secure a special permission from the District Magistrate and from the army headquarters to visit the area. According to APDP, team members were not able to freely move around because the Indian security forces closely monitored them. However, they were able to meet people from the villages who bravely gave their testimonies. The report, *Facts Under Ground A Fact-finding Mission on Nameless Graves and Mass Graves in Uri Area* which came out on 29 March 2008 must have shocked the world:

"This convinces us, yet again, that many a story of what befell our people at the hands of the Indian security forces remains to be told. We met people who claimed to have seen dead bodies being thrown into River Jehlum. In many cases police were informed about it but to no avail. Some of the dead bodies resurfaced when they got stuck on the river shore and were retrieved by the people who buried them in their village graveyards in order to avoid the desecration of dead bodies. We also met witnesses who have seen the army, with the help of police, burying the dead in different graveyards. We decided to investigate this matter. A team of APDP visited the areas and conducted a survey of some of the places that

contain nameless and mass graves. These places are: Zandifaran, Budmulla, Fatehgarh, Kichama, Gondabal Peerniyan, Chehal Bimyar, Boniyar, Trikanjan, Banali, Parro-Gagarhill, Chottali, NHPC Road, Brigade Head Quarters Rampore, Gingal, Bijhama, Lachipora, Dashewara, Mayan, Charkote, Hatlonga LoC. Most of these graveyards, according to the local community, were constituted by the



inhabitants of these villages on the orders of Jammu and Kashmir Police. The total number of such graves according to our survey in three Tehsils of the frontier district Baramulla of J&K comes to 940 or nearly 1,000. The Armed Forces and Jammu Kashmir Police claims that the slain persons buried in such cemeteries were unidentified foreign militants killed in the border areas while infiltrating across the line of control. Whereas many locals claimed that most of the persons buried in such graves are local Kashmiris.”⁹



Foundation stone of an envisioned monument for the Kashmiri *desaparecidos* constructed on 21 April 2005.

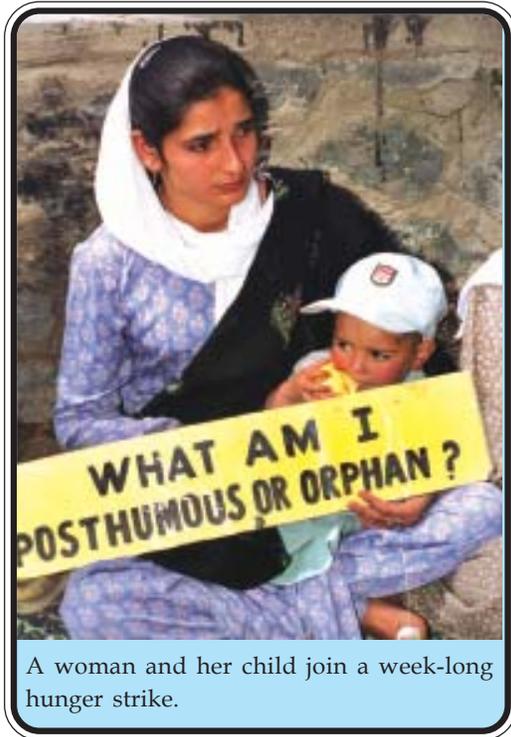
APDP’s report is a loud cry for help from our Kashmiri sisters and brothers. With the discovery of the nameless graves and mass graves, the families and relatives who have been searching for the truth for years have gained a renewed hope. The very existence of the nameless graves is yet another proof that indeed, people disappeared and were killed in the state of Jammu and Kashmir. They buried their victims without proper identification in an effort to hide their crimes forever. Not unlike the case of Abel and Cain in the Old Testament, the cry of our brothers and possibly, sisters who were mercilessly killed and made to disappear, must have reached to the heavens so that their nameless graves are now known to the whole world!

Warm responses to the APDP report came from many parts of the globe. Among these is the solidarity statement of Amnesty International-India Section which came out on 4 April 2008. To quote in part:

“Amnesty International urges the Government of India to launch urgent investigations into hundreds of unidentified graves discovered since 2006 in Jammu and Kashmir. The investigation must be independent, impartial and follow international standards. The grave sites are believed to contain the remains of victims of unlawful killings, enforced disappearances, torture and other abuses which occurred in the context of armed conflict persisting in the state

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since 1989. The graves of at least 940 persons have reportedly been found in 18 villages in Uri District alone.



A woman and her child join a week-long hunger strike.

A report issued on 29 March 2008 by the Srinagar-based Association of the Parents of Disappeared Persons (APDP), *Facts Under Ground*, indicated the existence of multiple graves in localities which, because of their proximity to the Line of Control with Pakistan, are not accessible without specific permission of the security forces. In response to the report, army spokespersons again claimed that those found buried were armed rebels and "foreign militants" killed lawfully in armed encounters with military forces. However, the report detailed testimonies from local villagers saying that most of those buried were local residents hailing from the state. These are serious allegations that must be fully investigated."¹⁰

Indeed, the justice campaign on involuntary disappearance and other human rights violations in Jammu and Kashmir has been moving rapidly in recent months. Another giant leap was the launching

of the *International People's Tribunal on Human Rights and Justice in Indian-Administered Kashmir* (henceforth referred to as the "People's Tribunal or Tribunal") through the efforts of the Public Commission on Human Rights, a constituent of Jammu Kashmir Coalition of Civil Society. Convened by human rights activists and lawyers, the People's Tribunal will probe human rights violations and seek international intervention for the resolution of the Kashmir issue. Investigating the unmarked graves cited above is an important part of the Tribunal's task. A historic first in the justice campaign in Jammu and Kashmir, the People's Tribunal was launched on 5 April 2008 in Srinagar.¹¹ During the launching, the conveners explained the Tribunal's gigantic mission:

According to Atty. Parvez Imroz, a recipient of the Ludovic-Trarieux International Human Rights Prize in 2006, "Conceptualized two years ago, the Tribunal will confine its probe to the period between November 2003 and 2009 with supporting investigations related to the 1989-2003 period and is holding its investigations this year, 2008, up to 2009. It will inquire into the military presence and



governance in Kashmir and their impact on civil society, political economy, development, local government, media and judiciary. It is also an initiative to seek the attention of global civil society to investigate crimes against humanity in Kashmir committed by India. The tribunal will involve the participation of families and survivors seeking justice, local communities and groups, experts from Kashmir and India, other places in South Asia and the international community. It will invite renowned personalities to constitute a council of justice to deliberate on the tribunal's findings. The findings and recommendations will be presented at a public hearing in Kashmir and subsequently, to the international communities to seek their intervention."

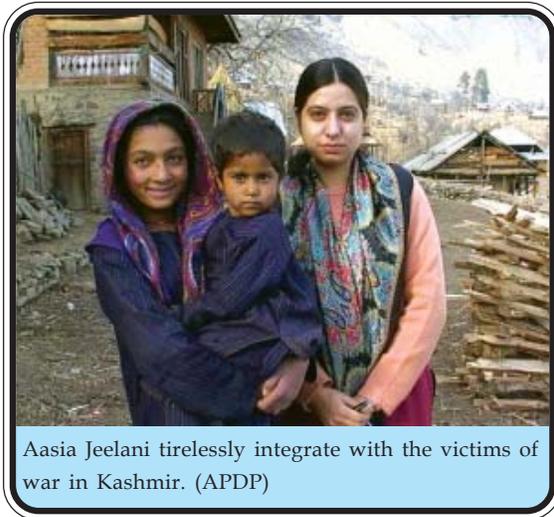
Another co-convenor Gautam Navlakha, a noted Indian human rights activist, said, "The Tribunal will be completely based on facts and reports. We will seek the attention of international communities towards the legitimate struggle going on in Kashmir. It is imperative to set up a People's Tribunal in Kashmir since justice was not available to the people from both the state government and New Delhi. The normalcy claims made by state government and the government of India in Kashmir is a sad joke as people have been denied justice. To break the silence and pressurize the government of India to give democratic rights to Kashmiris, I, an Indian, joined the Tribunal. We want to convey to the world what has befallen people in Jammu and Kashmir and what crimes India has committed here."

The legal counsel for the tribunal, Atty. Mihir Desai, who practices in the Mumbai High Court and the Supreme Court of India said, "The gross abuse of human rights violation by state agencies in Kashmir for the past 18 years has attracted me to become a part of the Tribunal. Most institutions failed in Kashmir despite the fact that they have power to respond. We will try to understand the causes of their failure."

Another co-convenor, noted human rights activist and anthropologist Dr. Angana Chatterji, associate professor of Anthropology at the California Institute of Integral Studies and an Indian based in the US said, "We call upon the international community to join us in investigating India's record in Kashmir. We seek accountability for the human rights abuses in Kashmir under the provisions of the constitution of J&K, India and the international laws and conventions and insist on the Kashmiris' right to self-determination."



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As the very young Tribunal flexed its muscles for the urgent tasks ahead, one of its conveners, Atty. Parvez Imroz, was harassed in his house on 30 June 2008. Based on the Tribunal's press release on 1 July 2008,¹² nine or 10 men wearing uniforms of the state police and the paramilitary Central Reserve Police Force appeared at his house in Kalpura Village (approximately eight (8) km. from Srinagar) and demanded that Atty. Imroz come outside. Having gone through previous assassination attempts, Imroz told his wife not to open the door. Instead, he called his brother, Sheik Mustaq Ahmad, who lives nearby. Mr. Ahmad came out with a torch

and asked the group to identify themselves but they refused. When his nephew went out, one of the uniformed men fired at his direction but no one was hit. Another man threw a grenade outside his front door. This exploded but no one was hurt. The men left at around 10:30 P.M. after using tear gas and firing two blank shots outside Imroz' front door. The perpetrators beat a neighbor they met along the way. Community members announced what had happened at the village mosque prompting people to gather near Imroz's house. The villagers "stated that they had seen one large armoured vehicle, two Gypsy cars and men in Central Reserve Police Force (CRPF) uniform and Special Operations Group (SOG) uniform." The harassment of Atty. Imroz raised global concern and prompted national, regional and international human rights organizations to deliver their statements of concern and solidarity. Many of these were published in leading local, regional and international print and broadcast media as well as on the internet.

Among the warm responses to the recently discovered nameless graves and mass graves in Kashmir was one from the European Parliament (EP) Subcommittee on Human Rights (EHR) which held its first meeting in Brussels, Belgium on 16 July 2008.¹³ The agenda on Exchange of views on Kashmir, follow-up to EP Resolution of 24 May 2007 and to report massacres in the region. Invited representatives from the Tribunal to address the EHR were Dr. Angana Chatterji, Atty. Parvez Imroz on behalf of Association of Parents of Disappeared Persons (APDP) and Ms. Marjan Lucas, international partner from *IKV Pax Christi*-The Netherlands. Both ladies were present in person but Atty. Imroz addressed the gathering via weblink as he was denied a passport by India and could not travel abroad.

At the hearing, Dr. Chatterji described the Tribunal's mandate, structure, and work and gave a detailed testimony of the gravity of the human rights situation in Kashmir at present. She described the Tribunal's investigation of nearly 1,000 mass

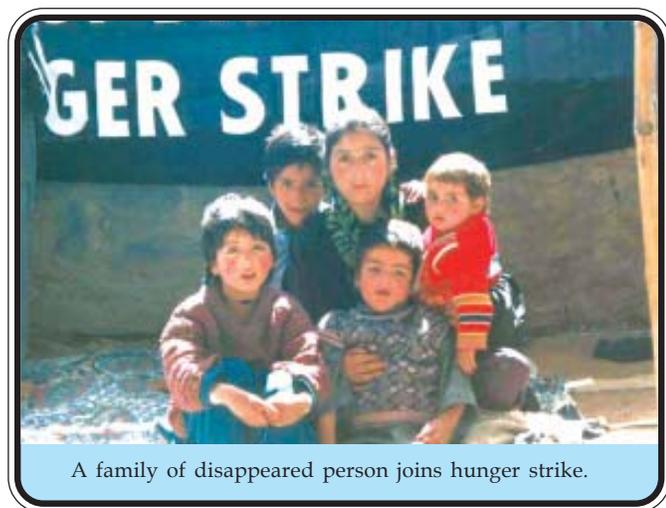


graves in June 2008 and showed video clips of mass graves from Baramulla and Kupwara district. She also spoke of the continuing militarization and impunity enjoyed by military and paramilitary forces in Kashmir, of the rule of exception and draconian laws and the history of genocidal violence. Dr Chatterji gave details of the harassment and intimidation which Atty. Imroz and herself as well as Tribunal Liaison Khurram Parvez experienced in the conduct of their work and on the harassment of Atty. Imroz on 30 June 2008.

Atty. Imroz described the earlier work of the APDP and their investigation of the mass graves and spoke in depth of the climate of fear and threat that human rights defenders experience on a regular basis and of the severe breakdown of law and order in Kashmir. He spoke of the failure of judicial apparatus and human rights institutions in Kashmir and described the attack made on him on 30 June 2008 and how members of the Tribunal are being humiliated and watched. Atty. Imroz appealed to the international community to carefully track the human rights situation in Kashmir and the need for a mechanism that seriously addresses the issues.

Ms. Lucas spoke of the greater need for an international alliance with human rights defenders in Kashmir and stated the importance of the work of the Tribunal. She stressed that reconciliation is impossible without truth and justice. She underlined the importance of the ongoing attention of the international community to Kashmir's ground reality, the adoption of the Resolution in Strasbourg on 10 July 2008 and the EPHR hearing of 16 July 2008 all of which are among the essential first steps on the long road ahead. She underlined the importance of the installment of an impartial and independent investigation of the unmarked graves, which, she reiterated, needs a strong and visible international component.

The EPHR and Members of the European Parliament (MEPs) listened with concern and engaged the panel for almost 2½ hours. The European Commission (EC) representative, Mrs. Rensje Teerink, appreciated the evidence presented and stated her concern over the situation. Her presence and active participation proved the seriousness with which EPHR is approaching the issue. Mr. Geoffrey Harris, Head of Human Rights Unit of the European Parliament, and Mrs. Helene Flautre (Greens), chair of EPHR, maintained that the invited speakers should be



independent, relevant, and credible. Thus, Dr. Chatterji, Advocate Imroz, and Ms. Lucas were invited to speak to convince the MEPs on the gravity and urgency of the facts and figures presented by APDP on mass graves and those currently presented by the Tribunal. The Indian Embassy was invited to speak but did not participate. The Tribunal welcomes the European Parliament resolution of 10 July 2008 which among others, "Calls on the Government of India urgently to ensure independent and impartial investigations are undertaken into all suspected sites of mass graves in Jammu and Kashmir."¹⁴ The EPHR session on 16 July 2008 was another important development as this was an opportunity for the MEPs to hear relevant actors and actresses speak on the matter and discuss the issue in greater detail.

The Government of India and the State Government: Their Response to the Phenomenon of Enforced Disappearance

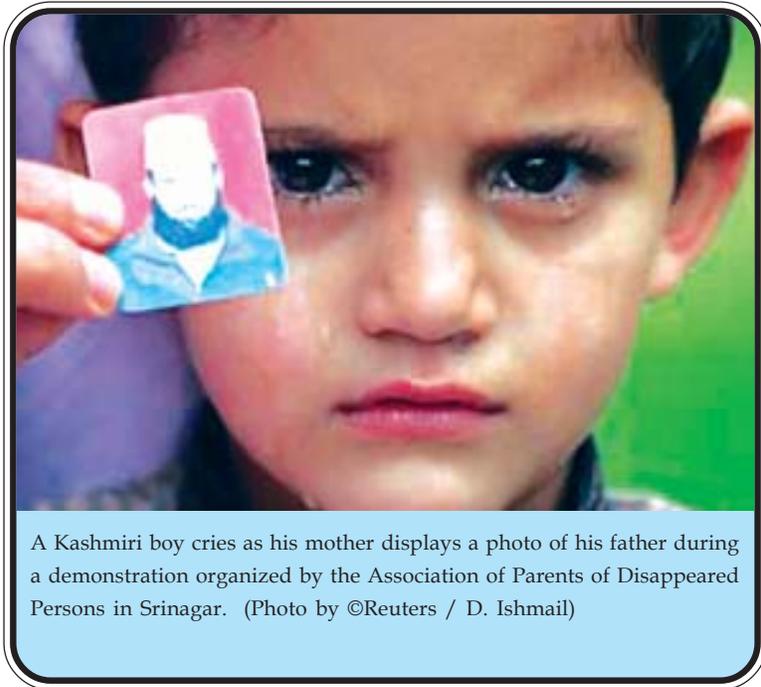
India, the world's largest democracy and second most populous country has emerged as a major power after a period of foreign rule and several decades during which its economy was virtually closed. A nuclear weapons state, it has carried out tests in the 1970s and again in the 1990s in defiance of world opinion. However, India still faces huge social, economic and environmental problems.¹⁵

India's government is divided into three branches: the Legislative or the Parliament (which makes the laws), the Executive (the government), and the Judiciary (the one that makes sure that the laws are obeyed, the Supreme Court). The Legislative branch is made up of the Parliament of India, which is located in New Delhi, the country's capital. The Parliament of India is divided into two groups: the Upper House, *Rajya Sabha* (Council of States); and the Lower House, *Lok Sabha* (House of People). The *Rajya Sabha* contains 250 members and the *Lok Sabha* with 545 members. The Executive branch is made up of the President, Vice President, Prime Minister, and the Council of Ministers. The President of India is elected for five years. S/he can choose the Prime Minister, who controls most of the power. The Council of Ministers, such as the Minister of Defence, are aids of the Prime Minister. The Judicial branch is made up of the courts of India, including the Supreme Court. The Chief Justice of India is the head of the Supreme Court. The Supreme Court has the power to prevent a law from being passed by Parliament if it determines that the law is illegal and contradicts the Constitution of India. In India, there are also twenty-one (21) High Courts. India is composed of twenty-eight (28) states excluding the capital New Delhi and seven (7) union territories (which are different from states). Delhi and Goa have state status.¹⁶

The state of Jammu and Kashmir is among India's largest states. Like all states of India, Indian controlled parts of Jammu and Kashmir employ a multi-party democratic system of governance. The main political parties include the Jammu and Kashmir National Conference, the Indian National Congress and the Jammu and Kashmir People's Democratic Party (PDP). The Constitution of India grants



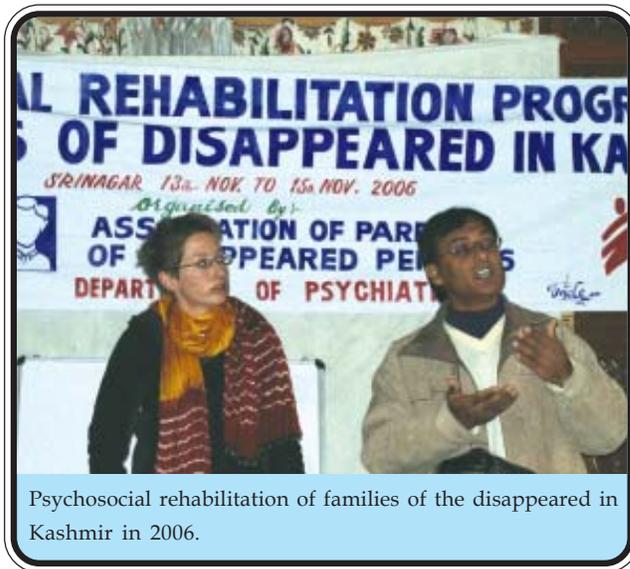
Jammu and Kashmir "Special Autonomous Area Status" as a temporary provision through Article 370. Some Muslim Kashmiris demand greater autonomy, sovereignty and independence from India while many non-Muslims would like the state to be fully integrated into India. There are also some Kashmiri Muslims who prefer to be integrated with Pakistan. Jammu and Kashmir is the only Indian state with its own unique flag. Designed by the Government of India, the state flag of Jammu and Kashmir is the native plough on a red background which is a symbol of labor. The three stripes represent the three administrative divisions of the state, namely Jammu, Kashmir Valley and Ladakh.¹⁷



Human rights organizations in Jammu and Kashmir claim that for the past five (5) decades, as the Indian army maintained its heavy presence, laws were enacted to people in jail without charge or to prosecute leaders on flimsy grounds to destroy the people's struggle for independence. Many also believe that had it not been for the continuing presence of the Indian security forces, violence would not have erupted in the state. Different state governments have been in power since 1989 but the human rights situation has not improved. During the campaign period, aspiring candidates usually promise that they would facilitate the resolution of enforced disappearance cases once they are in power. Sadly enough, promises are made to be broken. On the other hand, the APDP has reported that a breakthrough has been made in at least one case. For the first time, the Jammu and Kashmir High Court booked 11 perpetrators for the abduction and murder of a disappeared person named Mohammad Ashraf Koka. Koka was arrested by the armed personnel of 10th Battalion Indo-Tibetan Border Police (ITBP) camped at Verinag, Anantnag district and was later on believed to have been killed while in custody. In a petition filed by his father, the High Court directed the state to investigate his disappearance. Finally, the police, under judiciary pressure was compelled to book 11 personnel of ITBP in the murder case.¹⁸

The government of India has repeatedly claimed that it is committed to the protection of human rights. When India sought election to the Human Rights Council

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it made voluntary pledges which reinforced its commitments. In seeking re-election to the UN Human Rights Council in May 2007, the government stated its belief *"that in a truly pluralistic society, the growth and well-being of citizens can only be guaranteed through a culture of protection and promotion of human rights."* Despite the existence of local laws protecting human rights and even though India has signed and ratified various UN instruments and is so far, one of the four countries in Asia which has signed the Convention for the Protection of All Persons From Enforced Disappearance, it has failed to

implement laws and policies to protect its very own people.

The APDP claimed that in 2000, the Divisional Commissioner issued a public notice to local papers directing the families of missing persons to approach their respective deputy commissioners along with the details of their missing loved ones. Filled with hope and high expectations, thousands of families filed cases at the office of their respective Deputy Commissioners. Eight years have passed but nothing has been heard regarding these petitions. The state judiciary is mandated to protect the life and liberty of citizens and to enforce the guidelines laid down by the Supreme Court of India but has failed as perpetrators are hardly punished. The exhaustive litigation has only given impression to the relatives that the institution is dysfunctional and not capable of addressing their grievances.

Time and again, families of the disappeared and the APDP have suffered direct harassments, threats and physical assaults from security forces and the police as occurred on 20 March 2004. In that incident, the police used their batons and lobbed tear gas to disperse a peaceful protest march organized by the APDP. Thirty members were injured including APDP patron Parvez Imroz who was taken into custody. The incident took place in the heart of the city, Lal Chowk (Red Square) directly outside the association's office when dozens of family members of the disappeared convened before marching towards the local office of the United Nations Military Observers Group India and Pakistan (UNMOGIP). The group planned to submit a memorandum to the UN Working Group on Enforced or Involuntary Disappearances (UNWGEID) through this local office. Members who were wearing masks and carrying banners and placards along with APDP volunteers were intercepted by a composite of police. When the protesters stood their ground, the



police ruthlessly used their batons to disperse the peaceful protesters. Women and men alike were mercilessly beaten and many were arrested.

Aware of what is happening in the state of Jammu and Kashmir, various regional and international human rights organizations have time and again called on the Indian government to invite the UNWGEID and a special rapporteur from the UN Human Rights Council to look into the human rights situation in the state. They have reiterated that as a member of the UN Human Rights Council, the Indian government is bound to cooperate with the Council's mechanisms. Having signed the UN Convention for the Protection of All Persons from Enforced Disappearance on 7 February 2007, the government must ensure that the mandate is implemented on the ground. APDP notes that it is now more than a year since the government signed the Convention but significant changes have yet to be implemented.

The APDP's report on the nameless graves and mass graves in the Uri area which brought the attention of the whole world offers a great challenge to the government of India. It goes without saying that the families of the disappeared in the state of Jammu and Kashmir are hoping against hope that the loved ones they have been searching for many years may be among those who are buried in these the graves. In view of this, we hope that the Indian government will order prompt, thorough, independent and impartial investigations guided by international standards not only on the reported graves but also on all the past and current allegations of enforced disappearances in Jammu and Kashmir. According to the 17 July 2008 issue of the Thaindian News, India's Ambassador to Brussels Dipak Chatterjee had stated that "India is aware of the resolution adopted by members of the European Parliament on missing people in Jammu and Kashmir and will give it the consideration it deserves."¹⁸

Conclusion

Involuntary disappearance is a phenomenon in the princely state of Jammu and Kashmir for more than half a century. It is not a matter of determining which country in Asia or in the world has the highest number of *desaparecidos*. It may not even be that important to spend much time in arguing on the exact figure of cases because this will never be achieved. It is as clear as the sun that people's lives were unjustly taken away so that cases must be prosecuted. When proven guilty, perpetrators must be punished according to the rule of law. It is only through this that perpetrators and society will learn their much-needed lessons so that the phenomenon of involuntary disappearance will be stopped, society will be cleansed and humanity can move on to a higher level of existence. Simply forgetting the past will not do any good to anyone.



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Behind every *desaparecido* is a grieving family – a wife, a mother, a daughter, a son, a father, a sister. In whatever culture, the pain of losing a loved one is beyond description especially if the victim happens to be a disappeared. Families are left in the dark for years or forever not knowing what happened to their loved ones. If governments are truly decisive in finding out who disappeared and what happened to them, and if they are intent on finding out the gruesome effects of enforced disappearance, they must listen to the families' deepest sentiments and just demands. In this connection, it is appalling to hear that the security forces and police assault and harm families of the disappeared who are holding a peaceful protest as part of their efforts to search for their missing loved ones and for their own self-healing. The families along with their disappeared loved ones are victims and yet are victimized again and again by no other than the people who are supposed to guard and secure their lives. Indeed, there seems to be many paradoxes and contradictions in this life.

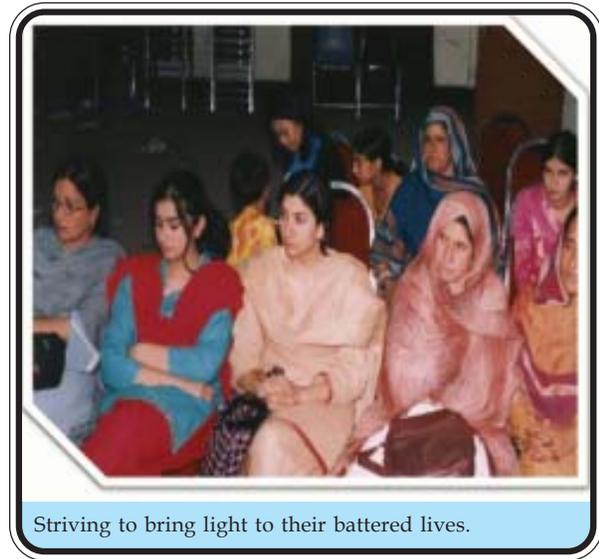
Amidst harsh realities and difficulties of day-to-day life worsened by the continuing suppression of security forces, the families of the disappeared, APDP along with human rights defenders and organizations in Jammu and Kashmir have consistently stepped up their efforts in their campaign for justice. Believing in their sincerity and decisiveness towards the achievement of their noble goals, the national, regional and international human rights community as well as other groups worldwide have always given them the much-needed support. A few years earlier, the families of *desaparecidos* and APDP felt that their justice campaign had reached a certain level of success as they helped ensure that enforced disappearance became a public issue in Jammu and Kashmir. Very recently, the campaign has reached a big breakthrough with the discovery of nameless graves and mass graves in the Uri area and the founding of the *International People's Tribunal on Human Rights and Justice in Indian-administered Kashmir*.

We hope and pray that the government of India would take positively the recent developments in Jammu and Kashmir and act towards the achievement of the long-awaited justice based on truth and peace. The world watches as realities continue to unfold in the beautiful state of Jammu and Kashmir, where one of today's biggest societal dramas is taking place. The families along with APDP and other human rights organizations have done and are doing their important role. It is time for the powerful government of India to come in and perform its complementing role.

The mass graves in the Uri area speak loudly to the conscience of the Indian government, the state government and society as a whole. During the first half of the 20th century, Mahatma Gandhi selflessly contributed to nation-building and held



the highest respect for every human being regardless of religion, sex, age, color, economic standing and political belief. If the *Bapu* were alive today, what would he, the much-respected adviser of the then newly liberated Indian government, say to the present Indian parliament? In her readings, this writer discovered that Gandhi went to the princely state of Jammu and Kashmir at a time when Maharaja Hari Singh has not yet acceded to India and that he wore no additional clothing to his loincloth – the symbol of his unity with the poorest of the poor, the symbol of his detachment from earthly riches and power.



When the events of today had become the history of the next generation, it is the longing of each Kashmiri that the terror of disappearance is not anymore looming around. However, it is imperative that one has a unique role to play in order to witness the dawning of a new day in the pained paradise of Jammu and Kashmir and in many equally magnificent parts of the world.

RECLAIMING STOLEN LIVES

Notes:

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³History of Jammu and Kashmir. Retrieved July 14, 2008 from http://en.wikipedia.org/wiki/History_of_Jammu_and_Kashmir.

⁴Asian Human Rights Commission. (2007). The State of Human Rights in 11 Asian Nations. p. 91. Retrieved July 14, 2008 from <http://www.ahrchk.net/pub/pdf/TheStateofHRin11AsianNations2007.pdf>

⁵Jammu and Kashmir: basic facts. Retrieved July 19, 2008 from <http://www.jammu-kashmir.com/basicfacts/basics.html>.

⁶Human Rights Watch (2006, September). "Everyone Lives in Fear" *Human Rights Watch* 18 (11C), pp. 122. Retrieved July 14, 2008 from <http://www.hrw.org/reports/2006/india0906/>.

⁷Imroz, Parvez. (2003, April 18). Disappeared Persons in Kashmir. Retrieved July 15, 2008 from <http://www.ahrchk.net/ua/mainfile.php/2003/429/>.

⁸Jeelani, Aasia. (2004, January-March). *Voices Unheard*, pp. 6-7.

⁹Association of Parents of Disappeared Persons. (2008, March 29). Facts Under Ground: A Fact-finding Mission on Nameless Graves & Mass Graves in Uri Area, pp. 2-3

¹⁰Amnesty International. (2008, April 4). India should investigate all allegations of enforced disappearances in Jammu and Kashmir following reports of mass graves. Retrieved July 15, 2008 from <http://www.amnesty.org/en/library/asset/ASA20/005/2008/en/6c2f1dbc-0498-11dd-a7b6-313ce24bfa55/asa200052008eng.html>.

¹¹International People's Tribunal on Human Rights and Justice in Indian-Administered Kashmir. (2008, April 5). *Announcement on the Tribunal*. Retrieved August 4, 2008 from www.kashmirprocess.org.

¹²Attack on Advocate Parvez Imroz, *Appeal for Solidarity*(2008, July 1). Retrieved August 3, 2008 from www.kashmirprocess.org.

¹³European Parliament Human Rights Subcommittee Hearing on Kashmir Brussels. (2008, July 16) Retrieved August 4, 2008 from www.kashmirprocess.org.

¹⁴European Parliament resolution on allegations of mass graves in Indian-administered Kashmir. (2008, July 10). Retrieved August 5, 2008 from www.kashmirprocess.org.

¹⁵British Broadcasting Company News. (2008, July 28). Country Profile: India. Retrieved August 4, 2008 from http://news.bbc.co.uk/2/low/south_asia/country_profiles/1154019.stm.

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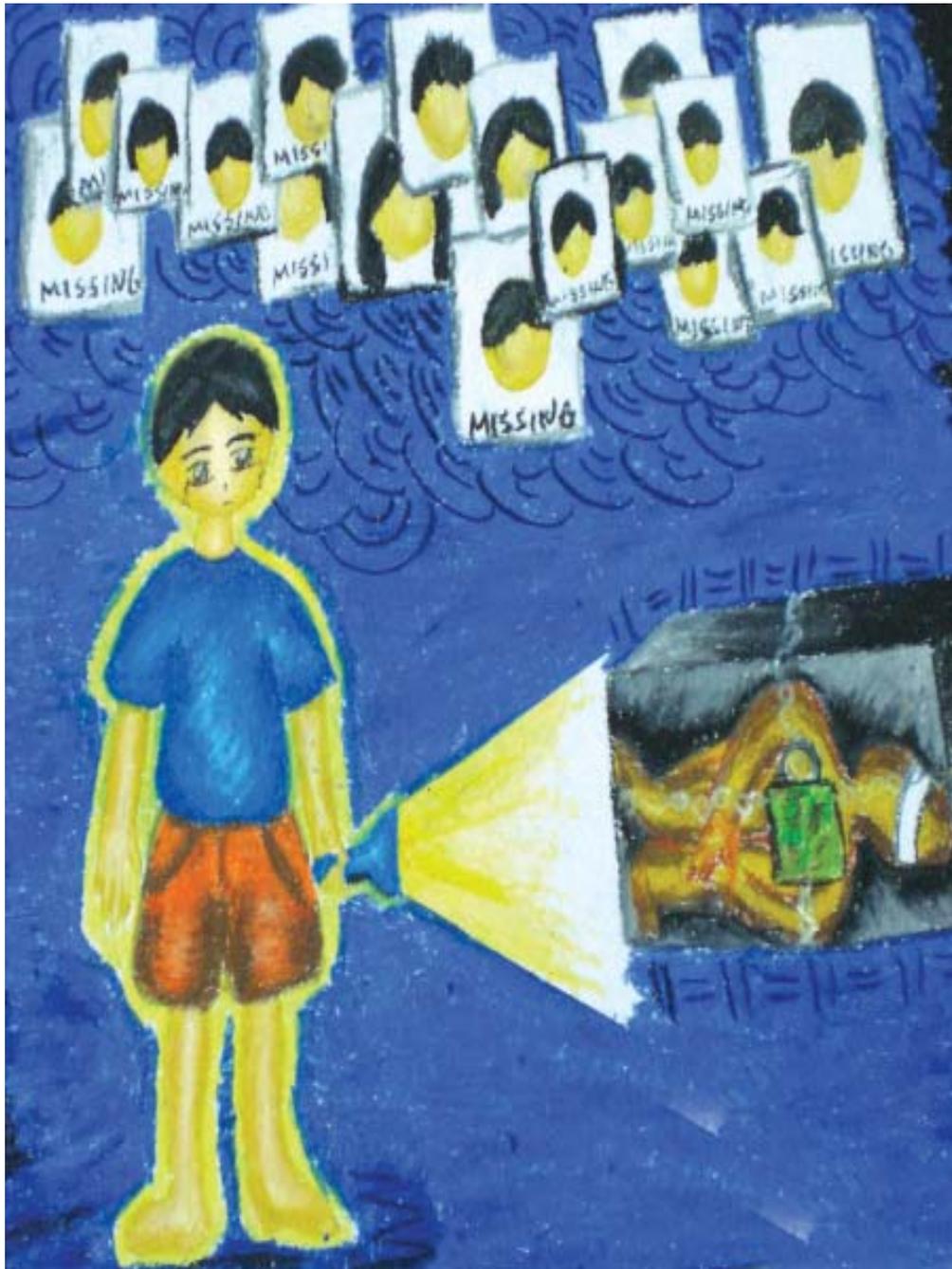


¹⁹India to give due consideration to EU report on Kashmir mass graves. (2008, July 17). *Thaindian News*. Retrieved August 5, 2008 from www.thaindian.com/newsportal.

²⁰Aasia worked with a non-governmental organization called *Kashmiri Women's Initiative for Peace and Disarmament* and was a regular writer of a magazine called, "Voices Unheard." She also served as a volunteer for the *APDP*. (see Aasia Jeelani on page 38)



RECLAIMING STOLEN LIVES



Jemimah Crismo
2nd Place
First AFAD Poster Making Contest
14 May 2008





INDONESIA: THE JUSTICE CAMPAIGN BEGINS TO BEAR FRUIT

By Erlinda Timbreza-Valerio



Indonesia: The Justice Campaign Begins to Bear Fruit

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If the huge, archipelagic and resource-rich country of Indonesia were likened to a beautifully-woven tapestry, dark stains would be scattered over many parts of it. The stains are symbolic of heroic people who have been brutally killed or made to disappear in the country over the past half century.

The phenomenon of enforced or involuntary disappearance started in Indonesia in 1965 but the most notorious period is certainly under Suharto's more than 32 years of dictatorship from 1966 to 1998. Reported cases of involuntary disappearance are believed to be a small fraction of the total figure as some victims' families do not report the disappearance of their loved ones out of fear. One great problem to this day is that impunity has remained entrenched in Indonesian society firming up the reality that involuntary disappearance is a continuing phenomenon.

Right after the fall of Suharto in 1998, families of victims and surfaced victims along with human rights organizations like *KontraS* (Commission for the Disappeared and Victims of Violence) and *IKOHI* (Indonesian Association of Families of the Disappeared) started to submit complaints on disappeared victims to the succeeding presidents, the National Human Rights Commission (*Komnas HAM*) and other government agencies. To date, *KontraS* and *IKOHI* have documented 1,508 cases of involuntary disappearance from 1965 to 2005. However, human rights defenders in Indonesia believe that the actual number of *desaparecidos* from the Suharto regime to the present is much larger than what is on paper. Based on documented cases, the act of disappearing people in Indonesia is criminal, accomplished in a systematic manner by the government forces and the state machinery intended to silence opposition, crush dissent and suppress pro-democracy efforts in order to maintain the status quo.

All throughout Indonesia's history, people have sacrificed much in their quest for justice, peace and freedom. Families of victims, surfaced victims and freedom-loving people have initiated organizations in their efforts to wage a human rights campaign towards the resolution of cases. Expecting that under the post-Suharto administrations, cases of involuntary disappearance and other human rights violations would be resolved, they continue to exert all efforts towards the achievement of their collective goals.



Today, the memories of young women and men who fearlessly fought for freedom to their last breath continue to live in the country long after they are gone. Their noble efforts and sacrifices are indelibly printed in the fabric of Indonesian history and in the hearts and minds of the present generation especially in the dynamic human rights community and civil society whose purpose for being never falters amidst all adversities. Their indefatigable efforts are beginning to bear fruit.



Involuntary Disappearance: A Long-running Phenomenon in Indonesia¹

Indonesia is the fourth most populous country in the world after China, India and the United States. The country's population is more than 222 million scattered over 33 provinces but more than half live in the islands of Java and Bali. Jakarta, Indonesia's capital, is located in Java. The archipelago consists of 17,508 islands with a total land area of 2,027,087 square kilometers or 1,266,900 square miles. Indonesia's main islands are Sumatra, Java, Borneo, Sulawesi and Papua. Stretched along the equator, Indonesia has a tropical climate and two seasons; a dry and a rainy season. The Indonesian *lingua franca* is *Bahasa* Indonesia. Major religions exist in the country, namely: Muslims who compose 87.1%; Protestants, 5.7%; Catholics, 2.9%; Hinduism, 2%; and Buddhism, 1% of the population.

Indonesia possesses a very rich cultural heritage expressed in its many religions, music and theatre, visual arts, poetry and literature. Its cultural diversity most likely stems from its trade with India, China and the rest of the world in the past centuries. In early times, some kingdoms embraced large parts of the archipelago. However, Indonesia became a country only by the middle of the 20th century when The Netherlands possessed the islands and established the archipelago's physical boundaries making them into a single colony. After the Japanese invaded Indonesia in 1942, the people started to develop a spirit of nationalism. This led to a struggle for independence called the Indonesian Revolution of 1945-1949 headed by Sukarno, who later became the country's first president.

The Republic of Indonesia first saw the light of day on 17 August 1945 and a constitution was adopted as the basic law of the land. As enshrined in the Constitution, the president was powerful as he headed both the State and the Government. He was assisted by a vice-president and a cabinet of ministers. Sukarno was Indonesia's president for a little less than two decades (1950-1965). Some observers viewed him

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as "nationalistic," surrounded by people that espoused nationalism. The president linked up with the then fast growing Communist Party of Indonesia (*PKI*) considered to have been composed of millions at the peak of the party's strength. As powers like the United States and United Kingdom showed great interest in the resource-rich and strategically located country, Sukarno was increasingly observed to have allied with China and Russia. Before his downfall, Sukarno ordered the International Monetary Fund and the World Bank to leave the country considering their presence in Indonesia as an expression of post-colonial meddling. Focused on the internal affairs of his country, Sukarno hardly noticed the increasing division within the military, a large faction of which was under the then General Suharto. The group was widely known to have been secretly supported by foreign powers.

On 30 September 1965, six generals were kidnapped and assassinated in an attempted army *coup*. This signaled a crisis for the entire country resulting in massive bloodshed the following months. Reports and documents containing information about the September 30 Movement were destroyed leaving much speculation as to the actual causes of the series of events. On 11 March 1966, Suharto, the military chief at that time, forced Sukarno to issue a Presidential Order called *Supersemar* (*Surat Perintah Sebelas Maret* - The March 11 Order) in which Sukarno ordered Suharto to restore order.

After obtaining the Presidential Order, Suharto abolished the *PKI* and declared it illegal arresting many high ranking officials who were loyal to Sukarno on the charge of being *PKI* members and sympathizers, further reducing Sukarno's political power and influence. In the succeeding months, the military forces, which were strongly supported by foreign powers, annihilated alleged *PKI* members and supporters resulting in widespread brutal killings, involuntary disappearances and other forms of violence. The late General Sarwo Edhi Wibow, the former Commander of the Army

Reserve Command in-charge of killing the communist members, supporters and sympathizers in Java and Bali in the 1960s and 1970s claimed to have killed three million people.

As Suharto continued to gain wide support from the military, he outmaneuvered Sukarno in the crisis. Inaugurated as president in 1966, Suharto instituted what he called a "New Order policy" and ruled the country with an iron rod. *TAPOL*,



the Indonesian human rights campaign, has the following to say on Suharto's ascension to power:

"Suharto rose to power on a wave of massacres that killed up to one million people, one of the twentieth century's worst crimes against humanity for which no one has been brought to justice. Tens of thousands more were incarcerated and held for more than a decade without charge or trial. 13,000 men were banished to the remote island of Buru, out of reach of their families and subject to a harsh physical environment and unremitting hard labour, which caused hundreds of deaths. Hundreds of women political prisoners were similarly detained in a remote prison camp in Central Java."²

For the ensuing years, the Suharto government continued to consolidate its overwhelming power in government and the military. Some years later, it started to occupy East Timor despite the people's long-drawn resistance. In pursuit of his so-called "development policy" but more so in his effort to maintain loyalties to himself, Suharto aggressively controlled the resource-rich Aceh and West Papua. "The control over natural resources was used as an instrument to nurture patronage. The New Order government had the monopoly to allocate the rights to explore oil, minerals, and timber. Forestry concessions were among the most popular patronage resources."³ In East Timor, Aceh and West Papua, the military forces brutally suppressed the people's resistance and just quest for freedom resulting in massive human rights violations, a big percentage of which are not on record.

From December 1975 to October 1999, the Suharto government occupied East Timor. Within that period, the country was subjected to an estimated 100,000 extrajudicial executions, arrests, torture, involuntary disappearances⁴ and starvation. It became common for the military forces to arrest pro-independence suspects and these people never returned to their families. All throughout those extremely difficult times, the East Timorese resistance remained strong. In November 1991, young people held demonstrations in Dili to which the Indonesian government responded with brutal killings. Fortunately, the bloodshed was secretly filmed and sneaked out of the country. Gaining an international audience, the film exposed the realities in East Timor which was opposed to the Suharto regime's projection that the East Timor problem was over. In 1992, Xanana Gusmão, the heroic East Timorese leader, and other pro-independence leaders were captured by the military forces in Dili. They were imprisoned in Jakarta on charges of subversion. As global outrage against the Indonesian government widened, international support for East Timor became stronger. While in prison, Xanana was visited by UN officials and some dignitaries including Nelson Mandela. They later called for the release of the East Timorese leaders. In 1996, the Nobel Peace Prize Award was given to East Timorese Bishop Carlos Belo and Jose Ramos-Horta greatly contributing to the global projection of the

RECLAIMING STOLEN LIVES

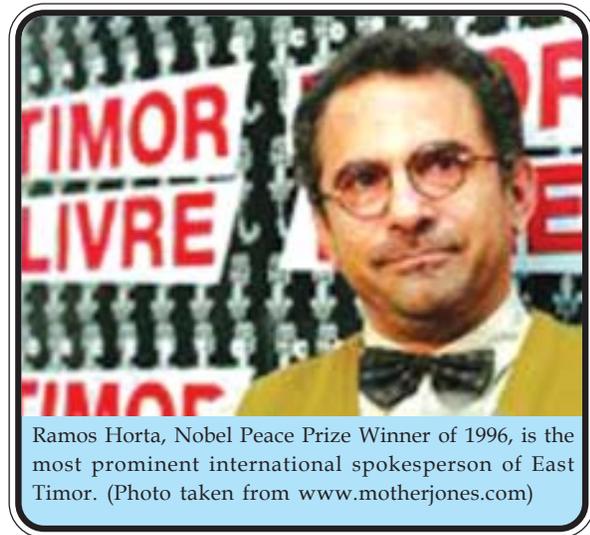
East Timorese' struggle for independence. To make the long story short, after a series of processes with the Indonesian government, with the help of the UN and the international community, Indonesian soldiers were finally withdrawn from East Timor and Xanana was released from prison in 1999. The United Nations Transitional Administration (UNTAET) was established in 2000 and assisted East Timor in its transition for two years. Finally securing its independence on 20 May 2002, East Timor was free at last but then had difficult task of rebuilding considering the heavy damage resulting from the 25-year Indonesian occupation. In September 2002, East Timor joined the United Nations as its 191st member-state.

Suharto's "policy of economic development and industrialization" was his vehicle for intensifying his control over the resource-rich provinces of Aceh and West Papua.⁴ The 1971 discovery of liquefied natural gas (LNG) in Aceh yielded large revenues to the central government and multinational corporations leaving very little for the local government. During the construction phase of facilities for the LNG, there was a rise in employment for the people but job opportunities declined when the infrastructures were completed. Meanwhile, the Acehnese were deprived of their land and suffered serious environmental devastation and atrocities at the hands of the Indonesian military.

The wide resentment against the extraction of natural resources contributed to the formation of the armed Free Aceh Movement (*GAM*), known as the Aceh/Sumatra National Liberation Front in October 1976. Consequently, Aceh was declared a Military Operations Area, known by the Indonesian acronym *DOM* from 1989 to 1998. The military and the police targeted the civilian population to destroy the *GAM*. The Armed forces of Indonesia (*Tentara Nasional Indonesia/TNI*) implemented a systematic campaign of terror, burning houses of families suspected of supporting *GAM*, disappearing people, routinely torturing and raping detainees and leaving corpses in public places. Human rights organizations estimate that 30,000 people were killed and disappeared during the *DOM*. It was only after Suharto's downfall in 1998 that the *DOM* officially ended and that the military atrocities began to surface. Abuses under the *DOM* left Acehnese with deep anger towards Jakarta which intensified since the post-Suharto governments did nothing concrete in response to their grievances. A growing non-violent political movement developed in Aceh after the dictatorship. In 1999, more than one million people (almost a quarter of Aceh's population) peacefully demonstrated in Banda Aceh, the capital, to demand a referendum on the region's political future. Recognizing the threat of a well-organized non-violent movement, the *TNI* imprisoned kidnapped and murdered political activists, human rights defenders and other people. Aceh was still in this same climate during the *tsunami* which gravely devastated the province in 2004. Updates on Aceh are cited below.



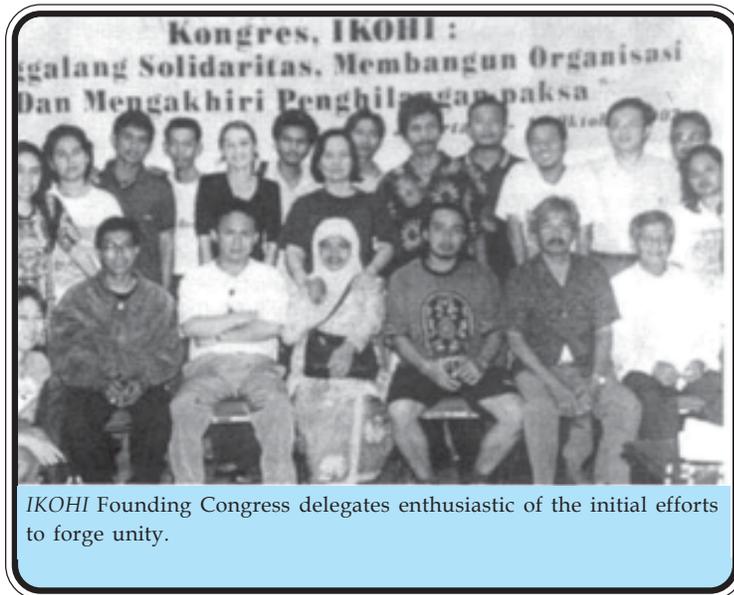
Just as in East Timor and Aceh, West Papua suffered from massive human rights violations under the Suharto dictatorship. The vast copper and gold mines discovered in the province in the mid-20th century served as the great attraction for the Indonesian government and foreign investors. In 1969, General Sarwo Edhi Wibowo oversaw the widely criticized referendum called “Act of Free Choice” on West Papua’s integration into the Indonesian government. Prior to that, the military detained a large group of Papuan tribal leaders for one month threatening them with death if the group did not vote for Indonesian rule. Instead of involving the whole citizenry, only 1,054 people were allowed to vote. The process which was supposed to be an “Act of Free Choice” in accordance with UN requirements was called “Act of No Choice” by critics.⁵ Nevertheless, the Suharto government formally annexed the territory in August 1969.



Aggressive as it was, the Suharto government had already signed an agreement with the US Company Freeport-McMoRan Copper & Gold Inc. over a 30-year exclusive mining license in 1967, two years before the “Act of Free Choice” referendum was held. The pact was extended in 1991 by another 30 years. With the opening of Grasberg Mine in 1988, it became the biggest gold mine and lowest extraction-price copper mine in the world. The West Papuans made several attempts to dissuade the company but to no avail. Aggravating the situation and further dissipating the resistance, the government accelerated its so-called “transmigration program” under which thousands of people from Java and Sumatra were resettled in West Papua in the 1970s and 1980s. The program officially ended in the late 1990s but people from other parts of Indonesia who were seeking economic opportunity voluntarily migrated to West Papua. Some observers cited that within a few years, the West Papuans increasingly had become a minority in their own land. The conflict and human rights violations including that of threatening human rights defenders continue up to this day in West Papua as presented in the latter part of this paper.

Dissent continued to grow in Jakarta and in many parts of Indonesia as the social and economic inequalities widened in the 1970s and as Suharto, his family and their associates were accused of corruption and amassing wealth through multi-million companies. The Islamic radicals, students and the basic masses were among the first groups to oppose Suharto despite military suppression. The collapse of Indonesia’s currency in 1997 which resulted in the spiraling prices of basic

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commodities and services widened the discontent and opposition among the urban middle class. Riots and uprisings broke out while Suharto continued to project to the world that all was well in the country.

It has to be noted that the year 1998 was a very memorable year for the human rights community and civil society in Indonesia. As involuntary disappearances and other forms of human rights violations became rampant, human rights defenders increasingly came together and put their heads together on what would

be their best response to the alarming situation. Within the same year, their efforts led to the founding of human rights organizations among which are *KontraS* and *IKOHI*. At the outset, these young organizations were faced with massive responsibilities which included among other things, the documentation of cases of involuntary disappearance and human rights violations, courageously bringing up the involuntary disappearance issue to the awareness of Indonesian society and the government, linking up with regional and international human rights organizations, and lobbying at the UN. The human rights movement was implanted into the Indonesian society at a time when Suharto and his cohorts were on a rampage.

In the violent suppression just before Suharto's fall, an estimated 500,000 to 3 million people were killed, detained or were made to disappear. Finally, on 21 May 1998, Suharto handed power over to then Vice-President Bucharuddin Jusuf Habibie, who was to serve on an interim basis. Below is an effort to record a glimpse of that historic moment in Indonesia:

"Suharto's resignation brought an outpouring of joy and relief from the thousands of students who had occupied the country's parliament grounds, camping there overnight to press their demand for the president to step down. When he read the words "I withdraw," the students who had spearheaded this popular revolution screamed loudly, fell to their knees in prayer, jumped into an outdoor fountain, and threw their brightly colored school blazers into the air."⁶

Known as a close ally of Suharto for decades, Habibie was popular to some segments of the military but not to students and some sectors which remained against him. His administration did not endure. In November 1999, the Assembly expressed a need for change and picked Abdurrahman Wahid as president and Megawati, the daughter of former president Sukarno, as vice-president. By that time, Wahid, who headed the country's main Islamic group, the *Nahdatul Ulama (NU)* enjoyed popular support. However, with a dwindling economy coupled by ethnic unrest and separatist uprisings, his administration soon weakened. The instability of the Wahid government intensified because of the independence battles waged in the regions of East Timor, Aceh and Papua hand in hand with outbreaks of violence between rival groups in West Java, Ambon and West Kalimantan. This was aggravated by the entrenchment of Suharto-era powerful men within the ranks of the military and the government.

Wahid tried to reduce military power and end discrimination against ethnic groups but failed to prosecute Suharto for alleged corruption and human rights violations. According to some observers, Wahid wasted his presidency and having travelled to various countries abroad, was tagged as the "traveling president." In 2000, AFAD organized an Asian-Latin American Lawyers' Meeting held in Jakarta which was titled: "Between Memory and Impunity." The Federation took the opportunity to visit then President Wahid to lobby for a visit of the UNWGEID. The president was agreeable but was ousted from the presidency some months later.

Soon, critics complained of his erratic and "zigzagging" leadership while the country's economy continued to stagnate. The final blow came when Wahid himself was implicated in two graft scandals. He was accused of diverting a \$2-million aid donation from the Sultan of Brunei and stealing \$4.1 million from the state's treasury. Wahid was impeached by parliament in February 2001. Some observers claim Wahid tried to implement the program of *reformasi* touted to be the hallmark of his government. However, Suharto's 'New Order' elements and armed forces in government were determined to sabotage his efforts.

Megawati was sworn in as president on 23 July 2001 and was to serve for the remaining years of the term. As president, Megawati faced many challenges, notably separatist movements in the provinces of Aceh and Papua, a battered economy with a huge government debt and an incomplete transition to democracy after decades of authoritarian rule under Suharto. Megawati's administration immediately secured the resumption of International Monetary Fund (IMF) loans, which had been suspended under Wahid. A year after Megawati became president, she was seen as a silent president who did not present her plans to the public. The Jakarta Post, 23 July 2002 cited:

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"There must be something wrong, or missing, if, as of today, a year after President Megawati Soekarnoputri took the helm, she is still an enigma to most people. It is really ironic that we have survived for thirty years playing the guessing game of what was on former president Soeharto's mind and now we have to endure, for how long we don't know, years of trying to figure out what's really on Megawati's....." ⁷

Nevertheless, while it was during the Wahid administration that the Truth and Reconciliation Commission (TRC) was first designed, it was during Megawati's that it was debated on more intensively. The government urged the TRC supposedly to resolve past human rights violations once and for all but at the outset, the victims' families, survivors of human rights violations and human rights organizations harbored many misgivings. In December 2002, the Megawati government signed an agreement with rebels in the Aceh province, raising hopes for peace. Unfortunately, the government ended what it claimed were fruitless talks barely six months after the agreement was signed. Consequently, the armed forces resumed their military action against the rebels. Just as in earlier administrations, the continuing conflict in various parts of the country during the Megawati administration dealt heavy blows to the common people, who were caught in the crossfire and were made to disappear or suffer from other forms of human rights violations.

Human rights defenders were and are not exempted from the ire of the powers-that-be in Indonesia. On 7 September 2004, Munir, a respected and well-known Indonesian human rights defender was mysteriously murdered on a Garuda flight from Jakarta to Amsterdam. Munir was the founder of *KontraS* and other human rights organizations in Indonesia. At the time of his death, he was serving his first year as Chairperson of the Asian Federation Against Involuntary Disappearances (AFAD).

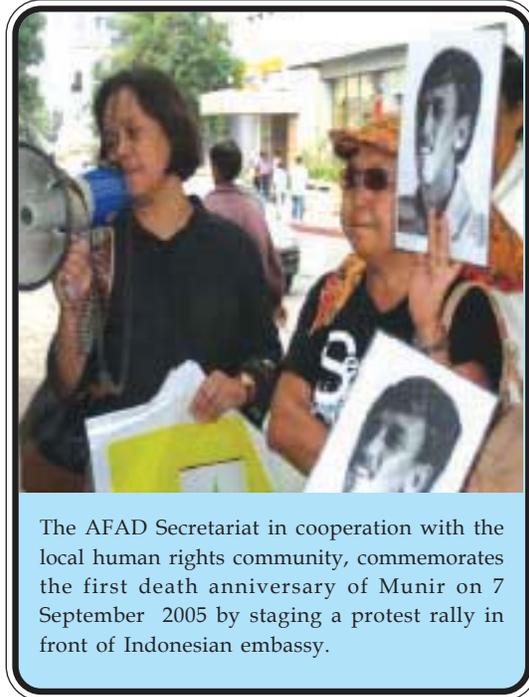
AFAD immediately reported the incident to the UNWGEID to which the UNWGEID responded in an official letter to the Indonesian government asking the latter to investigate the matter. Part of the mandate of the UNWGEID is to work on cases of human rights defenders working on issues of enforced disappearances. The Indonesian government replied in May 2005 assuring the UNWGEID that steps were being taken. In March 2005, when Indonesia chaired the then UN Commission on Human Rights, AFAD picketed in front of the Indonesian Embassy in Manila. Requesting for a dialogue, AFAD was coldly ignored by the embassy. The picket landed in the front pages of Jakarta's major newspapers. On Munir's 2nd death anniversary on 7 September 2006, AFAD picketed at the Indonesian embassy in Manila to seek the truth and justice for Munir. Mary Aileen D. Bacalso, AFAD Secretary General, and Veronica Kusumaryati, then AFAD focal person in Indonesia, met with officials of the embassy Minister/Deputy Chief of Mission, Mr. Sanusi and Minister Counsellor Maila Sonja Tahar. AFAD brought to the attention of the embassy officials



the urgency of shedding light on the case and working for its resolution at the soonest possible time.

Indeed, Munir's sudden death shocked the national, regional and international human rights community. To quote the Asian Human Rights Commission (AHRC):

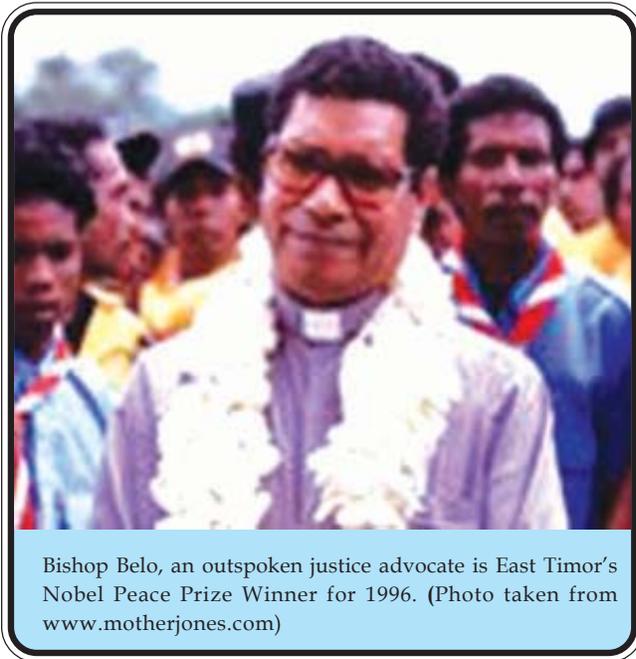
"Munir's call for the cessation of the dominance of the military, the end of the culture of impunity, justice to the hundreds of thousands of victims who were tortured, killed or disappeared was too threatening. It would have led, in the eyes of the authority, to destabilization and the emergence of people's power, which would have turned the tables on them, and which would have been too unnerving for many in the military and political leadership. Those who benefited from the dysfunctional justice system colluded in getting rid of him in a most despicable manner." ⁸



Munir, the well-known upright and brave human rights defender was so threatening for the powers-that-be that no one could have mysteriously murdered him except those who were threatened by his very existence. Munir, who had spent his life fighting for justice on behalf of *desaparecidos* and victims of other atrocities, became a victim, himself. He is such a loss for the overall human rights promotion and protection not only of Indonesia but also Asia and the rest of the world. The experience of the human rights movement in Indonesia and in Asia where Munir was one of the most capable leaders might have given a strong blow to the whole oppressive system of society. This would have caused the perpetrators to weaken until they would be subjected to the rule of law and suffer the consequences of their actions. Munir was, indeed, one of the rare sons of our times who contributed much to society's quest for justice. The international human rights community mourned and continues to mourn his death especially since his case remains unsolved up to the time of this writing. An account of his case is written in another chapter of this book.

Meanwhile, as human rights violations intensified in West Papua towards the end of the 20th century and at the beginning of the 21st century, a global campaign to review the "Act of Free Choice" process evolved. For one, Archbishop Desmond Tutu of South Africa stated in 2004:

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"The people of West Papua have been denied their basic human rights, including their right to self-determination. Their cry for justice and freedom has fallen largely on deaf ears. An estimated 100,000 people have died in West Papua since Indonesia took control of the territory in 1963.... Instead of a proper referendum, where every adult male and female had the opportunity to vote by secret ballot on whether or not they wished to be part of Indonesia, just over 1,000 people were hand-picked and coerced into declaring for Indonesia in public in a climate of fear and repression."⁹

Along with a global call, the archbishop called on the UN to review the discredited West Papuan "Act of Free Choice of 1969" in Indonesia's take-over. During the Abdurrahman Wahid administration of 2000, Papua gained a "Special Autonomy" status which did not succeed in making any qualitative change in the lives of West Papuans. During the visit of Ms. Hina Jalani, the special representative of the UN secretary general on human rights defenders, in Indonesia in June 2007, human rights defenders who met with her in West Papua were allegedly intimidated after the meeting necessitating statements of urgent appeal from the international human rights community including the Asian Human Rights Commission (AHRC).¹⁰

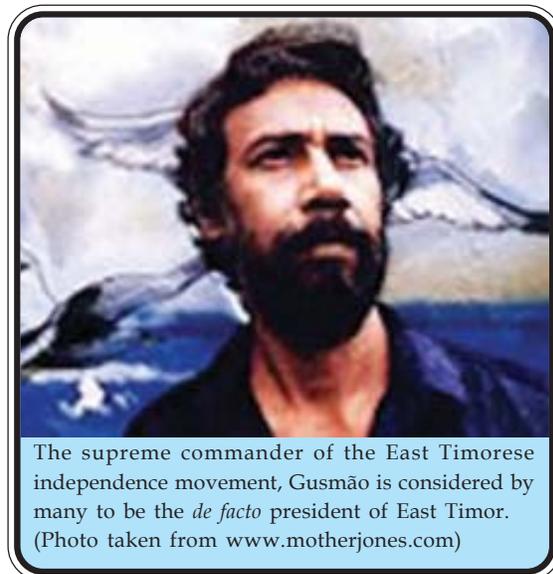
Susilo Bambang Yudhoyono, a former military commander, won over Megawatti in the October 2004 presidential election and promised to lead an anti-corruption campaign, rebuild the economy and put an end to human rights violations. However, not long after his ascension to power, the president made controversial appointments of officials from the Suharto-era making some sectors of Indonesian society question the congruence of his words and actions. Meanwhile, on 26 December 2004, Indonesia and neighboring countries were devastated by a *tsunami*, destroying the troubled Aceh province the hardest, with an estimated 160,000 people dead. Aceh's urgent need for aid and reconstruction prompted the government and the rebels to resume talks in January 2005. Aceh has vast reserves of natural gas, oil and coal but people remain poor because it is the central government which reaps profits from these raw materials.

On 16 July 2005, the government and the Free Aceh Movement (*GAM*) announced a peace agreement to end the 30-year civil strife. The agreement was signed on 15 August 2005 by chief Indonesian negotiator Hamid Awaluddin and *GAM* leader Malik Mahmud. A few months after that, the district and provincial elections were held on 11 December 2006 in Aceh. It is the first direct local election in Aceh and the first election after the August 2005 Helsinki peace agreement between the government and *GAM*. It is also the first time in Indonesian politics to allow non-party affiliated candidates to run in elections. In that election, Irwandi Yusuf, a former spokesperson of *GAM*, won the gubernatorial seat along with his running mate Muhammad Nazar as vice governor. Nazar is a former political prisoner and head of the Aceh Referendum Information Center (SIRA) which campaigned for Aceh independence. Yusuf and Nazar were installed in office on 8 February 2007. While the new leaders face the poverty prevalent in Aceh compounded by the damage done by the 2004 *tsunami*, they also have to urgently deal with the unresolved cases of involuntary disappearance and other atrocities. Keeping things in a positive key, the concrete experiences in Aceh may yet be a learning situation for the rest of Indonesia's many regions.

In the main, several years after Suharto's fall, Indonesia's common people have remained poor. In a 2006 article written by Indira Rossie, a daughter of a former political prisoner in Indonesia, she cited:

"Indonesia's cities are socially divided between the extremely rich, who are few in number and the extremely poor, who are the majority. Glamorous and overpriced shopping centres rub shoulders with miserable rows of street vendor stalls on narrow and broken sidewalks. Slums grow at the back of five-star hotels and apartment complexes. Condominiums are often next to garbage dumps worked and inhabited by scavengers. Luxury cars sail through hordes of beggars and prostitutes in front of every traffic light. High-rise office buildings are encircled by unsanitary *warungs* (improvised eateries that usually lack running water and toilets)."¹¹

The history of many developing countries speak of the fact that poverty and aggression are among the deepest roots of larger problems including dissent and rebellion. In



turn, this becomes a fertile ground for human rights violations triggered by the all-too-common government response which is suppression and repression. As in most Asian countries wherein the food crisis has further intensified in recent years, Indonesia has yet to fulfill its commitment to the UN Millennium Development Goals (MDGs) of reducing poverty before the 2015 deadline. With barely seven years to go and the situation the way it is, it seems that few of the 189 world leaders who swore their commitment in 2000 would be able to keep their word.

Effects of Involuntary Disappearance on the Families of Victims and Their Response to the Situation

Most *desaparecidos* particularly during Suharto's 32-year dictatorship were from the ranks of students, peasants, workers, other poor sectors and also from the lower middle class. Many of them were suspected members and supporters of the *PKI* and other so-called dissident groups. Dreaming of a better life for their people, they persistently worked to end Suharto's dictatorship so that democracy could begin to bloom. However, a number of victims were made to disappear on mere suspicion of their dissent and for other non-political reasons.

Most disappeared victims were male and were the main breadwinners of their families. Thus, their sudden disappearance made life even harder for their families. The situation was worsened by the psychological and emotional trauma of the families that accompanies the disappearance of their loved ones. However, *IKOHI* has many members who are brave wives, mothers, sisters and other female relatives of *desaparecidos*. The exposure and training they collectively and periodically undergo facilitated by *IKOHI* and in coordination with AFAD makes them even stronger. These brave women are increasingly finding their proper place in society. They exert all efforts to look after the basic needs of their children while contributing to the shaping of a more democratic Indonesia through their active involvement in the continuing justice campaign for their disappeared loved ones. As in other Asian countries, the families, relatives and friends of victims in Indonesia never forget their missing loved ones. Their loving memory of the disappeared remains engraved on their hearts and minds. They painstakingly put bits and pieces of information together hoping that their loved ones will be found or their whereabouts be known sooner than later.

A vibrant civil society exists in Indonesia. As cited earlier, among the most commonly known human rights organizations are *KontraS* and *IKOHI*. Formed in March 1998, *KontraS* is composed of pro-democracy non-governmental organizations. Among these are *KIPP* (Independent Committee for Election Watch), *AJI* (the Alliance Independent Journalist), *YLBHI* (Indonesia Legal Aid Foundation), and one student organization *PMII* (Indonesian Islamic Student Movement). *KontraS'* mandate includes: helping the Indonesian people raise awareness of their human



rights especially the freedom from any form of violence; to work for the promotion of human rights especially people's right to be free from all types of violence including involuntary disappearance; and to work for a consistent change of laws geared towards the protection of the people from enforced disappearances and all forms of violence.

When the families and surfaced victims decided to establish their own organization, *KontraS* supported them totally. These joint efforts led to the founding of *IKOHI* on 17 September 1998. The new organization held its first congress in October 2002 to regularize its organizational structure and finalize its mandate. *IKOHI*'s mandate includes the following: to document past and present cases of involuntary disappearance all over Indonesia; assist in the empowerment and development of members socially, economically, mentally and physically; wage a justice campaign for victims of involuntary disappearance; and work for the prevention of involuntary disappearance in the future. *IKOHI* believes that for justice to be fully achieved, the following must be met: the whereabouts of victims are known; the perpetrators are brought to court and tried in a speedy and fair manner after which they are given corresponding punishment when proven guilty; reparation and redress are provided to the families of victims; and surfaced victims and their rehabilitation is facilitated. *IKOHI* further believes that it is in achieving justice that involuntary disappearance will never be repeated in the future. Presently, *IKOHI*'s main office is based in Jakarta and it has 14 branches in the major provinces of the country.



Families of the disappeared persons in Indonesia urge the government to address cases of disappearance. (Photo taken from <http://ikohi.blogspot.com>)

For many years, *KontraS* and *IKOHI* have been closely working together in campaigning for justice for the disappeared. Among others, they have developed close partnerships with major newspapers in the country and have been conducting dialogues with media people from time to time. During meetings, the two organizations remind their media friends to regularly write on the human rights situation in the country and other related issues coupled with priority calls to pressure the government to concretely act towards the resolution of cases. Periodically, the *KontraS* and *IKOHI* develop joint statements and have them published in leading newspapers. In one statement, they called on President Susilo Bambang Yudhoyono (SBY) to fulfill his

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Families of the disappeared find connection with each other during one of their psycho-social rehabilitation seminars. (Photo taken from ikohi.blogspot.com)

election promise to resolve cases of human rights violation. In one statement, *IKOHI*'s chairperson Mugiyanto stated that "the government's poor handling of involuntary disappearance cases has left thousands of families in the dark... The government lacks the will to deal with the cases and that the state is implementing the so-called politics of forgetting. We are made to forget the New Order regime transgressions."¹²

Lobbying their government is an integral part of the work of *IKOHI* and *KontraS* along with the families and relatives of victims. For one, they have persistently demanded that President Yudhoyono exert more decisive efforts in

investigating the whereabouts of disappeared persons. They also demand that the Supreme Prosecutor, Abdul Rahman Saleh, establish a special team that involves the public in the investigation of cases and that alleged perpetrators be brought to court in a speedy manner. In line with national lobbying, they meet with concerned government agencies whenever needed. Regional and international lobby and solidarity work are among the equally important tasks of the families, relatives and friends of the disappeared and their organizations. In this regard, *KontraS* and *IKOHI* sought membership in AFAD many years ago. They actively participate in AFAD activities in Indonesia, in other Asian countries, at the UN and in other parts of the world. Aside from this, they also take time to visit embassies of other Asian countries based in Jakarta to lobby for the signing and ratification of the international treaty against enforced disappearances.

Awareness-raising is equally an important part of the tasks of *IKOHI* and *KontraS*. From time to time, they organize study sessions and fora among university students and other sectors. They talk about developments on their justice campaign in Indonesia and present films on the same topic in other countries. In 2007 when Mr. Patricio Rice, *FEDEFAM* representative, and Ms. Mary Aileen Bacalso, AFAD Secretary-General, visited Indonesia, the two discussed the work of their respective federations for the disappeared in Asia and Latin America among university students and other sectors. Becoming aware of the justice campaign for the disappeared in other parts of the world is very helpful for the young students making them all the more inspired in joining the fight for justice in their own country.

In coordination with AFAD, *IKOHI* provides scholarships for the dependents of *desaparecidos* and facilitates periodic psychosocial rehabilitation sessions among the families. An amount of Rp.74000/month is provided for each student. To date the



students with scholarship come from Jakarta, Jateng dan Jatim, Sulawesi Tengah, Aceh and Papua and are at the kindergarten, elementary, junior high school, senior high school or at the university levels. Since the scholarship fund is limited, a set of criteria for its provision has been defined namely: a family has at least two schooling children; the combined family income is below Rp.1,000,000 (US\$ 110.00)/month; they are active *IKOHI* members and/or active in the struggle for human rights.

AFAD together with its member-organizations in the different Asian countries implemented a psychosocial healing session in Jakarta in December 2004. Themed "Healing Wounds Mending Scars: First Sharing Experience of Asian Families of the Disappeared", the general objective of the activity was to help families of victims overcome the trauma caused by the disappearance of their loved ones so that they could go on with life more meaningfully and productively. After that, *IKOHI*, in partnership with AFAD, conducted a similar activity to create a forum for the families to express their feelings and hopes for the future and familiarize them with different exercises on stress management and self-healing. Counsellors and other professionals were invited to facilitate the activities together with the *IKOHI* staff. So that more families can benefit, similar activities were planned at the community level. In preparation for this, they facilitated a training for community counsellors with the theme: "From Victims to Healers."



IKOHI implements regular organizational consolidation in its main office in Jakarta and among its branches in the provinces. Officers and staff take these opportunities to update the members on organizational matters and on the developments of the Convention. AFAD materials are distributed during these activities and updates on the federation and its plans are also shared. To help members understand the Convention, it was translated into the *Bahasa* language and discussed during organizational meetings.

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Families, relatives and friends of victims and surfaced victims and the human rights community in Indonesia remember the *desaparecidos* in a special way during the days dedicated to them e.g. the International Week of the Disappeared (IWD) on

the last week of May and the International Day of the Disappeared (IDD) on 30 August. Every year, the activities are uniquely designed to relive the memories of the disappeared, unite with other families and relatives of victims all over the world, inform the general public on the phenomenon of involuntary disappearance and present related developments to gather wider support and, of course, pressure the government to more decisively perform its responsibilities in the justice campaign.



Parents of a disappeared person (Mr. and Mrs. Fatah, parents of Leonardus Gilang). Gilang disappeared in Solo in 1998. He was a street musician and activist. Few days after he disappeared, he was found dead.

In 2004, the government released Regulation No. 27/2004 establishing a Truth and Reconciliation Commission (TRC). The families of victims and human rights organizations were not consulted while the TRC was still being formulated. Thus, at the outset, many families and organizations were against it. Among others, the TRC contains provisions on the amnesty of perpetrators as a requirement for the rehabilitation, recuperation and redress of victims of gross human rights violations in the past. The involuntary disappearance issue is not specified. The victims' families, *IKOHI*, *KontraS* and the human rights organizations underwent a series of discussions and debates before they made a united stand against the TRC Indonesian-style.

In the article *Truth and Reconciliation Commission: A Two-Edged Knife*, published in the April 2004 issue of *The Voice*, the author, Mugiyanto¹³ thoroughly explained the objections of the families of victims, surfaced victims and human rights organizations to the TRC. He said that in terms of context, it is doubtful whether that kind of TRC could be effective considering that the government and the parliament are still dominated by alleged perpetrators from the military and other powerful people from the Suharto era.

"The Indonesian TRC is designed as a substitute for the judiciary, not complementary to it. Cases handled by the TRC will never be brought to court....Victims and families of victims are allergic to the word 'reconciliation' if truth and justice are not achieved first."

The TRC requires that for families of victims and surfaced victims to be granted reparation, redress and rehabilitation, they must first sign a document which absolves the perpetrators of their crimes. Thus, the human rights groups in Indonesia challenged the government on the legality of the TRC. After two years of campaigning, in December 2006, Indonesia's Constitutional Court declared Regulation No. 27/2004 unconstitutional saying that its provisions violated Indonesia's international obligations and even its domestic laws.

In 2007, families and relatives of *desaparecidos* along with other victims of human rights violations and their organizations initiated a weekly public protest in front of the Presidential Palace in Jakarta. This is inspired by the weekly activity of the *madres* and *abuelas* in Buenos Aires. Enacted every Thursday from 4 PM to 5 PM, the weekly protests are participated in by families of victims and surfaced victims together with other representatives of the human rights community. The group puts up the photos of Munir and other victims as well as banners with written slogans. Black umbrellas are also covered with slogans against impunity. Since this is performed on a regular basis, policemen are usually stationed ahead at the venue but do not interfere with the activity. On 10 December 2004, when AFAD and FEDEFAM representatives were present, a letter was delivered to the president after the protest. Since the venue was situated at a national park, flyers bearing urgent calls were easily distributed to passers-by. Thus, the public protest was also maximized to project the involuntary disappearance issue to the general public.

On 11 March 2008, IKOHI, KontraS, AFAD and FEDEFAM met with Komnas HAM to once again call on the government through the Commission on Human Rights to concretely act on cases of the disappeared and other victims of violence. The organizations reiterated their call on the government to work closely with the UN Working Group on Enforced or Involuntary Disappearances (UNWGEID) by responding to the latter's communications regarding the clarification of cases. They also called on the government to sign and ratify the Convention for the Protection of All Persons from Enforced Disappearance. Signing the Convention is a commitment which had been made several times by government representatives. They further asked President Yudhoyono to order the Attorney-General to abide by the Constitutional Court decision of 21 February 2008 to immediately investigate the disappearance of pro-democracy activists in 1997/98.

The families of victims along with their organizations, *KontraS* and *IKOHI*, visited the Third Commission of the Parliament on 1 July 2008 demanding that the Attorney General (AG) be called on to explain why he is not implementing the decision to conduct further investigation into the 1997-98 cases based on the documents submitted by *Komnas HAM*. The group reiterated their earlier demand that since involuntary disappearance is a continuing crime, this should be handled by the permanent human rights tribunal and not necessarily by an *ad hoc* tribunal as the AG keeps on insisting. Indeed, the developments in the justice campaign are closely monitored. As a whole, one big leap forward has been that the families, relatives and friends of victims together with their organizations are now recognized by their government as a strong force with which to reckon in the concrete implementation of human rights in the country.

The Government's Position on Involuntary Disappearance and its Human Rights Performance

As cited in the earlier part of the article, Indonesia became the 60th member of the United Nations on 28 September 1950 barely five years after the UN was established. Since then, Indonesia has been very active in signing and ratifying international human rights instruments. Among these are the Universal Declaration of Human Rights declared by the General Assembly on 10 December 1948, International Covenant on Civil and Political Rights, Optional Protocol to the International Covenant on Civil and Political Rights, Second Optional Protocol to the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Declaration on the Protection of all Persons from Enforced Disappearance, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and many more. In May 2006, Indonesia was elected as a member of the UN Human Rights Council and continues to be a member of this body up to the present.

Yet, even while the Indonesian government is a signatory to many UN documents and treaties including the UN Declaration on the Protection of All Persons from Enforced Disappearances, the Indonesian Criminal Code does not criminalize involuntary disappearance. Regulation No. 33/1999 considers involuntary disappearance as a crime against humanity but there is no domestic law related to this crime. The government simply ignores cases of this type. On the other hand, some domestic laws can be maximized for the resolution of involuntary disappearance cases. Among these are as follows:

- Regulation No. 39/1999 which focuses on human rights and which was enforced on 23 September 1999. Article 3 (2) and 5 (1) ensure protection of all persons and non-discrimination/non-distinction of any kind before the law; Article 4 ensures right to life, right not to be tortured, freedom of expression,



freedom of religion, freedom from slavery and equality before the law; Article 9 ensures the right to live in peace and in secure conditions; Article 16 ensures the right to build an organization; Article 17 ensures the right to be tried in an impartial court; Article 18 (1) ensures that everyone is presumed innocent until proven guilty and is entitled to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and



of any criminal charge against him or her; Article 24 ensures freedom of speech, freedom of expression, freedom of peaceful assembly and to found a political party, non-governmental organization, and take part in government as well as in the protection and promotion of human rights; Article 27 ensures the right to freedom of movement and residence within the borders of the state; Article 29 ensures that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence; Article 30 ensures the security of persons; Article 33 ensures that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; Article 34 ensures that no one shall be subjected to arbitrary arrest, detention or exile.

- Regulation No. 26/2000 was enforced on 23 November 2000 and is related to the human rights court. Article 9 states that human rights violations can be categorized as crimes against humanity if these fulfill the following criteria: systematic, large scale, widespread, and committed directly against any civilian population.
- Regulation No. 73/1958 or Bill No. 1/1946 on the Indonesian Criminal Code was enforced on 20 September 1958. Article 328 prohibits arresting people against the law and perpetrators which can be punished for a maximum of 12 years; Article 333 prohibits attacking other people's freedom against law; Article 351 prohibits molestation.
- Regulation No. 8/1981 about Criminal Court Code enforced on 31 December 1981. Article 17 requires sufficient evidence before detention; Article 18 ensures that any detention should be followed by a legal and official detention

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letter; Articles 20-31 prescribes detention procedures; Articles 50-74 protects the rights of the suspect.

Regulation No. 26/2000 on Human Rights Court states that it will provide a legal basis for redress, recuperation, and rehabilitation for the victims but the regulation does not carry implementing guidelines so is rather, a matter of "hit and miss." For instance, in Talangsari, the military initiated what is called "a rehabilitation process" for the families of victims and surfaced victims. However, they distributed money only to some groups, neglecting others. In effect, their steps which were repeated became discriminatory and had divided, instead of uniting the victims.

The 1997-'98 cases of involuntary disappearance are among the first cases handled by *Komnas HAM*. Some human rights organizations in Indonesia hope that the success which may be achieved in these cases can serve as a breakthrough and a springboard for the success of future cases. However, the following series of events related to these cases are

reflective of how the government and its concerned agencies are handling cases of involuntary disappearances at present:

On 8 November 2006, *Komnas HAM* held a plenary session on the cases. The Commission concluded that the victims were deprived of their liberty and security, the information on their abduction was distorted, and the victims were put outside the protection of the law. This meant that the 1997-'98 cases, which included 24 victims and 27 alleged perpetrators, fall under the category of gross human rights violations according to Regulation No. 26/2000. *Komnas HAM* further established that international human rights laws as well as national laws are grossly violated since involuntary disappearance is a crime against humanity. The Commission then asked the Supreme Prosecutor, the Parliament, and the President to establish a human rights court for the speedy trial of the alleged perpetrators. It further recommended

that families of victims and surfaced victims be afforded with due compensation, redress and rehabilitation. However, Juwono Sudarsono, the Minister of Defense, stated that the case had been closed by the Mawar Team in 2002. *IKOHI*, *KontraS* and other human rights organizations did not accept the argument as the Mawar Team only charged the executors and not the masterminds of the crime. Besides, the whereabouts of 13 out of 24 victims cited above remain unknown to this day.

Komnas HAM then submitted its investigation report to the Attorney General (AG) Abdurrahman Saleh so that the cases could be processed further. *IKOHI*, *KontraS* and other human rights organizations called on the Attorney General, the Parliament and the President to establish a Human Rights Court (HRC) where the cases would be tried. The group called on the AG to further investigate the cases based on the *Komnas HAM* report even while the HRC was still being established and also for the President to help in the investigation to surface those who are still missing.

However, on 5 January 2007, the Attorney General sent a letter to the Chair of *Komnas HAM* saying that his office could not proceed with the cases because there was no *Adhoc* Human Rights Tribunal referring to Article 43 of Law No. 26/2000 on Human Rights Tribunal. The Chairman of *Komnas Ham* responded to the AG's letter saying that further process does not need an *Adhoc* Human Rights Tribunal. A copy of this letter was furnished to the President, the Chair of the Parliament and the Third Commission. The AG continued to hold to his argument that the Parliament must first establish an *Adhoc* Human Rights Tribunal before the cases could be processed. In February 2007, the Plenary Meeting of the Parliament agreed that the cases would be reviewed by a Special Committee (*PANSUS*). The first session of *PANSUS* was held on 13 March 2007 and elected Panda Nababan as Chairman. So far, nothing has happened after this.

Meanwhile on 21 February 2008, the Constitutional Court (*MK*) issued its decision through Decree No. 18/PUU-VI/2007 based on their discussion of Law No. 26/2000 Article 43. The *MK* cited that Article 43 verse 2 is valid and a part of its decree is as follows: "...in deciding whether it is needed to establish an *Adhoc* Human Rights Tribunal on a particular case according to *locus* and *tempus delicti*, this requires the involvement of a political institution representing the people, which is the Parliament. However, the Parliament should also consider investigation results from the authorized institution if the Parliament wants to establish such a tribunal. In other words, the Parliament would not rely on its own understanding as it has to review the investigation report made by the authorized institution, which is *Komnas HAM* and the Attorney General as stipulated in Law No. 26/2000."

On 26 March 2008, victims' families together with *KontraS* met with President Yudhoyono and directly reported to him the difficulties in resolving cases of involuntary disappearance and other human rights violation. In response, the President promised

that he would conduct a special meeting to be attended by all cabinet ministers and other agencies whose tasks are related to human rights. Furthermore, he promised to ask clarifications from the Attorney General, Mr. Hendarman Supanji, regarding the supposedly "missing documents" of Trisakti Semanggi and verify from the Minister of Defense, Mr. Juwono Sudarsono, if the latter had, indeed, said that it is not essential for the military officers and former *TNI* members to respond to the invitation of the *Komnas HAM*'s inquiry team.

On 1 April 2008, the AG returned four documents from the 1997-'98 and May 1998 riot cases to *Komnas HAM* asking the commission to improve the documents. On 28 April 2008, *Komnas HAM* returned the four documents to the AG without any improvement. According to the commission, the AG should improve the documents as he is in-charge of the further investigation process. Thus far is the update of the cases at the time of this writing.

The Ministry of Foreign Affairs and other government officials cited in several occasions and separate meetings with the victims' families that the government would support the enactment of a national legislation on involuntary disappearance. It had further stated that the government's goodwill is expressed in its support to the UN Declaration on the Protection of All Persons from Enforced Disappearances and its membership in the UN Human Rights Council. On the ground though, the government does not make enough concrete efforts in resolving involuntary disappearance cases as clearly seen in what has occurred in the 1998-'99 cases investigated by *Komnas HAM*. The number of cases of involuntary disappearance has decreased in recent years but the continuing conflict in some parts of Indonesia remains to be a fertile ground for this grave crime against humanity. Furthermore, the very fact that cases are not resolved, the phenomenon continues.

On many occasions and even at the UNHRC session in June 2006, government representatives cited their support for the UN Convention for the Protection of All Persons from Enforced Disappearance.¹⁴ Mr. Hassan Wirayuda, the Minister of Foreign Affairs (MFA), said that the government respects, protects and promotes non-derogable rights, more importantly the right to life. On another occasion, the president, himself, has stated that Indonesia fully supports human rights enforcement. In the experience of *KontraS* and *IKOHI*, they have several times met with the *Komnas HAM*, the Parliament, the military, the DFA, Mr. Andi Malarangeng, the official assistant of the president and many more. These officials all say the same thing the government upholds the truth and promotes justice for victims of human rights violations and that it cares for the well-being of its citizens. Thus far, these are all hollow words unproven by deeds.

The government received letters from the UN Working Group on Enforced or Involuntary Disappearances (UNWGEID)¹⁵ through the MFA asking for clarification of



reported involuntary disappearance cases. As presented in the UNWGEID report, the government never responded to these letters. From the same report, on 12 December 2006, the UNWGEID requested for a visit to Indonesia in late 2007 or early 2008 to facilitate the clarification of outstanding cases. It received a communication from the government acknowledging receipt of the request on 24 January 2007. In March 2007, the UNWGEID Secretary met with representatives of the Indonesian Permanent Mission to discuss outstanding cases and the mission request. A few days after the meeting, the UNWGEID received a letter from the Permanent Mission saying that Indonesia had just been visited by a Special Rapporteur and that two other visits were scheduled for 2007 so that it would be better to visit at a later date.

Indonesia was praised by some members of the UN Human Rights Council (UNHRC) for its Universal Periodic Review (UPR) presented by government representative H. E. Rezlan Ishar Jenie to the body on 9 April 2008. On the other hand, some human rights organizations criticized the same report. For one, the Asian Legal Resource Centre (ALRC) cited in its statement:

“The Asian Legal Resource Centre welcomes the acknowledgement of many of the serious human rights concerns in Indonesia as part of the UPR outcomes, including the need for the criminalization of torture. However, we regret the lack of any clear agreement on the part of the government to take decisive, timely action concerning this issue and further regret the lack of commitments by the government to address the problems of impunity and the ongoing violations in Papua, as a result of the UPR process. Impunity continues to be Indonesia’s main human rights problem. The Attorney General’s office role in ensuring impunity remains a key obstacle in the country. We regret that the UPR has failed to identify this problem and make recommendations in this regard.”¹⁶

ALRC’s claim that impunity remains Indonesia’s main problem has been clearly expressed in many parts of this paper as confirmed by the testimonies and statements of victims’ families and surfaced victims along with human rights organizations in the country. Concrete achievements on the 1998-’99 cases could have started to disprove this claim but so far, the series of events which transpired in connection with these cases speak of the contrary. In fact, Suharto, who is globally notorious to have caused the deaths, disappearances, detention and torture of hundreds of thousands if not millions of people, was not even brought to court before his death on 27 January 2008.

Two UN officials visited Indonesia in 2007. Ms. Hina Jalani, the Special Representative of the UN Secretary General on Human Rights Defenders made a visit in June and even went to West Papua. During her visit, Ms. Jalani met with government officials as well as human rights activists to hear reports on the country's progress in improving its human rights protection. She raised concerns over the unsolved murder of prominent human rights defender Munir Said Thalib. As cited earlier in this paper, human rights defenders with whom Ms. Jalani had a meeting in West Papua were threatened after her visit, thus necessitating a global urgent appeal. On the other hand, Ms. Louise Arbour, the United Nations High Commissioner for Human Rights, arrived in Indonesia in July. A UN statement cited that Ms. Arbour's visit was aimed at "encouraging the government's efforts to promote and protect human rights at the national, regional and international levels." She met with President Yudhoyono, Foreign Minister Hassan Wirayuda, Justice and Human Rights Minister Andi Mattalatta and other officials as well as civil society organizations. She also visited Aceh to obtain first hand information on the developments of the peace process and the post-*tsunami* reconstruction efforts.

Conclusion

The dark stains on the beautiful tapestry which symbolizes the huge, archipelagic and resource-rich country of Indonesia cited at the beginning of this paper remain up to this day. These are clearly seen particularly in the culture of impunity which continues to prevail in the country resulting in the non-resolution of past cases. As observers cited time and again, Suharto is gone but vestiges of his dictatorship remain entrenched in Indonesia through the people who worked with him during his dictatorship and who continue to hold top positions in government and the military.

In view of the above, the Yudhoyono government has to act more decisively and clearly align its domestic legislation with international laws and treaties. With these as its stronghold, coupled with a strong political will, the present government will be able to implement the tough job of uprooting the culture of impunity and other evils in the country. Furthermore, as the government has promised time and again, it has to sign and ratify the UN Convention for the Protection of All Persons from Enforced Disappearance. Consequently, it needs to develop a corresponding domestic law to facilitate the resolution of involuntary disappearance cases and their prevention.

Victims and survivors of human rights violations along with their organizations and civil society as a whole should be congratulated for their contribution to the gradual dawning of a human rights culture in their country. Yet, as in many countries of Asia and in the world, much remains to be done in the long and arduous journey towards a world without *desaparecidos*. Certainly though, the struggle towards justice and peace in Indonesia is beginning to bear fruit.



Notes:

¹Republic of Indonesia. Retrieved July 8, 2008 from http://encarta.msn.com/encyclopedia_761573214_10/Republic_of_Indonesia.html# and Indonesia. Retrieved July 9, 2008 from http://encarta.msn.com/encyclopedia_761573214_10/Republic_of_Indonesia.html#s49

²TAPOL, the Indonesian Human Rights Campaign. (2008, March). Suharto dies without being brought to justice.

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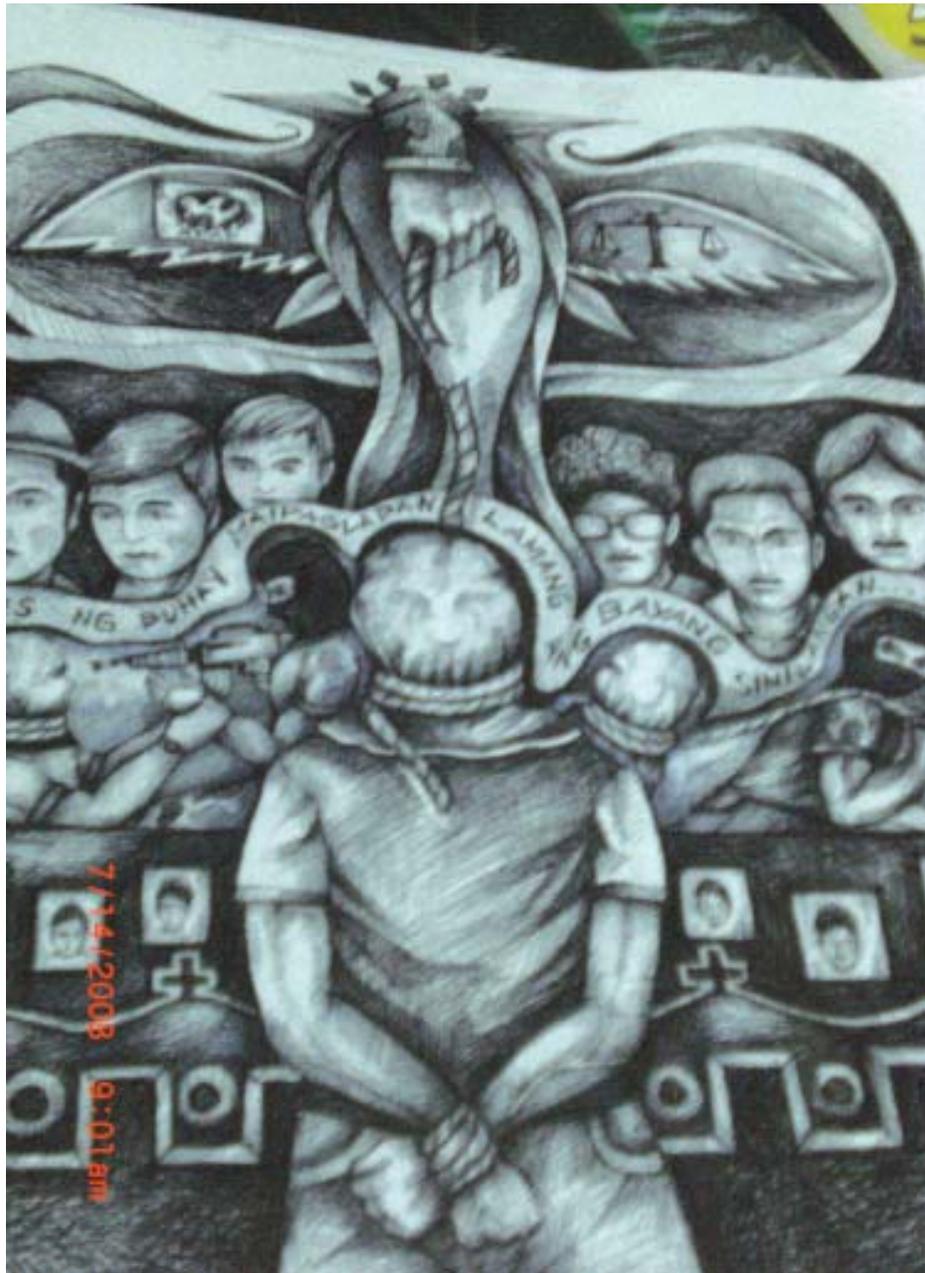
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RECLAIMING STOLEN LIVES



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NEPAL: A NEW HOPE FOR THE DISAPPEARED

By Erlinda Timbreza-Valerio, Atty. Kopila Adhikari

and Dhiraj Pokhrel



Nepal: A New Hope for the Disappeared

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Nepal has reached the crescendo of political transition from a monarchy to a republic with the successful conduct of the Constituent Assembly (CA) polls on 10 April 2008. The formal announcement of Nepal as a republic during the first meeting of the CA and the simultaneous eviction of the king from the political arena is viewed by many as a milestone towards durable peace and a significant step forward to uphold human rights and the rule of law. With the radical political shift and its accompanying promises of change, the excitement of the general populace is at fever pitch and the expectations of all run sky-high.

But the road to a republic was and is not strewn with roses. A decade-long gory conflict precipitated by the initiation of armed insurrection in 1996 by the Communist Party of Nepal-Maoist (CPN-Maoist) and the political crisis that ensued left the country in shambles. During those ten years, Nepal experienced the worst human rights violations including extrajudicial killings and disappearances. Taking advantage of the political instability, King Gyanendra together with the then Royal Nepal Army (RNA), staged a military *coup* on 1 February 2005 and took over the reins of the country. Fueling the already raging inferno of bloodshed and political chaos, the king imposed a state of emergency and flexed his military muscles to the full to quell the peaceful demonstrations of the seven main political parties and the CPN-Maoist.

As a last resort to the increasing martial aggrandizement of the king, the disillusioned mainstream political parties signed a historic 12-point agreement with the warring CPN-Maoists and launched a peaceful democratic movement which climaxed in the king's resignation of absolute rule on 24 April 2006. An interim government was duly formed and a Comprehensive Peace Accord (CPA) was signed shortly thereafter, marking the end of a decade of armed conflict between the Maoists and the State. An Interim Constitution (IC) was drafted and promulgated. After being postponed for two consecutive times on 20 June 2007 and 22 November 2007, the seven-party alliance government including the CPN-Maoist, was finally able to hold the much-awaited CA polls on 10 April 2008. The CA is expected to usher a new era of human rights promotion and protection in the country.

Notwithstanding the hope and jubilation following the popular uprising, the resulting peace process and the relatively peaceful CA polls, many Nepalese continue to voice concerns about the country's human rights and political situation. For one, the resettlement of 100,000 to 250,000 internally-displaced persons (IDPs) has been hindered by security concerns and the seeming insincerity of the CPN-Maoist. Despite



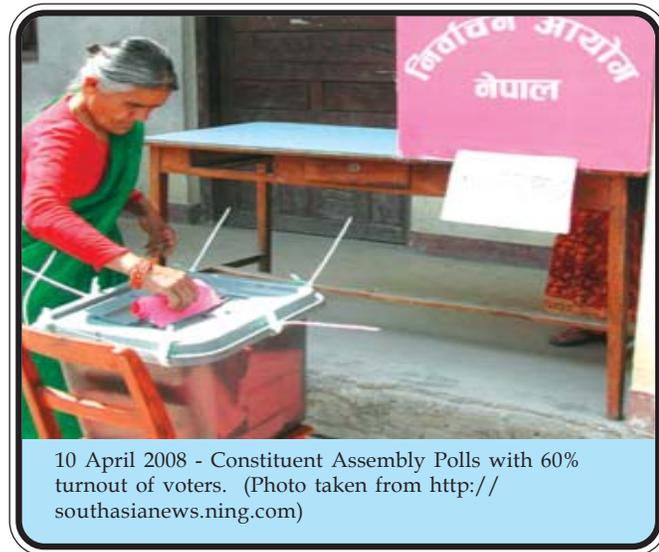
its declaration of democratization, the Nepal Army has failed to cooperate with investigations on the whereabouts of *desaparecidos*. The government failed to properly investigate and prosecute a single case of extrajudicial execution, enforced disappearance and torture so that the perpetrators who are notably the security forces and the CPN-Maoist go scot-free.

Although the optimism for a better future is high, the aftermath of the CA elections and the declaration of a republic tend to create doubts and uncertainty. The Nepalese eagerly wait for the concrete moves of the CPN-Maoist, the former rebels who were able to prove that the mainstream political parties are mere political pygmies in the CA polls, *vis-à-vis* the improvement of the human rights situation in the country. The national and international human rights community is closely watching post-conflict and post-election moves in addressing past human rights violations. But the CPN-Maoist's manifesto for the CA elections has been silent on the past human rights violations particularly during the armed conflict it initiated.

Among the first steps of the new government must be to end the pervasive culture of impunity in Nepal. Thus, the formation of an effective Truth and Reconciliation Commission (TRC) is a must at the soonest possible time. The enactment of a separate legislation and a commission to address the issue of enforced disappearance is urgent. Creating an environment conducive for non-governmental organizations to operate for the cause of human rights is equally important. The newly elected leadership is expected to ensure that the state agencies directly responsible in protecting, promoting and fulfilling human rights in the land seriously fulfill their commitments.

As the Asian Human Rights Commission (AHRC) stated in its 2 June 2008 statement:

"Transformation of a state from monarchy to a democratic republic is not an easy task in theory as well as in practice. The process is more difficult especially when the pre-transition period was marked by violence. To make matters complicated Nepal was a Hindu kingdom where inequality was the norm, with feudalism and caste based discrimination literally segregating the people into non-combinable socio-political veins. These practices coupled with



centuries of maladministration have also considerably exhausted Nepal's financial reserves. Yet Nepal and its people have emerged as a successful nation with a resolve to get away from the past and to create a new future."¹

The Shaded Phenomenon of Enforced or Involuntary Disappearances

Nepal is a small country with a land area of 147,181 sq. km. Located in the middle of two powerful countries, China and India, Nepal used to be the only Hindu kingdom in the world under a hereditary monarchy for most of its known history of 239 years. The country's ethnically-diverse population is 28.2 million based on a UN estimate in 2007. The people's main religions are Hinduism (81%), Buddhism (11%), Islam (4%) and others (4%). Nepal is known as the 12th poorest country in the world.

Local and international human rights organizations have stated time and again in their statements and country reports that involuntary disappearance and other forms of human rights violations were rampant under Nepal's long line of monarchy and more particularly during the 10-year civil war which the CPN-Maoists started in 1996. A joint statement of the Asian Human Rights Commission (AHRC) and the Asian Legal Resource Center (ALRC) on 20 January 2005 cited the "barbarism" committed in Nepal. A part of the statement goes, "The actual number of victims is yet to be known because the police and military forces often do not keep records of their arrests, apparently on purpose. Many enforced disappearances and extrajudicial killings are justified by the security forces as being the result of 'encounters' with the insurgent Maoists."²

The practice of involuntary disappearance has been a major method of repression employed by the oppressive regimes to maintain their ascendancy and wield their authority. During the democratic movement of 1951 against the then *Rana* Oligarchy, many people were reportedly disappeared by the security forces but these were not documented except for some anecdotal evidence, mere hunches and guess estimates. However, the earliest recorded case of disappearance is that of Ram Prasad Rai, who was arrested and subsequently disappeared by the police allegedly for his protest against the Delhi agreement the same year. His whereabouts are still unknown.

The systematic trend of enforced or involuntary disappearance started in Nepal after the Royal *coup d'etat* of 15 December 1960 whereby the then king Mahendra dissolved the democratically elected parliament and imposed an authoritarian party-less Panchyat regime. During this era of royal despotism, many people, especially the articulators and adherents of a multi-party democratic system, were arrested and disappeared by the state for their alleged association with the dissident political parties for the restoration of democracy in the country.

In 1985, several disappearances were reported during a civil disobedience campaign against the government that resulted in a series of bomb explosions in the capital city of Kathmandu. The UN Working Group on Enforced or Involuntary Disappearance (UNWGEID) retains four unresolved cases from this period. A commission of inquiry on disappearances established by the government reported in 1985 that six disappearances had been committed during that period but no action to investigate the persons' whereabouts was ever undertaken. In at least two of the six cases of disappearance, there were credible reports that the detainees had been held at the Police Training Academy in Maharajgunj, Kathmandu, an unofficial place of detention. As per the report of the probe committee formed after the restoration of democracy in 1990, sixty-two persons were disappeared by the state during the thirty years of Panchayati regime. The report further stated that most of them were disappeared during the course of jail transfer.

The dawning of democracy in 1990 brought in its wake a plethora of promises regarding peace, prosperity and rule of law in the country. But a massive number of cases of human rights violations were committed from 1990 to 1996. During this period when democracy was supposed to be slowly blossoming forth, two persons named Bhuvan Lal Thapa Magar and Pravakar Subedi were arrested by the police and their whereabouts remain unknown. The democratic opening following the restoration of democracy did not go smoothly, and the monarchy and army retained considerable power. The mainstream parties in the early 1990s failed to live up to the high expectations of the population as they wasted time and energy in power struggles that led to a series of ineffective coalition governments. Although the United Peoples' Front, an umbrella party of ultra leftists, managed to win nine seats in the 1991 general elections, realignments and programmatic evolutions led to the formation of the CPN-Maoist and the presentation of 40 demands to the government in early February. On 13 February 1996, the CPN-Maoist announced an armed rebellion in the country paving the way for the bloodiest conflict in the annals of Nepalese history.

The capital city of Kathmandu is generally disconnected from the rest of Nepal's countryside. To spread their insurgency like wildfire, the Maoists selected remote locations generally inhabited by uneducated people during the "people's war." The



Families of the disappeared on their way to Bhadrakal army headquarters. (Photo by Shreedhar Neupane/INSN news. taken from <http://insn.org>)

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population the Maoists engaged with was, for the most part, at the lowest rung of the economic ladder and so it was easier to motivate them to join the struggle against the state which allowed for such abject conditions and strained circumstances. Because most of the frontline struggles took place in these far-flung and impoverished areas, the reigning trend was that most of those who disappeared were manual workers, who were the main breadwinners of their families. The rest of the family members, who relied on the disappeared for their survival, found it extremely difficult to earn their meager living. When the then Royal Nepal Army was deployed to combat the insurgency, indiscriminate accusations leading to arbitrary arrests which resulted in disappearances were the mode of operation.

To contain the Maoist uprising, the government launched an all-out police operation called "*Kilo Sera-II*" followed by another operation called "*Romeo*" in the Maoist affected area giving rise to new patterns of pervasive arbitrary arrests and disappearances. The trend of disappearances surged dramatically and reached the peak, during the state of emergency (November 2001 – 2002) and the subsequent evolution of Anti-Terrorist Law (TADA). The cases of disappearances during this period were mostly underreported because of the restricted capacity, access and other logistical hurdles of the human rights community. The rebel side also resorted to massive abductions and disappearances. Despite the gravity of the situation, NGOs like Advocacy Forum (AF) were in the forefront in documenting cases of disappearances, filing writs of *habeas corpus* and using the information strategically. As a result, in 2003 and 2004, the UNWGEID delivered a report that it had recorded the highest number of new cases of disappearance from Nepal. After the royal *coup* of February 2006, the trend of disappearances continued unabated.

Although disappearances by the state has decreased to zero after the signing of the Comprehensive Peace Agreement (CPA), the emergence of various groups, most of which are armed, led to continuing abductions, killings and disappearances. Prominent groups among them include *Janatantrick Terai Mukti Morach – Jwala* Group (*JTMM- Jwala*), *Janatantrick Terai Mukti Morach – Goit* Group (*JTMM- Goit*), *Tharuhat Mukti Morcha (TMM)*, *Madhesi Tiger (MT)*, *Madhesi Yakata Kobra (MYK)*, *Terai Virus (TV)*, *Ranabir Sena (RS)* and the Young Communist League (YCL). The RS claimed responsibility for the blasts outside the Birendra International Convention Center, the venue of the CA, just a day before the first meeting of the CA. On the other hand, the YCL, a youth wing of the CPN-Maoists, has also been found to be involved in abductions, extortions and physical assaults.

In Nepal almost all arrests and detentions that led to disappearances were carried out by regular army units, police, or Armed Police Force (APF) personnel. The army and the APF have been deployed in counter-insurgency operations since 2001. On 4 November 2003, after the collapse of peace talks and the Maoists' withdrawal from the ceasefire, the government declared the formation of the so-called Unified Command, consisting of the army, APF, police, and the National Investigation



Department, under the operational command of the army. Individuals who were disappeared were last seen by eyewitnesses in the custody of government security forces, who had put them under detention during the course of their search operations or raids nabbed them at police checkpoints or apprehended them from their homes and places of work or study. In most cases, the *modus operandi* was - disappearances after large-scale operations, disappearances after targeted raids and disappearances after re-arrest.



Eight months after the peace agreement, families still wait for the truth behind the disappearance. (Photo taken from news.bbc.co.uk)

In many of the cases attributed to the security forces, and especially to the army, a clear pattern emerged. A person suspected of Maoist sympathies, or simply of having contact with Maoists, was seized by a large group of known military personnel out on patrol. A victim is blindfolded with hands tied behind the back. During the conflict, CPN Maoists also abducted and killed scores of civilians whom they accused of being “informers” or those whom they suspected of being engaged in other acts of defiance to Maoist rule. They specifically targeted local officials and civil servants, teachers, journalists, off-duty army and police personnel, and members of non-Maoist political parties, such as the Nepali Congress Party and the Communist Party of Nepal (United Marxist Leninist or UML). Maoists systematically kidnapped children to serve as soldiers. Because these children were forcibly taken from their families and were brought into armed units that took them away from their homes, many of the children disappeared.³

Over the years, the statistics of disappearances have varied according to the different sources of information. Based on the latest annual report of the National Human Rights Commission (NHRC), around 2,113 complaints of disappearances by the state security forces have been filed by the victims’ family members. Despite repeated claims that they were not involved in any disappearances, the CPN-Maoists are said to have disappeared 331 persons. The International Committee of the Red Cross (ICRC), on the other hand, puts the total number of disappeared persons during the armed conflict at 812. These records, however, are still exclusive of undocumented cases. Fear of potential reprisals from perpetrators and threats to their lives have deterred the victims’ families from reporting their cases and seeking help from human right organizations.

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Members of the Maoist Victims Association are arrested by riot police after a silent protest near the Royal Palace where they planned to plead for food and shelter. (Photo: STR/AFP/Getty Images)

Involuntary disappearance and other forms of human rights violations continue. The fall of King Gyanendra after the third democratic renaissance in April 2008 ended the decade-long civil war and signaled promises of sustainable peace and prosperity in the country. However, some dissident groups in the Terai region (the southern belts of the

country better known as *Madesh* in Nepalese vernacular) hit the streets after the adoption of the interim constitution demanding that a federal republic be established in Nepal and for the guaranteed inclusion of the Madeshi people in all the sectors of government. They were also of the view that the interim constitution is flawed and does not appropriately address the problems of Madhesis and other ethnic and marginalized communities. The issue was settled after the government yielded to their requests aired through heightened protests for about a month. Around 30 people lost their lives and hundreds were injured during clashes with the police.

On 28 May 2008, the historic first meeting of the newly elected CA, the body declared Nepal a Federal Democratic Republic, abolishing the 239 year-old monarchy to the jubilation of thousands of Nepalese in the streets.⁴ The motion for abolition was carried by a huge majority; out of 564 members present in the assembly, 560 voted for the motion, four members voted against it while 37 members were absent. On that same day, the CA ruled that the king had to vacate the palace in 15 days or else he would be driven away by force. Finally, on 11 June 2008, the ex-king Gyanendra left the palace, saying in a press conference that "he had accepted the political course his country has taken."⁵ From then on, the palace would simply serve as a museum marking the long line of monarchy that ruled Nepal for the past more than two centuries.

Indeed, in more recent years up to this writing, the world has been witnessing the swift political changes in Nepal. Amidst all these developments, the local and international human rights community continues to hope that these developments will usher in a better climate for the protection and promotion of human rights in the country and that the thousands of cases of involuntary disappearances and other human rights violations will be resolved under the new government.

Effects on the Victims' Families and Their Campaign for Justice

"The state security apparatuses and the Maoists wrested our loved ones off from our lap and from our own hearts and home and disappeared them. Their whereabouts are still unknown. Hardly can anyone empathize with the pain of waiting with expectant eyes that our dear ones would turn up this instant or the next. Still, it is not possible for many to feel the pangs of leading a life without knowing the reasons behind the murder of our sweethearts in front of our naked eyes with the same intensity as we went through. We are the ones who have suffered the third-degree torture and excruciating pain of electric shocks after being blindfolded, stripped naked and doused with water. Similarly, it is virtually impossible for others even to imagine the anguish of being dispossessed and displaced out of the places we were born and bred and the agony of smashing our legs to smithereens with hammers under the allegation of being a spy or a class enemy. In this situation, we are waiting with bated breath for a fair hearing of our pain."

The aforementioned excerpt from a memorandum submitted on 3 March 2008 by the Conflict Victims' Society for Justice (CVSJ), an umbrella organization of conflict victims across the country, to the Minister of Home Affairs and the Peace and Reconstruction Minister attempts to summarize the haunting poignancy felt by the victims' families.

Rated the 12th poorest country in the world, Nepal's inhabitants suffer from a variety of manifestations of poverty. Such economic conditions have fostered incredibly interdependent communities and joint family systems. As with any system, when a critical part of its functioning is lost, the system fails. The trend of enforced disappearance in Nepal has accomplished this. Often the disappeared have been active male household contributors or in a significant number of instances the sole breadwinners, who provide most, if not all of the income. With them gone, female, elderly and young family members struggle to survive. More tragic, however, are the psychological effects of having a loved one disappeared. While there is hardly comfort in comprehending the death or suffering of a loved one, there is perhaps some relief in being able to grasp the state of a person. Many families are denied this relief and live daily with the haunting question of a disappeared family member. Not to know if a loved one is alive or not, or suffering or not, is a torturous mental affair. The effects of disappearances have created negative spirals of poverty and suffering, creating a new generation lacking a complete family as well as standard educational opportunities as they are forced to work at a young age to help support their families.

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Yet, families and relatives of *desaparecidos* exert all efforts in campaigning for justice for their loved ones. On 21 June 2004, families and relatives of people who disappeared allegedly at the hands of security forces met the then Prime Minister Sher Bahadur Deuba and demanded that the government make public the whereabouts of their loved ones and provide access to them. On the same day, 33 relatives started a week-long hunger strike and on 28 June, four mothers of the disappeared went on an indefinite hunger strike. The government's response to these decisive actions of the families and relatives is presented below.

During this time of political transition in Nepal, it is important that the events of the past are forgotten. The trend of **historical amnesia** practiced by the political powers centers in the name of reconciliation and amnesty and it is the prime deterrent to combat impunity. In realizing this, the Advocacy Forum (AF) started to form groups of family members of the conflict victims including those of disappeared persons. AF supports and empowers them so that they can pressure the government for justice. It is critical that the family members of the disappeared maintain an active voice in politics so that the injustice they suffered does not go unattended.

Families of victims participate in lobby and advocacy. These groups help create a support network for victims and their families which are not only effective as therapy for psychological reasons but also in attaining justice. As part of a victims' group, members gain information about legal procedures and their own rights. They are given a rare opportunity to tell their story and to hear similar accounts. This activity familiarizes them with their own rights and empowers them to coordinate for a common goal. Thus, they get more informed and the mission to locate the disappeared becomes stronger.

On 3 March 2008, the Conflict Victims' Society for Justice (CVSFJ –Nepal) submitted 1,460 signatures of victims and victims' families from all over the country along with a memorandum to the Minister of Home Affairs and Peace and Reconstruction Minister to condemn the government's unacceptable attempt to introduce the Truth and Reconciliation Commission (TRC) and a Commission on Disappearances on separate ordinances.

In a bid to join hands and make a concerted attempt in their march for justice, representatives of several victims' groups across the country decided to come together under an umbrella organization named "Conflict Victims' Society for Justice" at a program facilitated by the AF in Kathmandu. The organization was formally registered on 27 May 2008 and is under verification by the concerned authorities. To this writing, around 125 victim groups have been formed under AF's facilitation and logistical support. Indeed, the families and relatives of *desaparecidos* in Nepal are not bound to keep silent over the injustice done to their loved ones.



The Government's Commitments *Vis-à-Vis* their Deeds

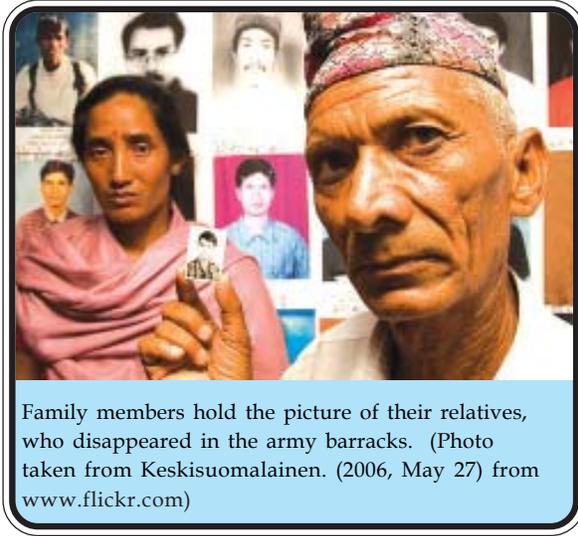
Nepal is a party to six of the major international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Being a party to these treaties, Nepal must strictly observe human rights laws enshrined in these instruments. Moreover, it also has a pressing obligation to conform to international humanitarian law, which regulates the conduct of hostilities and protects persons affected by armed conflict, including captured combatants and civilians. Likewise, it is mandatory for Nepal to adhere to Common Article 3 of the 1949 Geneva Convention since the conflict in Nepal meets the Convention's criteria and definition of an "internal armed conflict." Furthermore, Nepal must adhere to the standards set in the 1992 United Nations Declaration on the Protection of All Persons from Enforced Disappearances. Although a non-binding document, the Declaration reflects the consensus of the international community on this type of human rights violation and provides authoritative guidance on the safeguards that must be implemented to prevent it.



From 2001 until the dissolution of parliament in late 2002, Nepal was under a nationwide state of emergency. The ICCPR allows states to suspend temporarily (or derogate from) certain provisions during an officially proclaimed "public emergency which threatens the life of the nation," but only to the extent strictly necessary under the circumstances. However, certain rights, including the right to life and protection from torture, are never derogable. The United Nations Declaration on the Protection of All Persons from Enforced Disappearances categorically states that "no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances."

In addition, Protocol II to the Geneva Conventions sets out the minimum standards for treatment of persons deprived of their liberty during the conflict, which include access to relief and communication with relatives. It also details the due process requirements that apply to all persons detained in connection with offenses arising out of a conflict, which include being charged without delay, the presumption of innocence, the prohibition on forced confessions, and the right to an adequate

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Family members hold the picture of their relatives, who disappeared in the army barracks. (Photo taken from Keskiuomalainen. (2006, May 27) from www.flickr.com)

defense. Nepal has not ratified Protocol II, but many of its provisions are recognized as customary international law and are therefore applicable.

Nepal's 1990 Constitution also contains a number of safeguards against arbitrary arrest and illegal detention but unfortunately such activities have continued to be carried out under laws which are largely remnants of the *Panchayati* era (1960-1990), such as the Public Security Act 1989 (PSA) and its Second Amendment, 1991 as well as the Anti-State Crimes and Penalties Act 1989 (ASCPA). Several provisions in these laws are in clear breach of the Constitution, not to mention the international treaties Nepal is party to, such as the ICCPR.

Prior to the declaration of the state of emergency in November 2001, the PSA was widely used to detain people whom the government suspected to be involved with, or are members of the CPN-Maoist. The PSA allows for those in question to be held in "preventive detention" for up to 90 days by order of a local authority, usually the Chief District Officer (CDO), in order "to maintain sovereignty, integrity or public tranquility and order" in the country. The length of "preventive detention" can be extended up to six months with the endorsement of the Home Ministry. A further extension of up to 12 months from the original date of issue can be obtained with the approval of an Advisory Board established under the Act.

In addition to these powers to arrest and detain granted to the police and CDOs, as designated in the Act, the Ministry of Home Affairs is the authority to which detainees can appeal upon arrest. However, few detainees actually attempt this procedure because it is so deliberately ineffective. Instead, detainees file *habeas corpus* petition in one of the Appellate Courts or in the Supreme Court, but due to lack of access to legal counsel in the early stages of detention, detainees find it extremely difficult to file such petitions.

In 2001, when a state of emergency was declared, it resulted in the suspension of many fundamental rights, such as freedom of opinion and expression, the freedom of peaceful assembly, the right not to be arbitrarily detained and the right to a constitutional remedy. The right to the remedy of *habeas corpus* remained.

The Terrorist and Disruptive Activities Ordinance (TADO) was promulgated as one of the emergency measures in November 2001, giving security forces the power to arrest and detain suspects under a preventive detention order. In the two

months following the promulgation of the TADO, more than 5,000 people were arrested, about half of whom were later released based on government figures. Approximately 1,200 people were reportedly held in preventive detention and about 1,000 were held on the suspicion of their involvement in “terrorist and disruptive crimes.” The whereabouts of many of the people held under TADO have not been made public so that these people have become *desaparecidos*.

On 10 April 2002, the Terrorist and Disruptive Activities Punishment and Control Act (TADA) became a law, replacing the Ordinance of the same name. The Act gives security forces the power to arrest without a warrant and detain suspects in police custody for up to 60 days for the purposes of conducting investigations and up to 90 days as preventive detention without ever presenting detainees before a court of law. The act also outlines the formation of special courts to try all TADA cases. Detainees accused under TADA are often held *incommunicado* for weeks or even months.

Most of those arrested under TADA have been held in unacknowledged detention without being produced before a court or judicial authority, in total infringement of the provisions in the Constitution of Nepal which requires that every detainee should be produced before a judicial authority within 24 hours of their arrest. According to figures obtained from the Home Ministry in July 2003, out of 1,000 people detained under TADA, only 400 were released, the rest disappeared. None of those arrested and detained under preventive detention orders of TADA were presented before a judicial authority.

The international community raised concern over the reports of dramatic surge in the number of enforced or involuntary disappearances and other human rights violations in Nepal. The majority of the 267 outstanding cases of disappearances reported to the UNWGEID occurred between 1998 and 2004 in the context of counter-insurgency operations launched by security forces against alleged members and supporters of the CPN-Maoists. Thus, the Working Group visited Nepal on 6-14 December 2004. After this visit, the body came up with a comprehensive report and a set of recommendations, among which are:

- To create a specific crime regarding involuntary disappearances in the Nepalese criminal law;
- To devise a complete documentation of case,
- To amend the Army Act;
- To prosecute accused perpetrators in a more aggressive manner;
- That the Supreme Court considers a more active application of its inherent contempt power to hold accountable and punish officials who are not truthful before the Court;
- To protect human rights defenders in the process of implementing their work, strengthen the National Human Rights Commission; and

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The Maoist admits abduction and killing of Shreshta and throwing her into Narayani River. (Photo taken from blog.com.np)

- For the UN Department of Peacekeeping Operations to evaluate the participation of Nepalese security forces in future UN Peacekeeping missions.

However, the UNWGEID's recommendations are yet to be implemented. The foremost of hurdles for Nepal *vis-à-vis* the issue of disappearance lies in the government's lack of political will to implement such recommendations and implement the international human rights instruments and standards. The complacent attitude of those at the helm of state's affairs to address such a grave problem is the basic hurdle that has brought a judicial status quo and the resulting impunity to become more pervasive and widespread. On one hand, the perpetrators are enjoying complete impunity as the state maintains a deafening silence over the ratification of the UN Convention for the Protection of All Persons from Enforced Disappearance, on the other. The government has been brazenly silent despite constant clamoring from the national and international human rights organizations. This prompted the International Center of Jurists (ICJ) to submit a memorandum to the government in this regard.

Although calls for justice to the victims of involuntary disappearance and other human rights violations have been raised repeatedly since 1990, the government's approach had been a cosmetic one. The following chronology of events shows some steps in addressing the involuntary disappearance issue:

- After the restoration of Democracy in 1990, the then government formed a Committee to find out the whereabouts of disappeared persons after 1960. The committee was headed by Surya Bahadur Shakya and its members were Prakash Kafle, Basudev Dhungana and Dr. Sachhe Kumar Pahadi. This Committee produced a report which illustrated that since 1960 up to the restoration of multi-party Democracy, 62 persons were disappeared by the state. The committee came up with recommendations but these were not effectively implemented.

- The government announced on 1 July 2004 that it would establish an Investigation Commission on Disappearances under the Home Ministry for the duration of one month. The Commission, consisting of five members from the Home Ministry, Defense Ministry, Police Headquarters and the National Investigation Department, was chaired by the Joint Secretary for Home Affairs, Mr. Narayan Gopal Malego. The Commission's initial findings which were issued on 11 August were highly disappointing. It had investigated only 36 cases of disappearances and clarified the whereabouts of 24 people. Altogether, the Commission published eight reports on disappearances and published the status of 472 people including many who had been killed. The procedure of formation, mandate and the work of the committee was highly criticized by the human rights community as it did not meet the criteria and standards set by the UN for an independent and competent commission.
- After the successful April 2006 uprising, the government, to cover up the mounting pressure of national and international human rights community as well as the victims' families, formed a committee on 1 June to find the whereabouts and status of people disappeared by security forces. It was headed by the Joint Secretary of the Home Ministry, Baman Prasad Neupane. According to the Neupane Committee report, the status of only 104 disappeared people was known. Accordingly, they were either "released" or killed in the "crossfire." The committee said the whereabouts of 62 people is still unknown. Even the Nepali Army, Armed Police Force and Nepal Police denied the arrest of these people. The Neupane committee could not issue satisfactory results as the Nepali Army did not cooperate.
- On 28 August 2006, the Supreme Court of Nepal ordered the government to form an all powerful probe committee to investigate the whereabouts of detainees Rajendra Prasad Dhakal, Bipin Bhandari and Dil Bahadur Rai. On 31 August 2006, the committee was formed. It was led by appeal court judge Lokendra Mallik and the members were Govinda Prasad Sharma (Bandi), representative of Nepal Bar Association, and Saroj Prasad Gautam, Joint Attorney. The committee produced its report to the Supreme Court on 8 April 2006. It suggested to the Supreme Court to order the government to enact a law against involuntary disappearance which would have a retrospective effect. Similarly, an independent and impartial committee to investigate all the cases of disappearance was suggested. However, the committee failed to confirm whether the disappeared persons were dead or alive. The government of Nepal produced a draft bill in the House of Representatives to amend the Country Code for the adoption of legal provisions against disappearance and abduction.

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- On 21 November 2006, the seven-party government and the CPN-Maoist signed the Comprehensive Peace Accord. Among others, this states that: "Both sides agree to make public the information about the real names, surnames and addresses of the people who were disappeared by both sides and who were killed during the war and to inform the families within 60 days from the date on which this Accord has been signed."
- In January 2007, the Interim Constitution (IC) of Nepal was adopted and simultaneously promulgated. The IC cites: "To provide relief to the families of the victims on the basis of the report of the Investigation Commission constituted to investigate the cases of disappearances made during the course of the conflict."
- On 8 April 2007, the unprecedented investigations carried out by the Supreme Court Task Force, recommended that the Supreme Court issue a directive to the government to set up a high level commission of inquiry into disappeared persons. The Task Force suggested that the Supreme Court direct the Parliament and the Interim Government to enact a law to punish the guilty, in accordance with international standards categorizing disappearance as a crime against humanity. The report also advised the Court to issue judicial strictures to the government and the police to stop illegal arrest and detention.
- On 20 April 2007, the Ministry of Law, Justice and Parliamentary Affairs registered a bill to amend the Civil Code with respect to disappearance and abduction at the Interim Legislature-Parliament. This step, according to the government, was a fulfillment of its obligations under international human rights and humanitarian law, in line with the recommendations of the UNWGEID following its mission to Nepal in December 2004. However, the bill was criticized by national and international human rights organizations on the grounds that it does not fully meet applicable international human rights standards. Even the lawmakers of the legislature-parliament came down heavily on the bill and put forward more than 130 amendments.
- The Supreme Court's momentous verdict of 1 June 2007, on enforced disappearances stated that the existing legal framework related to commissions of inquiry is inadequate to address cases of involuntary disappearance that have systematically occurred during the armed conflict. The order gave directives to the interim government to introduce a new legislation to ensure the establishment of a credible, competent, impartial and fully independent commission. The order also stated that, in doing so, the interim government should take into account the UN Convention for the Protection of all Persons from Enforced Disappearance and the Criteria for



Commissions of Inquiry developed by the UN Office of High Commissioner for Human Rights.

- On 21 June 2007, a three-member "High Level Investigation Commission on Disappeared Persons" headed by ex-justice Narendra Bahadur Neupane was formed. However, the commission became automatically defunct as various human rights organizations criticized the government's move as against the spirit of the June 1 verdict of the Apex Court.
- On 12 August 2007, the Parliamentary hearing committee directed the government to take appropriate steps on the issue of disappearances and the Minister of Home Affairs provided assurances that a bill on disappearances would be made public by 6 January 2008. A committee was formed at the Ministry of Peace and Reconstruction to prepare the draft bill.
- On 23 December 2007, the government and CPN-Maoist devised an agreement. Point no. 8 of the 23-point agreement cites: "As per the Comprehensive Peace Accord, relief shall be provided to the families of those who were killed as a result of the armed conflict by mid-February 2008. With regard to the disappeared, relief shall be provided based on the report of the Investigation Commission. The preliminary report shall be submitted within a month after the Investigation Commission begins work."
- In January 2008, a high-level task force under the Ministry of Peace and Reconciliation recommended to the government to establish a Truth and Reconciliation Commission (TRC) and a Commission on Disappearances in two separate ordinances. Accountability Watch Committee (AWC), a watchdog body formed by senior human rights defenders of the country, condemned the apparent "back-door" approach of the government. AF is the secretariat of the committee.

Although the state continues to make grandiose claims of providing reparation to the conflict victims, no substantial effort has been made in this regard. According to the Ministry of Peace and Reconstruction, it has already distributed 24 million rupees to the internally displaced persons (IDPs) and are soon receiving funds from the World Bank to provide monetary compensation to other categories of victims including disappearances. It cited further that a victim identification committee has been formed all over the country including representatives of political parties, the police, the District Administration Office, National Human Rights Commission and local NGOs. However, it also cited that the government has not yet mapped out any plans for psychosocial rehabilitation for the victims. ⁶

The Indispensable Contribution of the National and International Human Rights Community

The Advocacy Forum (AF) with the help of other concerned agencies has placed Nepal at the forefront of significant human rights attention locally and abroad. AF works within the international human rights realm, engaging international legal mechanisms and working closely with Amnesty International, Human Rights Watch, the International Commission of Jurists, the Asian Human Rights Commission and World Organization against Torture. AF played an active role in lobbying for the establishment of the Office of the High Commissioner for Human Rights (OHCHR) in Nepal.

AF is a leading non-profit, non-governmental organization working to promote the rule of law and uphold international human rights standards in Nepal. Since its establishment in 2001, AF has been actively confronting the culture of impunity that has thrived for decades by systematically documenting human rights violations/abuses, bringing legal cases against perpetrators to court and monitoring detention centers. The information it collects is published and presented to national and international audiences providing evidence for the reform necessary to improve the justice system in Nepal.

As disappearance is a continuing crime, AF continues to work with the families of disappeared persons to make the victims' whereabouts public. AF lawyers regularly visit detention centers to make official records of the detainees and to prevent possible disappearances, custodial death and torture. Besides advocating and lobbying for an all-inclusive TRC mechanism and a comprehensive legal framework on disappearances, it organizes victims and their families and supports them with legal aid and counseling. AF has developed a strong rapport with the National Human Rights Commission and the Ministry of Peace and Reconstruction. It has also been vocal about the formation of an independent commission to resolve past cases of disappearances, review legal measures and bring them in line with international obligation. AF also lobbies for the ratification of the UN Convention for the Protection of All Persons from Enforced Disappearance, Rome Statute for the International Criminal Court and Optional Protocol to CAT.

AF documented 98 cases of disappearance in 2007, the majority of which occurred during the conflict but were only reported in 2008. The year 2007 was a successful year in bringing the issues of the disappeared into judicial discussion. Responding to 83 petitions of *habeas corpus* that were made on behalf of disappeared persons, many of which were submitted by AF. On 1 June 2007, the Supreme Court ordered the government to develop comprehensive legislation to criminalize the act of disappearance in line with the International Convention for the Protection of all Persons from Enforced Disappearance. The court has also ordered the government to form a commission in line with international standards to make the whereabouts of the disappeared public. So far, AF has documented a total of 611 disappearance



cases. With the need for comprehensive data, the organization is promoting a national working group to compile the data on disappearances scattered among different organizations.

The presence of the Office of the High Commissioner for Human Rights (OHCHR) in Nepal since 2005 has certainly influenced the state and the Maoists as the body has consistently pressured the two parties to respect human rights. As per the Memorandum of Understanding (MoU) between the government and the UN, the mandate of the OHCHR includes that of monitoring, investigating and preparing reports on the human rights situation and it can also advise the state on the implementation of human rights policies. The OHCHR carried out an investigation into arbitrary detention, torture and disappearances at the then RNA Bhairabnath Barracks at Maharajgunj, Kathmandu in 2003-2004 and presented its report to the public on 26 May 2006.

The majority of the 267 outstanding cases of disappearances which occurred between 1998 and 2004 in the context of counter-insurgency operations launched by security forces against members and supporters of the CPN-Maoist were reported to the UNWGEID. This paved the way for the UNWGEID's visit to Nepal from 6-14 December 2004. Its comprehensive report and recommendations after the visit challenged the government and contributed to the projection of the country's human rights situation outside the country. For many years, the local human rights organizations in Nepal have been closely coordinating with the UNWGEID.

Conclusion

Going through the judicial annals of Nepalese history, the fact that surfaces in an obtrusive manner is that of a continuing tradition of surrendering to a **historical amnesia**. After the restoration of democracy in 1990, a commission was formed



A victim's family member mourns. (Photo By: Sagar Shrestha taken from <http://flickr.com>)

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under the chairmanship of Janardan Mallik to investigate several kinds of atrocities and human rights violations during the nationwide democratic movement. A similar commission was formed to find the disappeared during the 30 years of autocratic Panchayati regime. However, the recommendations based on these reports were never implemented and this only firmed up the systematic institutionalization of the culture of impunity. The same is true for the Rayamajhi Commission which was formed after the uprising in April 2006. During the decade-long conflict between the state and the CPN-Maoist, more than 13,000 people lost their lives, thousands disappeared, and thousands more were rendered physically and mentally incapacitated. The victims and their families before and during the conflict are seeking a concrete commitment from the new government so that the blunders of the past will never be repeated.

The CPN-Maoists' unexpected victory over the mainstream political parties has imparted a ray of hope to the conflict victims. After all, the group has always advocated the establishment of social justice in the country. As a new government is being formed, the Maoists, which have taken the highest number of votes in the CA, must not forget the past injustices, atrocities and violations of human rights and commit the same blunders of their predecessor governments "in the name of peace, harmony and reconciliation." A great challenge for Nepal's leaders is to firmly anchor the roots of the rule of law by ending the all-pervasive and deeply-rooted culture of impunity.

While addressing a program organized by the victims and families of *desaparecidos* after the April 2006 uprising, Maoist leader Prachanda assured that his party will not take part in the CA elections unless the government will form a commission on disappearances which will provide reparations to the victims and punish the perpetrators. Although his pledge turned out to be a white lie and the Maoists went on to contest the elections without addressing the woes of the families of the disappeared, everyone remains optimistic that justice will prevail. Nevertheless, doubts are still lurking at the back of everyone's mind. Since it is also the Maoists leaders who nodded in approval to establish the TRC and a commission on disappearances via separate ordinances, it is natural to doubt their intentions.

In sum, despite contradicting statements and actions against the backdrop of the rapidly changing political situation in Nepal today, a spark of optimism remains - the woes of the victims of involuntary disappearance and other human rights violations will be addressed and perpetrators will be brought to court. Leaving behind the vestiges of its having been the only Hindu kingdom in the world over the past 239 years, a new Nepal will shape up as the world's youngest republic.



Notes:

¹Asian Human Rights Commission. (2008, June). Nepal: The Constituent Assembly must not delay to rejuvenate the justice mechanisms.

²Asian Legal Resource Center (ALRC) and Asian Human Rights Commission (AHRC). (2005, January 20). Nepal drowning in madness of barbarity with no rule of law.

³Report of the UN Working Group on Enforced or Involuntary Disappearances. (2004)

⁴Constituent Assembly Declares Nepal a "Republic". Retrieved May 28, 2008 from <http://constituentassembly.com/>.

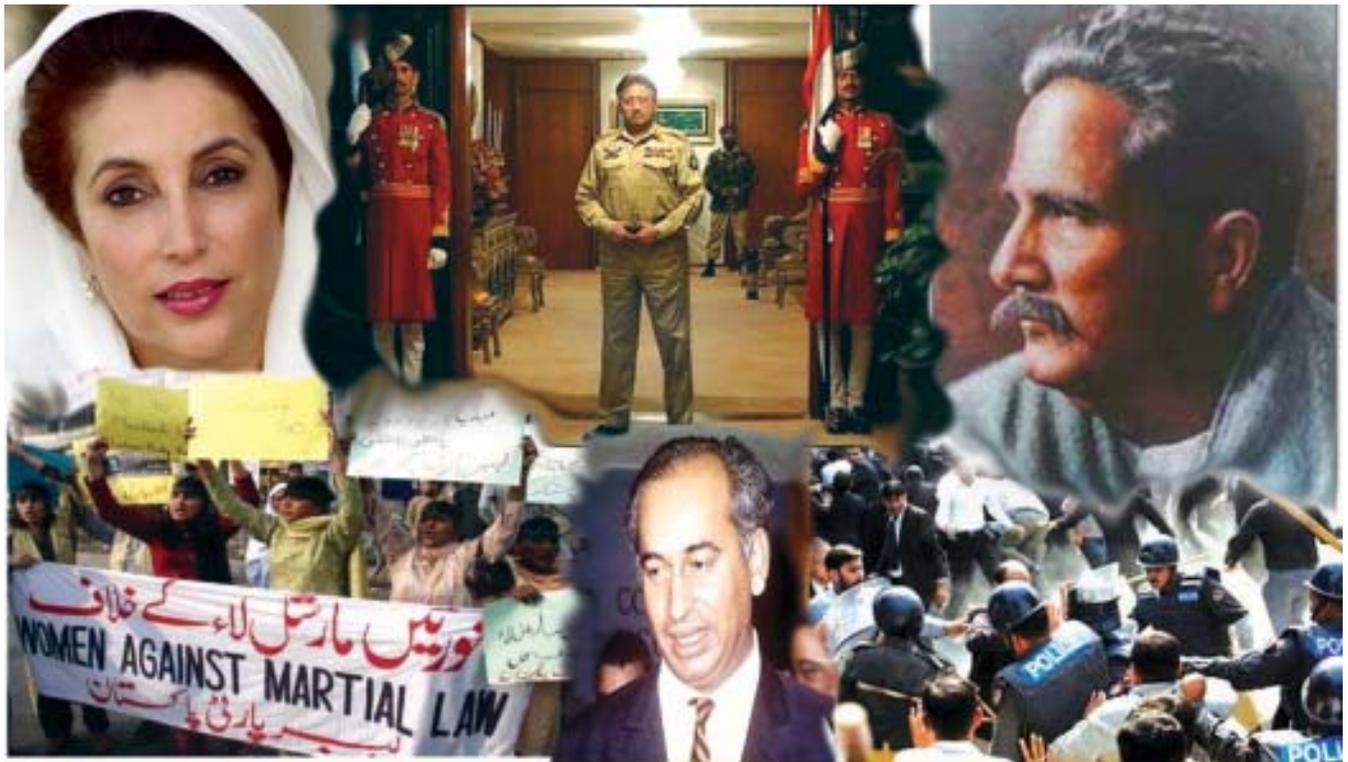
⁵Ousted Nepal king leaves palace. Retrieved June 12, 2008 from http://www.upi.com/Top_News/2008/06/12/Ousted_Nepal_king_leaves_palace/UPI-76851213249639/.

⁶As stated by the senior officials of the Ministry of Peace and Reconstruction during a meeting with the representatives of AF, OHCHR-Nepal and International Center for Transitional Justice (ICTJ) in May 2008.

RECLAIMING STOLEN LIVES



Aaron Alarcon
Entry
First AFAD PosterMaking Contest
14 May 2008



PAKISTAN: IN THE GAME OF THE GENERALS

By Emilia Aquino



PAKISTAN: *IN THE GAME OF THE GENERALS*

By Emilia P. Aquino

In this land of longest glaciers and highest peaks, bordering Iran on the west, India on the east, and Afghanistan in the north, Pakistan has surpassed its neighbors in terms of intense political upheavals encompassing religion, possession of power, territorial claims, governance and collaboration with the world's powerful. In this country, military strategies have continued running the country. Eleven years after its birth on 14 August 1947, the first martial law was declared by then Major General Iskander Mirza in collaboration with the Army Chief General Ayub Khan. Sharing of power between two uniformed men has set a trend of establishing political power after which the second-liners usurp the highest position in the government. This has been concretely demonstrated in the first partnership of Mirza and Khan. General Mirza was dispatched to London permanently while General Khan assumed the first Presidency of the country. This country has denied its citizens the advantages of democracy as Pakistan has remained under military rule for nearly five decades. This period was marked with military-bureaucratic maneuvers dominating the socio-political environment which was generally oppressive and anti-democratic. The punitive military era has also offered a guise of democracy coming in between following military directives. Over the years, this country has been the arena of generals grabbing power one over the other at the expense of a genuine nationalist struggle for political stability where every Pakistani's human rights are respected, protected and fulfilled.

Pakistan's political landscape evolved with neglect for the fundamental freedoms and rights of its citizens especially women and children, religious minorities, and members of civil society. People opposing the government have been dealt with accordingly in the manner of overt and systematic repression of their civil and political rights. Enforced disappearance is one form of human rights violation which the military regime has adopted to curb dissent. This can precisely be attributed to a setting wherein military supremacy reigns over the voice of the Pakistani public.

The civil society organizations in Pakistan espousing full enjoyment of basic human rights and protection of the law have proceeded without let-up even if their numbers oftentimes fill the hunting lists of the intelligence office for outlaws or terrorists.



The struggle for civilian supremacy and sincere upholding of the Pakistani people's human rights are in effect the primary call of its citizens, thereby sounding to its Asian neighbors and the whole international community the magnitude of violations committed by military regimes.

Against this backdrop, the following article focuses on the intricacies of military rule and "enforced disappearance" which has become standard for all countries subscribing to martial law and internal security paranoia and also to countries subservient to security policies of imperialist countries like the United States of America. This article would also include a description of the status of women *vis-a-vis* their role in advocacy against enforced disappearance and the accompanying gender issues surrounding their grief as families of the disappeared. Women are coping and containment of the myriad pains of survival will be analyzed along with their reproductive and productive responsibilities, many times compromised socio-culturally and aggravated by a militar-ruled state.

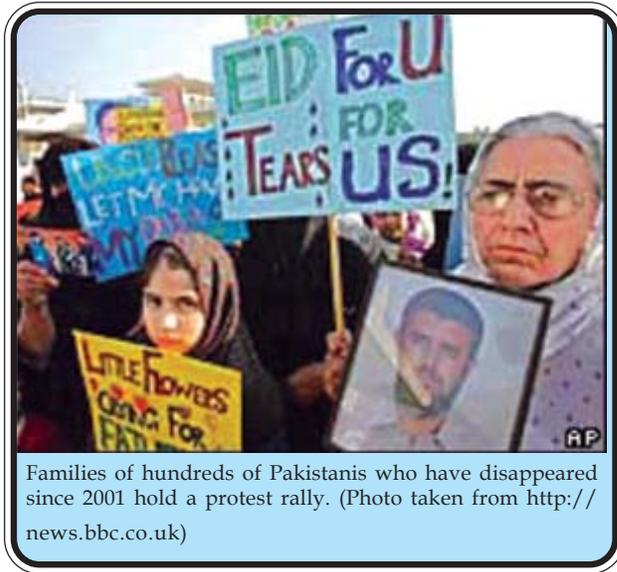


Historical Background

The name Pakistan was derived from *Urdu* words *Pak* (pure) and *Stan* (country) signifying a land of the spiritually pure and clean. Its total land area is 803,940 sq. km, geographically gifted with highlands in the northern and western side including its highest peak, K2 Mt. Godwin-Austen, flat Indus Plain in the east and the Baluchistan Plateau in the west. In the way of natural resources, the country possesses vast arable land, extensive natural gas reserves, petroleum and coal.

The conventional long form reference of the country's name is Islamic Republic of Pakistan with a federal republic type of government and Islamabad as the capital. This country is divided into four provinces namely, Baluchistan, North-West Province (NWFP), Punjab and Sindh. The Federally Administered Tribal Areas (FATA) comprise another territory. Azad Kashmir and the Northern

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areas belong to the Pakistani administered portion of the Jammu and Kashmir region.

Agriculture traditionally was the top earner of Pakistan's economy but it has recently shifted into services which delivered 53.7% of the national Gross Domestic Product. The country had an estimated labor force of 49.18 million in 2007. Labor force by occupation has been calculated to be 42% for agriculture, industry 20%, and services 38%. Pakistan has also an extensive export of labor to the Middle East and use of child labor continues. Top industries in the country consist of textiles and apparel, food processing, pharmaceuticals and

construction materials, paper products and fertilizer. Agricultural products include cotton, wheat, rice, sugar cane, vegetables and fruit, beef, mutton and eggs. Underdevelopment and poverty are major concerns of the country's economic managers.

As of July 2008, Pakistan had an estimated population of 167,762,040—the world's sixth most populous state of which, 97% are Muslims and the remainder Hindu, Christians and others comprise only 3% of the population. Ethnic groups consist of Punjabi, Sindhi, Pashtun, Baloch and Muhajir (immigrants from India and descendants).

Pakistani culture is basically diverse with the presence of various ethnic groups along with a number of local dialects, though *Urdu* is the official language. English has become the official language of the bureaucracy and mostly used by the middle-class Pakistanis. Families have strong ties and values are considered sacred. Festivals like the *Ramadan* and *Eid* celebrations (*Eid-ul-Fitr* or *Id-UI-Fitr*, Islamic holiday that marks the end of *Ramadan*, the month of fasting) are major ceremonies that Pakistani culturally upholds. The Day of the Republic, 23 March 1956 has also been commemorated every year and declared a national holiday.

In order to take a quick look at how the country developed politically, it is important to know the turn of events making up Pakistan's history. The era of military rule will be emphasized since it was this period of influence which significantly caused the gross violations of the fundamental human rights of the people working for equal representation in the national assembly, in the

maintenance of democratic institutions, for the independent judiciary, the working class and the minorities.

Pakistan became an independent state on 14 August 1947. This date marked its freedom from British India, though the region had been continuously inhabited for at least two million years. Its ancient history includes some of the oldest settlements in South Asia including some of its major civilizations. The political history leading to the eventual birth of the country began with the aftermath of the Indian Rebellion of 1857, which culminated in 90 years of direct rule by the British Crown and subsequently spawned a successful freedom struggle led by the Indian National Congress and the All India Muslim League. The latter was founded in 1906 to protect Muslim interests and rose to popularity in the late 1930s amid fears of neglect and under-representation of Muslims in politics. On 29 December 1930, the poet Muhammad Iqbal called for an autonomous "state in northwestern India for Indian Muslims. Muhammad Ali Jinnah espoused the Two-nation Theory (expressing Hindu-Muslim unity) and led the Muslim League to adopt the Lahore Resolution of 1940, demanding the formation of an independent Pakistan.¹

The Lahore Resolution of 1940 was a formal political statement adopted by the Muslim League on the occasion of its three-day general session of 22 – 24 March 1940 at Minto Park (now Iqbal Park, Lahore). The resolution called for greater Muslim Autonomy in British India otherwise interpreted as a demand for a separate Muslim state. The struggle for one Muslim state was necessarily deviating from the concept of United India on the grounds of growing inter-communal violence.

"Its independence was a Muslim-majority state with two wings to the east and northwest of India respectively. Independence resulted in riots across India and Pakistan – as millions of Muslims moved to Pakistan and millions of Hindus and Sikhs moved to India. Disputes arose over several princely states including Kashmir and Jammu whose ruler had acceded to India following an invasion by tribesmen from



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Pakistan opposition leader Benazir Bhutto, assassinated on 27 December 2007, is considered by many as the driving force against Pres. Musharraf. (Photo taken from <http://kanuwadhwa.wordpress.com>)

Pakistan. This led to the first Kashmir War (1948) which ended with India occupying roughly two-thirds of the state and Pakistan occupying the remainder.”²

This situation moved the country to place greater value on strengthening the defense system preserving Pakistan’s independence and India was already looked upon as an emerging enemy of the military. Thus, whatever resources the young independent state had during this period were already heavily allocated to the armed forces. Therefore, efforts to progressively build-up democratic institutions necessarily took a back seat while augmentation of military resources became top priority. The Generals held on to power as they viewed themselves sternly providing direction for the country’s daily political affairs.

In 1956, a constitution was formulated and Pakistan was declared as an Islamic Republic, the first in the world. Two years later, the military took control by a *coup d’etat* led by General Ayub Khan and held

power for more than ten years. Ayub Khan governed the country during a period of internal instability and a second war with India in 1965. His governance was basically repressive controlling the uncooperative press, ridding itself of opponents through illegal arrests, arbitrary detentions and eroding the strength of trade unions. Arbitrary detentions and illegal arrests commonly resulted in enforced disappearances. The strong combination of Ayub Khan’s army and the bureaucracy prevailed in managing the government.

In 1962, General Ayub Khan lifted martial law and established the Basic Democracy System (BDS) allowing some extended limits to civil and political rights but not in any way touching on the military status quo. The justice system remained partial to the governing body while undermining the civil society and other forces clamoring for reforms. Capitalists and moneyed landlords were accorded special privileges via favorable economic policies to the detriment of the peasants and the working sector.

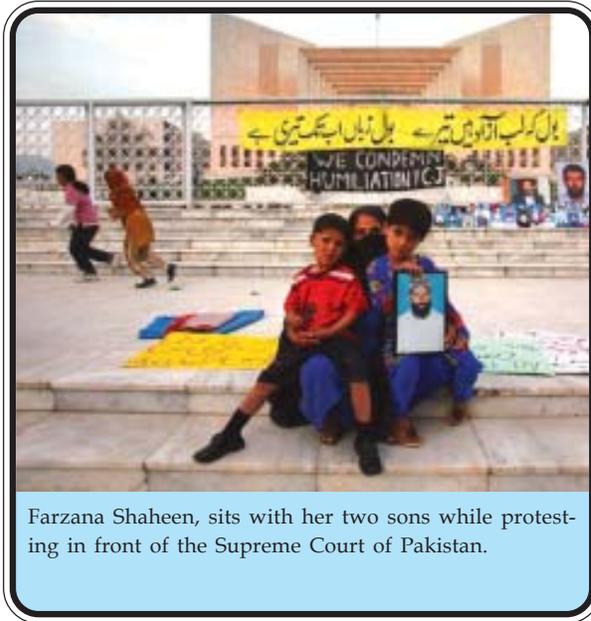
Concretizing the BDS, Ayub Khan held the first election and won the presidency over Fatimah Jinnah of the Muslim League. After the election, there was a popular cry for greater autonomy of the people across all sectors including the student organizations and trade unionists from East Pakistan, which consequently demanded the resignation of Ayub Khan. This opposition force became consolidated as an alliance and the Pakistan Democratic Movement was established. Since this alliance threatened the political symbiosis of the military and the government, crackdowns were instituted against all the members. Their activities were monitored. However, mass protests were sustained resulting in Khan's resignation. The victory was for only a fleeting moment because the successor to the presidency was another General who played with equal expertise on the game of martial rule. General Yahya Khan, with full confidence, reinstated martial law upon his succession.

Civilian rule returned in 1972 when General Yahya Khan turned over power to Zulfikar Ali Bhutto. Bhutto was a prominent landlord from Sindh who headed the Pakistan Peoples Party (PPP) and ran under a populist platform. Consistent with his pro-people stance, Mr. Ali Bhutto laid down his "egalitarian democracy" and the application of "socialistic ideas to realize economic and social justice." The thrust introduced by PPP was a welcome respite from martial rule thereby allowing a breathing space for socio-economic and political rights. The PPP introduced significant social and economic reforms that helped improve the life of impoverished Pakistani masses allowing multi-sectoral participation of peasants, workers and students to promote the country's recovery from the repressive martial rule.

"During his term (Bhutto), a serious rebellion took place in Baluchistan Province and led to harsh suppression of Baloch rebels. In 1974, Bhutto succumbed to increasing pressure from religious parties. Elections were held in 1977, with a Peoples Party's victory but challenged by the Opposition Groups. There were widespread rumors about voters' fraud which event ended in a bloodless *coup* installing General Muhammad Zia-ul Haq as President of Pakistan in 1978. Bhutto later was tried and executed after being convicted of authorizing the murder of a political opponent.

Zia's martial rule and military dictatorship were declared legal by the Supreme Court, under the Doctrine of Necessity. Socio-political developments at this time were manifested in the introduction of strict Islamic law into the country's legal system, contributing to current-day sectarianism and religious fundamentalism, as well as instilling a sense of religious

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Farzana Shaheen, sits with her two sons while protesting in front of the Supreme Court of Pakistan.

purpose within the youth. Socialist economic policies of the previous civilian government, which also included aggressive nationalization, were gradually reversed. The Doctrine of Necessity is a state's doctrine applied to a situation which has arisen for which no remedy has been provided in the Constitution. This same doctrine, rather than the constitution, became the basis for every decision on the legitimacy of a military take over.³

Pakistan under Zia-ul Haq government fought a war by proxy against the communists in Afghanistan during the Soviet-Afghan War. Significantly, this sealed the strong and deepened alliance of Pakistan and the United States during the Cold War. Moreover, Zia's government was an early recipient of billions of dollars in military aid from the United States, which reinforced Pakistan's army equipment and facilities. To a certain extent, Zia's term was characterized by irrational expenditures for defense which had overtaken necessary spending for development.

The changes in national leadership during the period of November 1988-1999 were both products of electoral exercises. Civilian government then, was led alternately by Nawaz Sharif and Benazir Bhutto. Their removal and replacement from the highest positions was generally attributed to corruption. However, Professor Mark Khaleeqe of Truth and Justice Commission, Pakistan wrote:

"Then elections were held in November 1988, under strict military control and Zulfikar Ali Bhutto's Peoples Pakistan Party won with his daughter, now also the late Benazir Bhutto, was installed as Prime Minister. She was ousted by the military establishment after just 18 months. Mr. Nawaz Sharif of Muslim League, a new face, was brought in as Prime Minister but only for two and a half years, when Benazir managed to replace him. She hardly spent three years in government when she was again removed and replaced by Sharif. It was not so much in order to demonstrate that they didn't know how to rule, or that there was any danger to the security of the country but simply to

show to the people that civilian leadership was not competent enough to run the country. Hence, Pakistan military is inevitable."⁴

It was as if a military take over or *coup d'etat* was already deeply embedded in the sub-culture of Pakistani governance that on 12 October 1999, then Army Chief Pervez Musharaff took control of the government and ousted Prime Minister Sharif. Immediately after the *coup*, Musharraf secured his executive structures through control of the judiciary and issued the Provisional Constitution Order (PCO). This PCO constituted a justice system nightmare since it suspended the constitution and legislative bodies and prohibited the superior courts from making any decisions against the Chief Executive. This accorded officials of the military government immunity from all forms of prosecution. Since the constitutional guarantees were deferred, all of the fundamental freedoms and rights of the people were easily violated. There was no space for the people to forward anti-government sentiments, much less question the legality of Musharaff ruling Pakistan. Without any qualms, the General-In-Command perpetuated the army's role in burying democratic rights into the graveyard. Logically, impunity became a guaranteed privilege of those officials participating directly and indirectly in the blatant infractions of peoples' human rights.

The judiciary lost impartiality since it was used as an instrument to legalize whatever the Chief Executive needed to expedite actions comfortably packaged as "actions to advance the good of the people" or necessary for "state order and internal security." When in fact, the government did attack the members of the Supreme Court, there were patriotic judges who remained loyal to the Constitution and bravely refused to legitimize his military government.

Another blunder the leadership committed was placing Pakistan under a "State of Emergency" on 3 November 2007. Some sectors thought it was enacted to preempt a *coup*. But the public obviously understood the move as a strategy to keep Musharaff in power. In less than a month, Pervez Musharaff took his oath as civilian president of Pakistan soon lifting the state of emergency to camouflage his militarist solutions and gain a popular façade. Soon after, a significant event rocked his



Amina Masood Janjua holds a portrait of her husband, Masood Ahmed Janjua, in front of a photo of the Islamic Hajj pilgrimage in Mecca. (Photo by Getty Images taken <http://www.daylife.com>)

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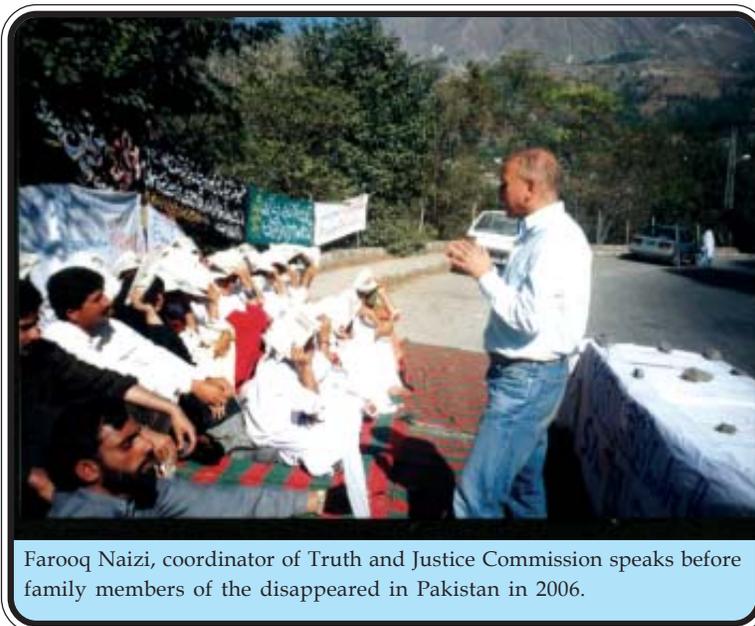
boat, Benazir Bhutto, a returning political contender was assassinated in Rawalpindi by a suicide bomber and gunshot on 27 December 2007. She came from a rally organized by her Pakistan Peoples Party. The incident caused the January 2008 election's postponement to 18 February 2008.

The National Assembly was won by two opposition parties, Pakistan People's Party and Pakistan Muslim League-N. The new Prime Minister, Yousaf Raza Gillani has vowed to institute progressive approaches gradually reducing military influence in the governing of the country. People are hopeful and what remains to be seen will be the measures that Gillani can take in implementing reforms without harassment. Human rights organizations should nonetheless continue hoping against hope for a wider space enjoying equal protection from the law and the exercise of each right and freedom.

Human Rights Situation and the Phenomenon of Enforced Disappearance

In his book, *In the Line of Fire*, Pervez Musharraf professed a pro-democracy stance even describing Pakistan as a functioning democracy responding to the real needs of the Pakistani people. It is easier said than done. There was no effort made to make known to the public an accounting from him for defending people's civil liberties during his long career in the military service. How can one talk about functioning democracy when his very entry into the presidency was illegal? People could not be convinced of a *coup d'etat* to save

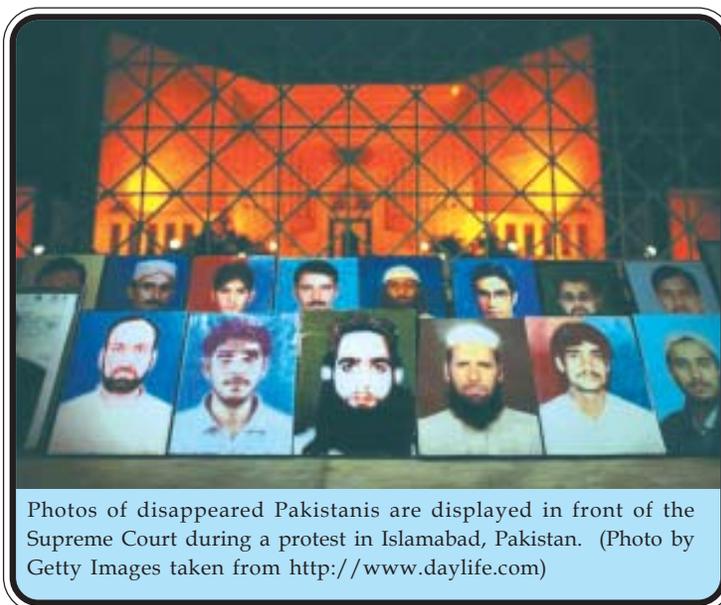
the nation from the acute malady of corruption which would lead Pakistan into an economic pitfall when the first event was to railroad the Constitution through encroachment on the independence of the judiciary. This constituted gross injustice on the fundamental safeguards of the Pakistanis against illegal and unlawful acts. Moreover, subverting the Constitution adds up to a gross irresponsibility of the government in ensuring development for all.



Farooq Naizi, coordinator of Truth and Justice Commission speaks before family members of the disappeared in Pakistan in 2006.



Keeping Pakistan under his whims and caprices together with the bureaucrats and powerful few, Musharaff continuously undermined the civil and political liberties of the people. His active and financially rewarding collaboration with U.S. President George Bush in the implementation of the War on Terror produced significant numbers of grieving mothers and siblings, half-widows, orphaned children because of committed enforced



Photos of disappeared Pakistanis are displayed in front of the Supreme Court during a protest in Islamabad, Pakistan. (Photo by Getty Images taken from <http://www.daylife.com>)

disappearances to alleged terrorists and extremists. The cruelty in this type of violation is akin to death but still being practiced while the victims undergo several harsh procedures, slowly killing them not so much physically but ripping their innermost power and strength. Most of the time, the perpetrators claim victory in their consummated crimes so unfortunately, the disappeared persons end up as victims of extrajudicial killing. For the families, it will involve a deeply haunting unfinished search.

General Pervez Musharaff, was allegedly one of the most notorious military rulers in the world because of his vast capability to shape national structures conforming to his political interests i.e. *coup d'etat* in 1999 and the state of emergency of 2007. He has governed since 1999 and continues to the present acting as *de facto* president with the usual power.

There is the underlying impression that Musharraf's pressure on the army has meant no change of military mindset since he turned in his uniform. Neither have the judges been fired by Musharraf on 3 November for disloyalty nor restored as promised by the new ruling coalition, nor have Musharraf's self-assumed powers been tamed.⁵

In all of the past military regimes, this one has been especially recognized to have engaged into wide anti-terrorism collaboration with the United States which wreaked havoc on the work of pro-democracy organizations including several innocent individuals. To some of his critics, Musharraf allowed counter-terrorism to expand its mandate to groups and individuals attacking his government. During his term, enforced disappearance has taken a different title like "ghost prisoner."

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This was the case of Marwan Jabour which occurred on 9 May 2004. Jabour was arrested in Lahore, Pakistan, detained for a short time then transferred to Islamabad to a secret detention center operated by both Pakistanis and American army officers. After a month of excruciating pain (tortured, beaten, deprived of sleep and chained to a wall naked, no family contact, since it was not known where he was, no legal counsel, no access to humanitarian agencies like the International Committee of the Red Cross). He was flown to Afghanistan and placed under US custody and only knew his exact location of detention two years later on 31 July 2006 in Jordan. Similarly, there were many more enforced disappearances in Pakistan but some were not reported.⁶

The Lawyers Committee for Human Rights reported that 1,319 persons had been subjected to torture and around 600 persons are believed to have disappeared in the same year following arrests by the law enforcement agencies. According to Amnesty International's *Executive Summary: Pakistan- Human Rights Ignored in the War on Terror* (September 2006):

"Hundreds of people have been arbitrarily detained and many have been subjected to enforced disappearance- held secretly, *incommunicado* and in undisclosed locations, with the government refusing to provide information about their fate and whereabouts. Their families, distressed about lack of information about their fate of their loved ones have been harassed and threatened when seeking information." ⁷⁷

What concerns this human rights watchdog most was the occurrence of disappearances even beyond the scare of the war on terror. There have also been recorded cases of people from different backgrounds who have been subjected to enforced disappearances including *Baloch* Nationalists and *Sindhi* leaders in line with the implementation of this dreaded fight against terrorists.

Significantly, the stages characterizing the military regime were all one cycle of power grab, monopoly of power, perpetuation of term to stay and greed acquired by the most trusted officials. Pakistan's top ranking military officers became the last persons to depend on by the incumbent leader in times of heightened political crisis. Military adventurism will likely be a tempting opportunity for power- hungry individuals to take over. The practice of enforced disappearances is well anchored within this cycle of greed and power.

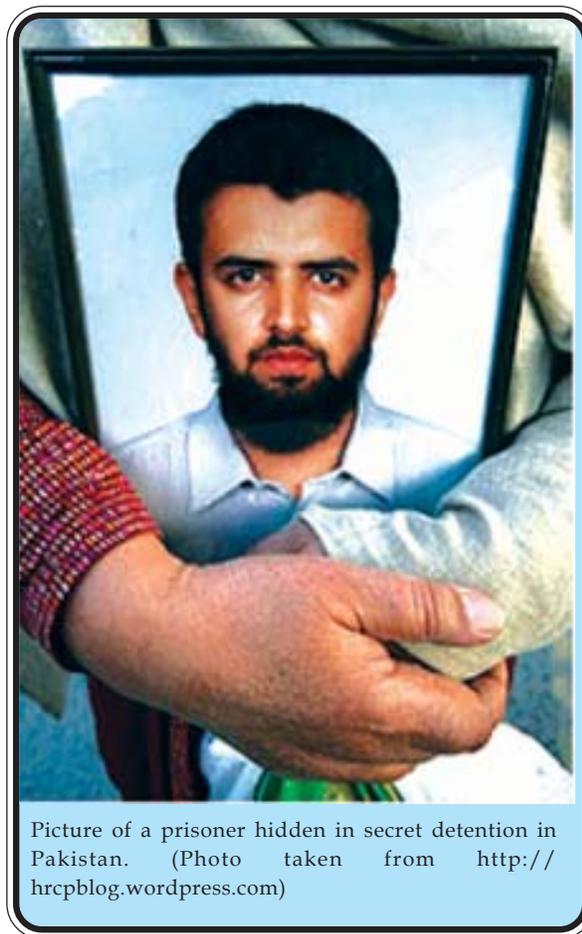


Effects of Enforced Disappearance on the Families and Their Response to the Situation

One can understand the unexplainable, unquantifiable degree of pain affecting one's family from a strange loss of a family member. Usually the victims are breadwinners in the family resulting in economic deprivation and causing the stoppage of children's education or worse, weakening the center of survival of one's violated family. This is just one part of the monumental effects that enforced disappearance brings to people. The absence of a person, whether politically motivated or not, destroys the functioning family unit. However, even though it may be too distressing and hurting, it has to be dealt with squarely and acted on promptly to mete out justice and stop the evil practice of enforced disappearance. The families of the disappeared will be helped to overcome the pain in their hearts.

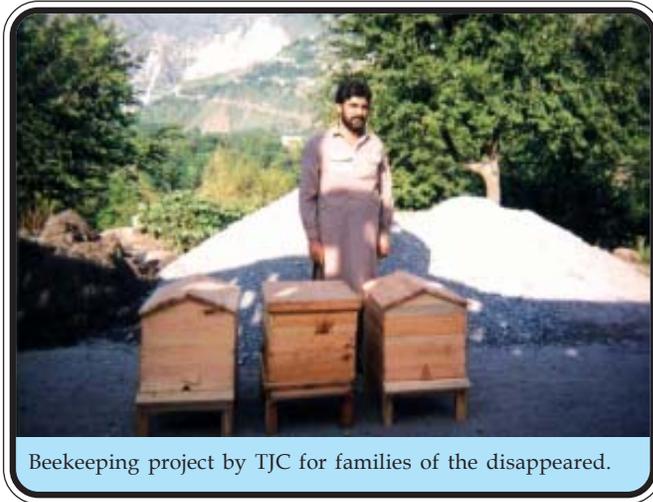
Clearly, the grief over a missing person is not the monopoly of women, but the following article does give special importance to the women as residual victims of forced disappearance. This is premised largely on the general status of women's rights in Pakistan. Generally, the state of women's human rights in Pakistan remains as bleak as the exercise of civil and political rights under military rule. In a country where men enjoy most of the rights and women the least, an uphill battle for the real emancipation of women needs to be undertaken. It is interesting to know that the non-discrimination against women is well stipulated in the Constitution Article 25, Chapter 1 (Fundamental Rights) states:

"Equality of Citizens" (1) All citizens are equal before the law and are entitled to equal protection of the law; (2) There shall be no discrimination on the basis of sex alone. (3) Nothing in this article shall prevent the state from making any special provision for the protection of women and children. Whereas some laws were in effect contrary to these guarantees. An example of this is the *Hudood Ordinances* which is clearly anti-women. It does not distinguish adultery (*Zina*)



Picture of a prisoner hidden in secret detention in Pakistan. (Photo taken from <http://hrcpblog.wordpress.com>)

RECLAIMING STOLEN LIVES



Beekeeping project by TJC for families of the disappeared.

from rape (*Zina-bil-jabr*). According to the Human Rights Watch Report, 2005 "...under *Hudood* ordinance, proof of rape generally requires the confession of the accused and the testimony of four adult Muslim men who witnessed the assault. If the woman cannot prove her rape allegations she runs a very high risk of being charged with fornication or adultery. The criminal penalty for which is either long imprisonment, public whipping or though rare, death by stoning. Although in November 2006, Pakistan's Parliament passed a Women Rights

Bill to replace *Hudood*, the core anti-women contents of the ordinance have not been abolished. Harsh laws that discriminate against women were kept to appease religious fundamentalists and extremists. Honor killings still account for the many cases of gender-based violations against women. As such, women are more accountable in conducting themselves properly in relationships personally and socially. Her existence as a wife, sister, mother or daughter must strictly promote or stand for the pride of the men in their immediate kinship. Even for the slightest reason as in deciding to terminate an unhappy marriage, she can become a victim of "honor killing." Husbands are dishonored by divorce as with his family.

In this situation of institutionalized inequality, aggrieved women find it very difficult to bring their cases to the authorities. Policemen do not seriously accommodate crimes against women e.g. gang rape, honor killing, kidnapping because of gender biases – simply because the victims are women. Gang rape is one of the tools atrociously used for social control equally by criminals, landlords and the police. Hence complaints are simply ignored.

Given the above social landscape, what are the possibilities for women as extended victims of enforced disappearance? It is true as statistics show more men become victims of enforced disappearance since they have the advantage of being chosen as leaders of developmental organizations, who consequently, are frequently targeted as opponents of the state. Men are more commonly at the forefront of struggles than women. The presence of women in demonstrations, in lobby efforts and in detention centers are usually because of their respective fight in favor of disappeared husbands, sons and brothers. As their family members are arrested, detained and kept secretly, the trouble in the hearts of women affects all the vulnerabilities within. Filling instantly the vacuum



created by the loss of a husband or a son is more than enough to challenge one's psyche. This condition all the more complicates the fragile state of women becoming residual victims of enforced disappearance.

Amina Masood Janjua of Rawalpindi, Pakistan, lost her husband in July 2005. She shared with other families of the disappeared the unending questions of knowing the reason why their husbands vanished at the hands of authorities. Sharing equally her pain are her two teenage sons and a younger daughter, she has not given up searching for her husband and has been supplementing the drive of other extended victims like her, thrown together on to common ground seeking for their disappeared loved ones. They have bonded themselves together and formed a group called Defense of Human Rights. Amina has been leading concerted actions to find the missing in Rawalpindi, Pakistan, carrying the banner, "Give our loved ones back." In one of their protest actions in December 2006, policemen came to confiscate posters and snatched pictures of the disappeared in an atrocious manner. Her 17 year-old son was also beaten and stripped by the police before they whisked him away in a police van.⁸

Anyone can just imagine the turmoil occurring within a mother witnessing an outrageous act violating her son. Should a dutiful son who only sought justice and like his mother simply wanted his father surfaced be treated violently? Surely, this is a picture of an insensitive society. The case of Amina represents a small fraction of the women suffering the same fate. Women accept responsibility and the rigors of legal processes in searching for their disappeared. Every step they thread is an experience of different struggles for their cause as women and as substitute victims confronting men police officers and intelligence personnel. Most of the time, along their search, they bear tons of frustration whenever their leads turn out to be fake and whenever officials of detention centers deny custody of the disappeared persons. If their



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Children of the disappeared in Pakistan struggle to rebuild their lives in the face of natural and human-made calamities.

cases reach the courts, their lawyers will either be apprehended or totally discouraged from handling and defending their case. The plight of women under these circumstances is undoubtedly difficult and painful. Behind most of the Urgent Action Appeals of Human Rights Organizations in Pakistan are mothers looking for their missing sons, wives looking for their husbands and daughters appealing for their fathers to be returned home. This situation cannot and must not remain the same forever. In the reversal of this sad reality, Pakistani women must be at the core. However, this can be possible

only if women enjoy equal rights, free from gender-biases, not discriminated against and respected.

Yet, despite the very repressive situation in Pakistan, the Human Rights Movement (HRM) has existed in the country since 1990. This was registered under the voluntary social welfare agencies and control ordinance of 1961. It is HRM which established the Truth and Justice Commission (TJC) on 10 December 1999 in order to give more focus on the issue of enforced disappearance and address the needs of the families of *desaparecidos*.

The TJC became an AFAD member during the Federation's Second Congress in 2003 held in Bangkok, Thailand. Among their earlier activities were to spearhead mass mobilizations like protest marches to provide public information on the status of disappeared persons and call on the government to give justice to the families. The organization also does media work and stages hunger strikes denouncing enforced disappearances in Pakistan.

In its initial report submitted to AFAD, TJC was able to document 37 cases of enforced disappearances containing a narrative of various brutal abductions, disappearances and their militant follow-up in courts, in police stations and corresponding protest actions pressing the concerned officials to surface the missing persons.

As part of their program on capability building towards the empowerment of the families of the disappeared, TJC in coordination with AFAD, conducted

rehabilitation sessions in October 2006 in Rawalpindi, Pakistan which was attended by 25 participants from the District Bagh, Rawalkot and Muzaffarabad district. The session was conducted to make debriefings, grief work and healing process in order to enable families to understand the experience of trauma and grief and learn how to manage it effectively. This was also a learning session for wholeness, wellness and self-care techniques after undergoing the tormenting loss of a family member. Organizing the families together in this type of activity brought much relief to each member. First, the bond is a result of knowing that one is not alone in this type of predicament. Likewise, the session allowed them to unload anger and fear in a shared manner. As they had let go of these negative feelings, their deep longing for their disappeared loved ones was translated into a renewed drive to move on collectively for the cause of the *desaparecidos*.

The psycho-social rehabilitation session in Pakistan was actually a continuation of a similar activity held in Jakarta. It is recalled that the Jakarta activity was attended by 40 family-members of *desaparecidos* from AFAD's member-organizations in Indonesia, Kashmir, Pakistan, Sri Lanka, Thailand and the Philippines. Dr. Nila Heredia, former President of the Latin American Federation of Associations of Relatives of Disappeared-Detainees (*FEDEFAM*) and wife of a disappeared was also present. Abdeslam Omar Lahsen of the Association for the Families of the Detained and Disappeared of Western Sahara (*AFAPREDESA*) attended. To observe the event, two representatives from *HOMI* Linking Solidarity, Ewoud Plate and Dave Hardy attended.

During the sessions in Pakistan, wives, children and other family members of the disappeared shared that they were confused and were going through the toughest time in their lives right after the disappearance of their loved ones. Just like in other Asian cultures, they simply kept their emotions and feelings to themselves and were feeling too tired to move on or do something productive for their lives including that of fighting for justice for their disappeared loved ones. They felt as though they were carrying heavy burdens caused by an unjust world. And yet, despite their situation, it is amazing how the families can still situate themselves within a wider



TJC members hold a rally in Rawalpindi, Pakistan.

RECLAIMING STOLEN LIVES

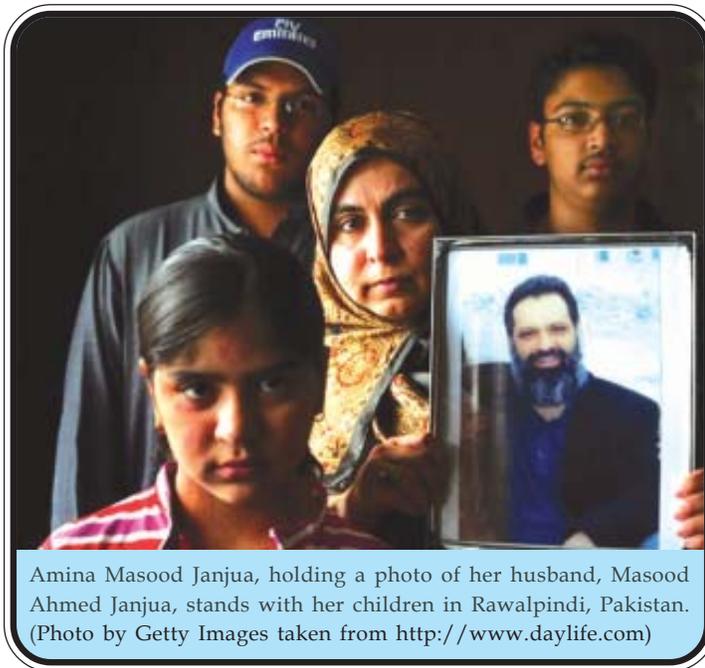
social context. In fact, some of the participants cited amidst their tears that having gone through so much indescribable pain and hardships, they do not want other people to become *desaparecidos* because aside from the injustice done on victims, suffering and grieving families like them will again be left behind.

Of the 25 participants, two young girls were included namely Amana (6-year old) and Ufaq (10 years old.) Having children-participants was not part of the original plan but they had to come along with their mothers because they had no one to stay with. Eight other participants were young adults with ages ranging from 12-17. Separate art workshops were facilitated to cater to the children's needs. The results of these activities were very revealing of the children's pains and trauma caused by the disappearance of their fathers. Although the children do not understand a single word in English, their facial expressions and actions expressed the joy they experienced while going through the activities as though they suddenly became just like any other children again and not "children in the midst of a cruel war." Some of what they said were recorded and translated.

As a whole, the participants showed the physiological effects of trauma in varying degrees. Aside from their psycho-emotional baggage, all of them were also carrying the very heavy burden of losing a family breadwinner. Among others, this is evident in the fact that most of the children had to stop schooling or alternate

in going to school with their older siblings. Towards the end of the activity, participants were helped to realize that families of the disappeared elsewhere in Asia and in the world go through a very stressful situation after the disappearance of their loved ones. What is important is the willingness to process their traumatic experiences although the process may be a long one based on each individual's unique situations and capabilities.

As though the families' sufferings were not enough, most of those who attended the rehabilitation session were also victims of



Amina Masood Janjua, holding a photo of her husband, Masood Ahmed Janjua, stands with her children in Rawalpindi, Pakistan. (Photo by Getty Images taken from <http://www.daylife.com>)

the earthquake that hit Muzaffarabad and the nearby district of Azad Kashmir on 8 October 2005. The 7.6 magnitude earthquake destroyed 50% of the buildings in the town and is estimated to have killed some 30,000 people in the Pakistani-controlled part of Jammu and Kashmir. In fact, most of the families and relatives who participated in the session were living in tents along the beautiful Jehlum river which also serves as a silent witness to their sufferings. To note, this river is the same river which is one of the sources of quarrel between Pakistan and India. While this river has its source from Indian-occupied Jammu and Kashmir, it flows all the way to various areas of rich families in Azad Kashmir.⁹

In the aftermath of countless human rights violations, several organizations were established to provide direct services to victims particularly under the aspect of providing legal aid. One example is the Mubashir Bhutta Human Rights (MBHR). Aside from the legal assistance, this group conducts education on laws and human rights awareness. Pakistan International Peace and Human Rights Organization in Nindo Shaher District Badin Sindh, Pakistan is another non-government organization which aims to cooperate, coordinate and participate with national and international organizations, associations and individuals engaged in promoting peace, human rights, education, health, reproductive health, environment, conflict prevention, poverty reduction/alleviation, disaster relief, development and gender balance.

On the local front in 1986, the Human Rights Commission of Pakistan (HRCP) was developed into a nationwide human rights body assuming a leading role in making an informed public towards human rights struggles and democratic development in Pakistan. It also works for the ratification and implementation by Pakistan of the Universal Declaration of Human Rights and of other related charters, covenants, protocols, resolutions, recommendations and internationally adopted norms. In its 2007 Annual Report, HRCP was able to trace 99 out of 198 missing persons through diligent coordination with judicial courts. HRCP similarly counts significant victories in the administration of justice for some victims who have been traced and consequently released.

To date, Pakistan is a member of the United Nations Human Rights Council (UNHRC) but has not ratified the principal human rights treaties such as the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. It has yet to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

The United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID) is a UN human rights mechanism established to

have a universal mandate. Its existence is basically humanitarian serving as a channel of communication between family members of victims of disappearance and governments. It is also tasked to assist the families in determining the fate and whereabouts of family members who are reportedly missing. In its report during the seventh session the Working Group transmitted to the Pakistani government, 29 cases reportedly took place in Karachi between June 2005 and September 2006. In this same paper, it was pointed out that the police and intelligence agencies were responsible for most cases. Concerned officials are then made to respond to UNWGEID's clarifications. One clear message of the Working Group is that there are no circumstances that can be invoked by the Pakistan national leadership which can justify enforced disappearance.¹⁰

Conclusion

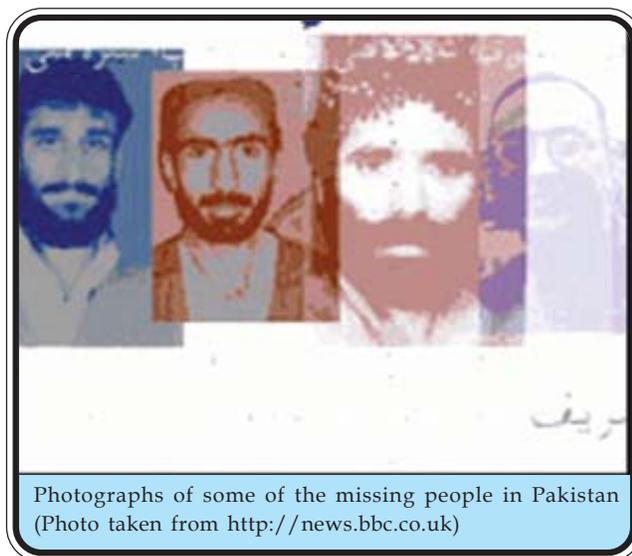
Enforced disappearance is an effective method applied by the state to prevent disclosure of evidence related to ineptitude in governance and abuses of non-functioning democracies. It is a politically motivated action meant to curtail forces opposed to the system of government and a complex inhuman act, a torture in itself which follows illegal arrest and illegal detention. If the intervention of the family and human rights advocate has been overcome by the persistence of the violators, enforced disappearance often ends in extrajudicial killing. This organized violence is only possible through an authoritarian regime with full support from the armed forces because of its profound but irrational penchant to control sovereign security. As such they were erroneously regarded as saviors of the country, and these agents of the state, become perfect implementors of enforced disappearance. Enforced disappearance is a crime and includes the family as another victim. Central to this are the women – the so-called half-widows, the grieving mothers and the children who always are forced to live with the uncertainties of not knowing whether their loved ones are safe, being tortured alive or dead. Many families wonder why a family member can never return home and the long horrifying wait continues.

The current dispensation, emerging from military rule has brought much hope to civil society. But how does the government respond to the phenomenon of enforced disappearances? *The Guardian* on its international section states: "To critics of Pakistan's coalition government, which is led by the Pakistan Peoples Party, the lack of progress on missing persons is symptomatic of a broader malaise, which has seen the policies and some personnel of the Musharraf era continue into the new democratic dispensation. Farhatullah Babar, a spokesman for the Pakistan Peoples Party said: "The missing persons' issue is high on the agenda. In fact when I called on the prime minister a few days ago ... he mentioned this issue as well." The wife of a disappeared three years ago, Amina, in her continuing



campaign to recover the disappeared has said, "The government talks a lot, but that is not enough."¹¹

Despite the darkness in situations of disappearance, it is not irreversible. As the saying goes, "there is a light at the end of the tunnel." Perhaps, the light can be derived first from the presence of civil society organizations and the like urging for democratic reforms and secondly to the groups' continuing victories. Moreover, the presence of specialized International Human Rights Organizations like the Asian Human Rights Commission, Amnesty International, Human Rights Watch and other peoples' organizations, albeit with limitations, are vehicles for information and facilitate advocacy and appeals to concerned agencies locally and internationally. The government's pulse is frequently quickened by these human rights watchdogs.



People must not surrender. People, particularly the surfaced victims and the families of the disappeared must be vigilant to all developments causing enforced disappearance such as the suspension of the constitutional guarantees, political systems (military rule or dictatorial) which institutionalize enforced disappearance, legalization of impunity and unrealistic threats to sovereignty. For the generals, the "Game is Over." The playing field must now be managed by pro-democracy, pro-human rights leaders who are the genuine representatives of the Pakistani people. The families of the *desaparecidos* must be taken care of, given justice, reparation, redress and be given an atmosphere wherein they can relive and reconstruct the historical memory of their cherished *desaparecidos*. The government must exhaust all means to locate victims and expedite procedures bringing them to places where everyone can be protected by the law. Pakistan, for it to be true to the people it professes to serve, must not only ratify the United Nations Convention for the Protection of All Persons from Enforced Disappearance but should sincerely commit to concretize it by putting to a stop to the phenomenon of enforced disappearances.

Notes:

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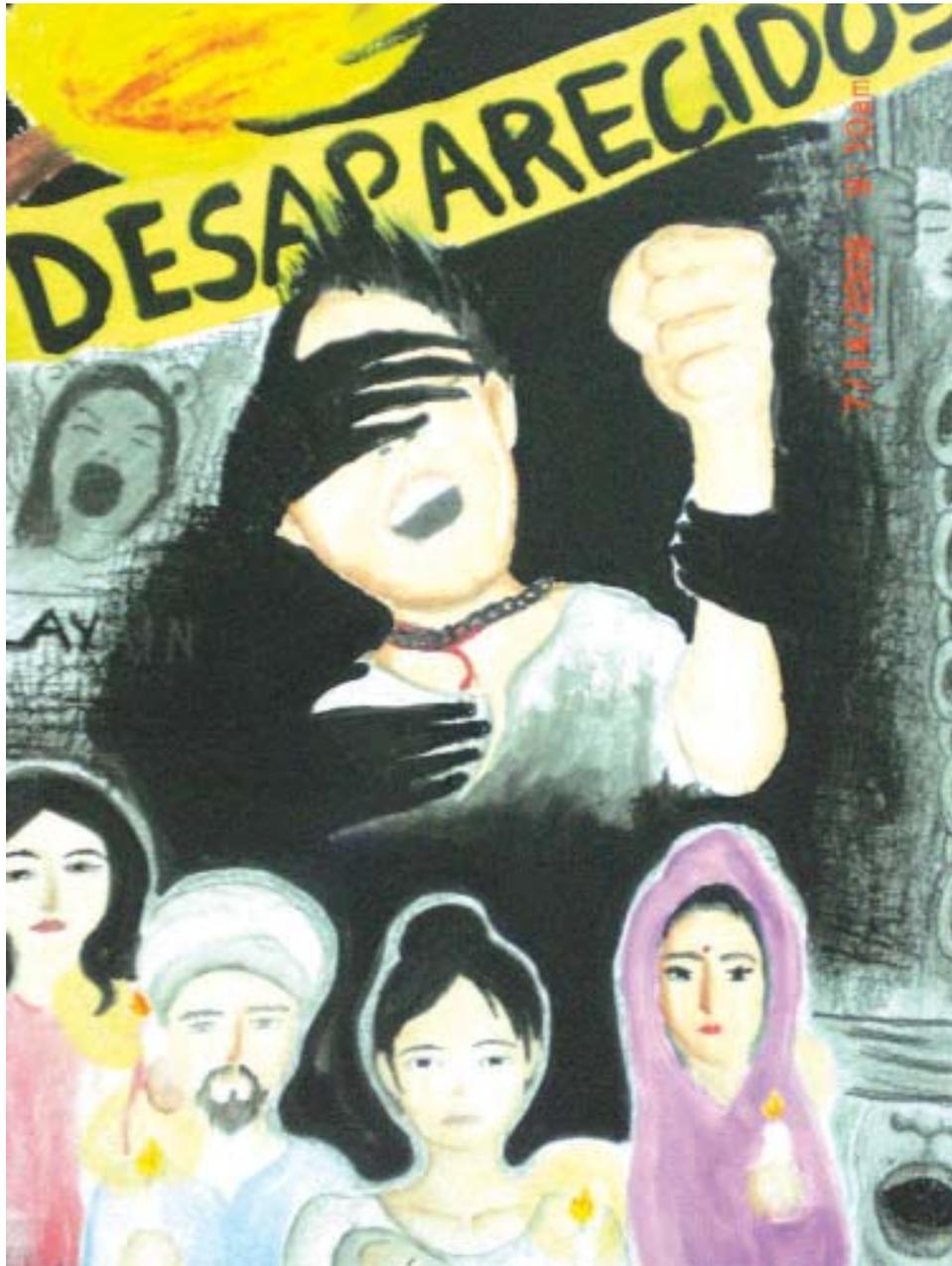
¹¹The Guardian. (2008, July 23). International Section. p.16.



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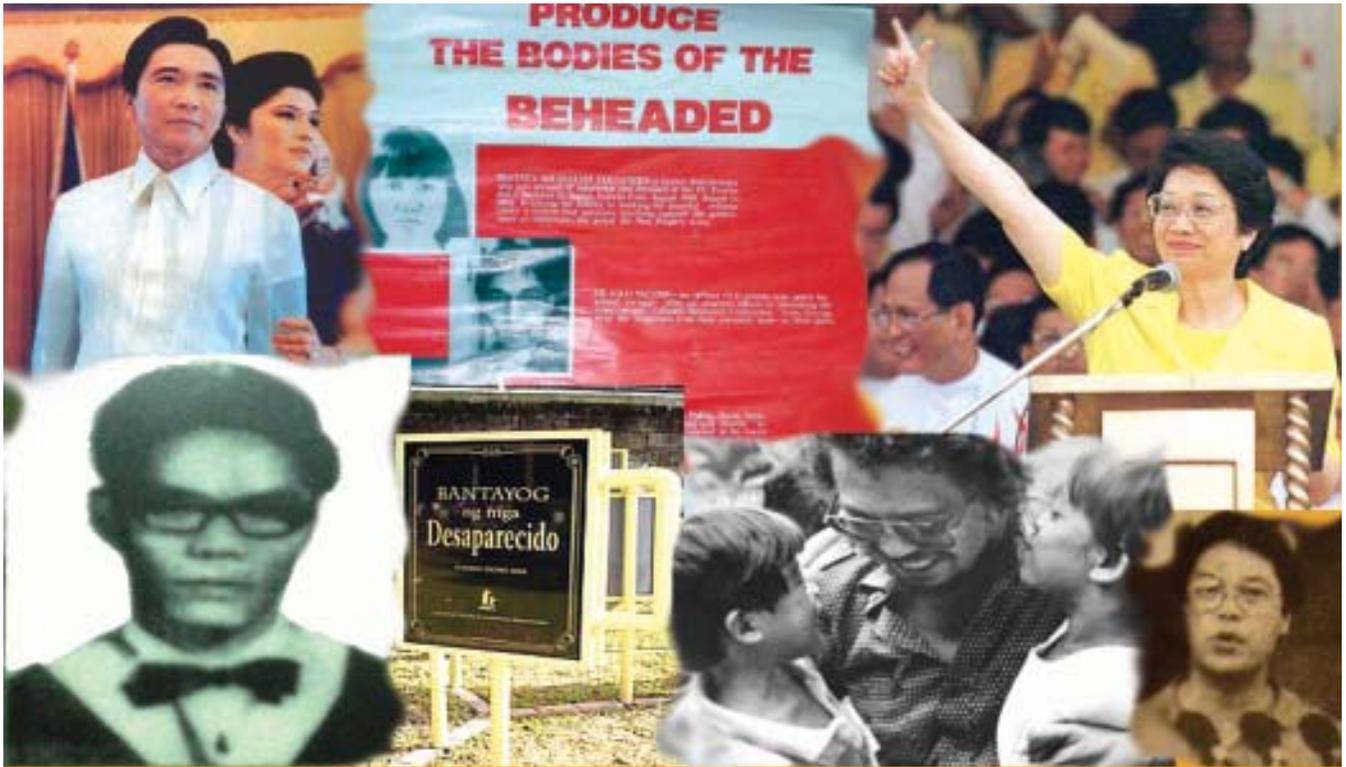
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RECLAIMING STOLEN LIVES



Maria Blanca Fuentes
Entry
First AFAD Poster Making Contest
14 May 2008





THE LONG ROAD TO JUSTICE ...

By Francis Isaac



The Long Road to Justice *Enforced Disappearances in the Philippines (1971-2008)*

By: Francis Isaac

The strength of a nation's democracy can often be measured by the respect that is rendered to the descendants of its revolutionary icons. In the United States for instance, Reese Witherspoon is very much respected by the American public, not only for her thespian skills and talent as an actress, but also for the fact that her great, great grand father was a patriotic leader during the American War of Independence.

But here in the Philippines, the offspring of our modern-day national heroes are given a different fate – usually harassed and abducted at will and often made to suffer indignities at the hands of security forces.



On 28 April 2007 for example, as farmer-activist Jonas Burgos was having his midday meal in Ever Gotesco-Commonwealth in Quezon City, he was allegedly accosted by at least four armed men who suddenly grabbed his hands and feet, and dragged him out of the mall premises. He was then immediately brought to a waiting vehicle outside of the shopping center, which eyewitnesses described as a maroon Toyota Revo with plate number TAB 194.¹

The son of press freedom icon and noted Marcos oppositionist Jose "Joe" Burgos,² Jonas, the *desaparecido*, caught the attention of the media, as his mother Edita began a frantic search to find her missing son.

His younger brother JL was equally heart-broken, saying that, "*Lumaki kami na hinaharas ang tatay namin at ang buong pamilya...Pero nung Martial Law, may warrant of arrest nung kinuha nila ang tatay ko. Ngayong sinasabi na nagbalik na ang demokrasya, ngayon lang may nawala sa pamilya namin at hindi ito panahon ng martial law.*"³ (We grew up in a situation where our father and the



whole family were being harassed...But during Martial Law, they had a warrant when they arrested my father. It is ironic that it is now when democracy has been supposedly restored that one of our family members was forcibly disappeared. And it is not even Martial Law.)

Deep Are the Roots

But even before the abduction of Jonas, the Burgos family had already been well aware of the phenomenon of involuntary disappearance, for the elder Burgos would report such abuses in the pages of the now-defunct *We Forum* at the height of the Marcos dictatorship.

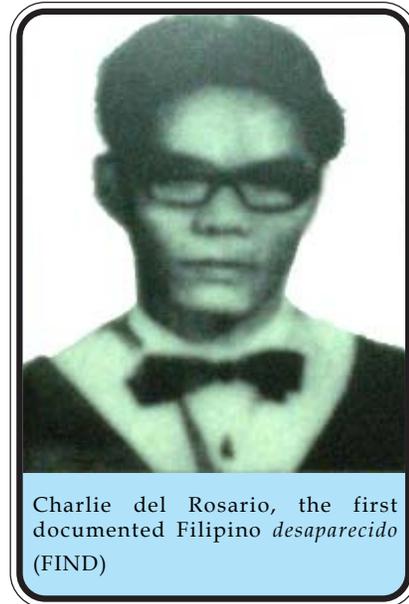
In fact, the very first case of enforced disappearance in the Philippines was recorded on 19 March 1971, with the abduction of the feisty Secretary General of the Left-leaning *Kabataang Makabayan* (KM) Carlos "Charlie" del Rosario. This was soon followed by the disappearance of Francisco Sison (brother of Communist Party of the Philippines founding Chairman Jose Maria Sison) and his driver Elpidio Morales on 24 May of the same year.⁴

And as the Marcos regime continued with its rampage, more and more people would fall victim to involuntary disappearance, most of whom were student activists, union organizers, peasant organizers, or just plain (and often poor) rural folk.

These early reports occurred in the early 1970s—a time when the country was experiencing severe economic hardship, marked by the constant devaluation of the peso and the ever increasing gap between the haves and the have-nots. As a consequence, people began agitating in the streets, calling for the total overhaul of the existing "political system" and an end to the Marcos regime.

In this charged political environment, militant groups sprang up like mushrooms, organizing mammoth demonstrations which usually ended in violence and running battles with the police—such as the First Quarter Storm of 1970 and the French-inspired Diliman Commune the following year. Marcos himself was equally bothered by these events, prompting him to describe the Philippines at that time as a country sitting on top of a "social volcano."

This situation was further aggravated by the sordid state of the economy, which merely added fuel to the masses' growing social resentment. Indeed, as American author David Timberman suggests, the early 1970s was a period in history



wherein the Philippine economy was buffeted by a series of internal and external shocks. Agricultural harvests in 1970 and 1971 were poor because of typhoons and severe floods. The peso floated in February 1970 in response to the balance of payments crisis caused by huge government spending for the 1969 election and had devalued by 42 per cent against the US dollar by mid-1973. This fuelled rapid inflation, causing consumer prices to rise 32 per cent from 1970 to 1972.⁵

These events, however, would soon become the perfect excuse for the declaration of Martial Law, which Marcos described as the only option left for the government to address the growing threat from both the radical Left and the militant Right. In his recollections written a few years after the event, the then-Philippine strongman proudly proclaimed:

On 21 September 1972, I declared martial law throughout the Philippines. I did so in accord with our Constitution, as a last defense against two grave dangers to the state. One was a rebellion mounted by a strange conspiracy of leftist and rightist radicals. The other was a secessionist movement supported by foreign groups. The decision was easy to take. For I did not become President to preside over death of the Philippine Republic.⁶

Blast from the Past

Few Filipinos, however, expected Marcos to actually impose military rule, allowing the armed forces to occupy the press offices of the nation's dailies in the wee hours of September 23 with both ease and speed.⁷ They then occupied all radio and television stations, and suspended the sessions of both the Senate and the House of Representatives. By two o'clock in the morning, the military had arrested some 8,000 journalists, activists and opposition politicians including prominent senators Benigno Aquino, Jr. and Jose W. Diokno.

At first, the public remained largely unperturbed, dismissing the strange events of 21 to 23 September as mere coincidences. But such happy nonchalance soon gave way to dread and fear after Marcos appeared on national television announcing that Martial Law had indeed been declared two days before. The emotional chill that the pronouncement created was reminiscent of the reign of terror that the Spanish government imposed on the Philippines less than a century ago, on 30 August 1896.

Triggering the arrest of a number of prominent *indios*⁸ as well as hundreds of suspected *insurrectos* from the lower classes, the draconian measures were instituted by the colonial administration shortly after the outbreak of the Philippine Revolution five days earlier on August 25.⁹ Led by a secret society known as the *Katipunan*, the



insurgents demanded complete independence of the Philippines, which had been a colony of Spain for the previous 300 years.

In the very first battle of the Revolution, a small Spanish contingent stationed in San Juan del Monte was able to repulse a rag-tag army of Filipino revolutionaries under the command of *Katipunan* founder and *Supremo* Andres Bonifacio. But despite this initial defeat, the Revolution quickly spread from the capital Manila throughout the rest of the colony, with simultaneous uprisings in provinces of Cavite, Laguna, Batangas, Bulacan, Pampanga, Tarlac and Nueva Ecija.¹⁰

To neutralize the secessionist threat, the colonial authorities placed a large portion of the Philippines under Martial Law—yet to no avail. For in less than two years, Filipino forces were able to overwhelm the better equipped Spanish army, prompting revolutionary leader Emilio Aguinaldo to proclaim the country's independence on 12 June 1898, and the subsequent inauguration of the First Philippine Republic on 23 January 1899.¹¹

But independence proved to be short-lived. For Spain (instead of acknowledging its defeat) sold the Philippines to the Americans, for a bargain price of \$20 million. The United States, for its part, then accepted the offer and promptly began a war of annexation which lasted for more than a decade.

Succumbing to the superior arms of the Americans, the Republic finally collapsed in March 1901, allowing the United States to impose its own brand of imperialist rule in the Philippines for the next 45 years. Filipinos, on the other hand, were not able to regain their independence until after the Second World War through a long and peaceful campaign for emancipation, which culminated in the withdrawal of most American forces by July 1946.¹²

Back to the Future

Like his Spanish predecessors a century ago, Marcos' Martial Law proclamation did not become the political denouement that he had hoped it would be. Instead, military rule turned out to be more like a barrel of petrol that was mistakenly used to douse the flames caused by a few burning twigs. This was so since Martial Law simply added the bane of political repression on a people long battered by economic disaster. And as his despotism intensified, so did the resistance—with more and more people calling for the removal of Marcos along with his system of strong-arm rule.



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This, however, made the regime even more desperate to cling to power, forcing it to avail of even more repressive methods in dealing with the opposition. Such underhanded means included committing various forms of human rights abuses most especially enforced disappearance—which were either directly carried out by the security forces or by elements in the employ of the state. Thus, it is not surprising that throughout the entire period of the Marcos dictatorship, an organization called the Families of Victims of Involuntary Disappearance (FIND) was able to document at least 855 cases of enforced disappearance.

Regime	No. of Reported Cases	No. of Documented Cases	No. of Still Missing	No. Surfaced Alive	No. of Found Dead
Marcos	805	855	596	132	127
Aquino	821	612	407	109	96
Ramos	87	87	40	37	10
Estrada	58	58	16	39	3
Arroyo	167	128	39	75	14
TOTAL	1,988	1,740	1,098	392	250

Table 1: FIND's statistics on enforced disappearances from 1971 to October 2006.

From all the reported cases, 259 were subsequently located and recovered, while another 596 people remain missing up to this very day. But from those that were recovered, only 132 victims have surfaced alive, while the remaining 127 were later found dead.

The Aquino Years

By the early 1980s, Marcos began to lose his grip on power as he was diagnosed with *lupus erythematosus*, a chronic disease that attacks the kidneys. Moreover, his policies also resulted in the regime's further isolation from the rest of the nation. The mounting incidence of human rights abuses, for instance, displeased the Catholic Church while the middle classes were slowly becoming politicized, especially after the assassination of opposition leader Ninoy Aquino, Jr. on 21 August 1983.

Such open defiance would eventually culminate in the First EDSA Uprising of February 1986, which was prompted by the sudden defection of Defense Minister Juan Ponce Enrile and Armed Forces Vice Chief of Staff Fidel Ramos following a botched *coup* attempt a few days earlier. This would then result in the assumption to



the presidency of Corazon Aquino, Ninoy's widow on 25 February, and Marcos' hasty departure to Hawaii that same evening.

Under her administration, Aquino focused on the restoration of liberal democratic institutions that had been destroyed during Martial Law and the creation of safety mechanisms designed to prevent the emergence of another dictatorship. Her presidency was also accompanied by the attempt to improve the country's human rights record, as indicated in the establishment of the Commission on Human Rights (CHR) in May 1987.

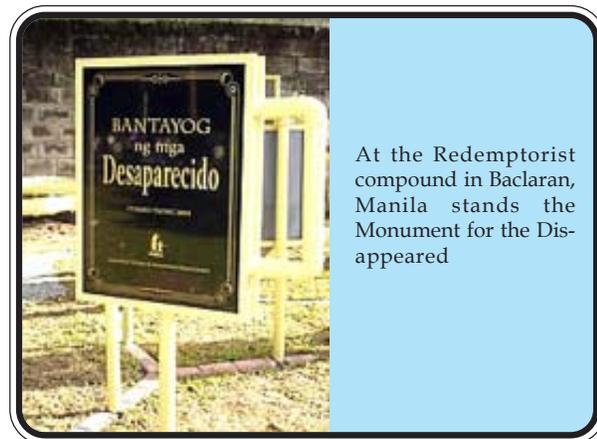
Created under the newly ratified 1987 Constitution, the Commission was given the task of (1) investigating all forms of human rights violations; (2) providing legal measures for the protection of human rights; (3) exercising visitorial powers; (4) establishing a continuing program of human rights research and information campaigns; (5) monitoring of government's compliance with human rights treaty obligations; and (6) recommending effective congressional measures so as to protect and promote human rights.¹³

However, the Aquino administration's human rights performance was far from impeccable due to its apparent "inability to curb, solve, and punish politically motivated acts of violence."¹⁴ In the first 11 months of 1987 alone, the human rights group Task Force Detainees of the Philippines (TFDP) had already monitored 512 cases of torture, 208 cases of "salvaging"¹⁵ and 59 cases of enforced or involuntary disappearance.

One of the most prominent of such cases was the abduction of Rolando Olalia, head of the leftist *Kilusang Mayo Uno (KMU)*, who was later found dead on 13 November 1986. Extremists within the military wanting to sabotage the then ongoing peace talks between the government and the communist National Democratic Front (NDF) were blamed for the incident, although no perpetrator was ever either formally charged or identified.

The sheer prevalence of human rights violations under this new dispensation can be attributed to the fragility of the country's newly restored democratic institutions and the strong anti-communist sentiment among members of the Armed Forces.

As a way of improving its human rights record, the Aquino administration



At the Redemptorist compound in Baclaran, Manila stands the Monument for the Disappeared

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Members of FIND conduct their rehabilitation program as an integral part of empowerment.

invited the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID) to come to the Philippines, which the latter did in early 1990. In the subsequent investigation that it conducted during its country visit, the said UN body readily confirmed that cases of enforced disappearance had indeed occurred during both the Marcos and Aquino regimes and several measures would

have to be undertaken to remedy the situation. These included:

1. severing the police's administrative ties with the army by placing the former under a separate cabinet ministry;
2. disbanding the local militias called the Citizens Armed Forces Geographical Unit (CAFGU), or if this could be effected, restrict their deployment to defensive action under army supervision so that strict discipline could be enforced;
3. enactment of legislation that would narrow the powers of arrest by circumscribing which category of public officials were authorized to do so;
4. passing into law a measure that would provide for civil action against military and police personnel for all offenses involving civilians;
5. prosecution of all those responsible for enforced disappearances along with the imposition of severe measures against officers who failed to prevent the perpetration of such offenses;
6. discouraging the practice of "red-labeling" ;
7. establishment of regional and central registers of arrest in order to facilitate the search for missing persons;
8. vigorously pursue the clarification of disappearances;
9. initiating a thorough overhaul of both the law and the practice of *habeas corpus*; and
10. ensuring the protection of witnesses from possible reprisals.

The Aquino administration, however, expressed strong disappointment over the UNWGEID's report, prompting them to demand its immediate reconstitution.

Despite this far from reassuring predicament, slight improvements in human rights were nonetheless noticed during former President Aquino's six-year term. This was indicated in the reduced number of documented cases involving involuntary disappearance from 1986 to 1992. During this period, FIND was able to document 612 victims of enforced disappearance, 407 of whom are still missing. On the other hand, of the 205 *desaparecidos* who were later recovered, 109 have surfaced alive, while the remaining 96 were later found dead.

The Watershed

If the Aquino years were characterized by continued instability and the "politics of survival,"¹⁶ the period from 1992 to 2001, on the other hand, were marked by the sharp decline in the number of reported cases involving involuntary disappearance. Under the Ramos administration,¹⁷ for instance, FIND only documented 87 cases of involuntary disappearance, with 37 of the victims surfacing alive, while the bodies of 10 others were unearthed. The rest, however, are still classified as missing.

This new political situation surprised many progressive groups, especially those within the Left, since Ramos (being a former military-man and Constabulary Chief during Martial Law) was expected to veer towards the Right. Instead, his administration ushered in a "period of stability unseen in Philippine politics since the 1960s."¹⁸ This, according to experts, was brought about by the gradual consolidation of the country's liberal democratic institutions and the growing consensus among the elite on how to manage factional disputes and contestations for power. Indeed, as senior political analyst Joel Rocamora aptly remarked:

Politically, 1986 was defined by the fall of the Marcos dictatorship, and the slow, painful reconstruction of elite democracy. Fidel Ramos' election in May 1992 represents a major step in the process of transition from dictatorship to elite democracy—the consolidation of a new form of elite rule. The fact that a candidate who received less than a quarter of the votes cast has been able to consolidate his administration shows that other factions of the ruling classes accept elections as a method for mediating their factional battles.¹⁹

Ramos also began a "prolonged negotiating process"²⁰ with armed rebel groups such as the National Democratic Front (NDF), the rightwing Reform the Armed Forces Movement (RAM) and the secessionist Moro National Liberation Front (MNLF). He did so by first creating the National Reconciliation Commission (NRC) and then appointing the highly respected elections chief, the late Haydee Yorac as chairperson.

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While the peace process failed in convincing the NDF to end its three-decade insurgency, it did however lead to the reintegration of RAM rebel soldiers and a peace accord with the MNLF which was finalized on 2 September 1996.²¹

Apart from these overtures, Ramos also projected the image of someone who was serious in promoting human rights and in curbing human rights abuses. Hence, on 8 February 1993, the Office of the President issued Memorandum Order No. 88 which created a new investigative body called the Fact-Finding Committee on Involuntary Missing Persons. Its task was to determine the whereabouts of all *desaparecidos* and determine those responsible for such atrocities. In addition, the Committee was also mandated to recommend to the President a package of indemnification allotted to the heirs of the disappeared.

Chaired by the head of the CHR, the Committee also included the Department of Justice (DOJ), the Department of National Defense (DND), the Department of Interior and Local Government (DILG), the Armed Forces of the Philippines (AFP), the Philippine National Police (PNP), the National Bureau of Investigation (NBI) and FIND—which became the lone representative from civil society.

Despite its noble intentions, the Committee had only two meetings and was unable to produce any report. This was probably due to the presence of military and police personnel in the said body and the gradual loss of interest among its members.

Notwithstanding these setbacks, the Ramos presidency still provided a fair, albeit temporary degree of stability. And though cases of involuntary disappearances were not totally eradicated during his term, they still did not reach Martial Law proportions, and even created a momentum that spilled right into the administration of his eventual successor Joseph “Erap” Estrada. During Estrada’s term for instance, the documented cases of enforced disappearance were reduced to 58. From this number of victims, 42 were recovered, with three found dead.²²

It must be pointed out, however that the above numbers only refer to a time period of three years—that is, from 1998 to 2001, since Estrada was unceremoniously booted out of office after a massive protest action now dubbed as EDSA II. It is for this reason that we can assume that the statistics might have gone higher if Estrada was not removed from Malacañang²³ and was instead allowed to finish the remainder of his term until 2004.

Arroyo Enters the Picture

Gloria Macapagal-Arroyo’s assumption of the presidency on 20 January 2001 was bloodless yet turbulent—an event whose constitutionality was affirmed two months thereafter when the Supreme Court decided to quash Estrada’s petition that



he be recognized as president-on-leave. This was also the final consequence of a long impeachment process that was abruptly ended after administration senators voted to suppress a “second envelope” allegedly containing bank information damaging to the former President.²⁴

The said transition was greeted by a mixed sense of hope and relief, especially by those coming from the intelligentsia and the middle class. This newfound hope, however, was eventually dashed after the Arroyo administration became involved in alleged instances of corruption and electoral fraud that have equaled, if not exceeded, those committed during the Estrada period.



The latest of these controversies was the revoked contract between the governments of the Philippines and China, which was dubbed by the media as the National Broadband Network (NBN) deal. It was first brought to public attention by opposition Congressman Carlos Padilla in a privilege speech in the House of Representatives on 29 August 2007.

The agreement, which amounted to US\$329.5 million, entailed commissioning a Chinese communications firm to develop a broadband internet network in the Philippines that would connect all local government units (LGUs) and government agencies on a nationwide basis. The deal was later awarded to Zhong Xing Telecommunications Equipment International Investment Ltd. (ZTE) through a contract-signing ceremony attended by President Arroyo held in Boao, China on 21 April 2007.

Padilla however, alleged that the said agreement was greatly one-sided and highly anomalous since the Philippine government gave ZTE undue advantage during the bidding process at the expense of a Filipino company and fellow competitor Amsterdam Holdings, Inc. (AHI).

The solon’s allegations were later corroborated by the testimonies of AHI co-founder Joey de Venecia; former National Economic Development Authority (NEDA) Director General Romulo Neri; and “star witness” Rodolfo “Jun” Lozada during their separate testimonies before the Senate Blue Ribbon Committee.

Most Distrusted President

Needless to say, all the allegations on the ZTE deal has not endeared President Arroyo to the Filipino public in any way but has instead plunged her popularity rating to a new low and made her administration even more vulnerable to political pressure and antagonism from various factions of the political opposition.

In fact, just as the ZTE-NBN controversy was beginning to unfold, research group Pulse Asia released the results of its October 2007 survey which indicated that 42% of respondents believe that President Arroyo was the most corrupt Philippine president since 1965, beating even the late dictator Ferdinand Marcos who was seven (7) notches below her. The same survey group further revealed that the country's Chief Executive had a disapproval rating of 51%, with only one (1) in every five (5) Filipinos saying that they actually trust President Arroyo.

The following December, another survey group called Social Weather Station (SWS) released its own study, finding that the President had a net satisfaction rating of negative sixteen percent (-16%), while another 48% had indicated dissatisfaction over her performance.

By the turn of the year, President Arroyo was still unable to address her sliding popularity (or at least in Metro Manila). This, after Pulse Asia once again released a survey conducted on February 21-24, showing that 76% of the respondents actually distrusted the President, and with her disapproval rating being pegged at 71%.

Continued allegations of corruption and malfeasance have also tarnished the country's international image, with Hong Kong-based group Political and Economic Risk Consultancy stating in March 2007 that the Philippines was the most corrupt among 13 countries in the Asian region. Then in November 2007, the World Bank threatened to cancel its \$232 million soft loan package for the Philippines, citing what they believed to be massive corruption within the government.

Threatened Presidency

Due to the growing dissatisfaction over the Arroyo administration, a number of groups have (since June 2005) began calling for her resignation, if not outright ouster, and have even devised plans to carry them out.

For instance, on 29 November 2007, in the midst of the on-going ZTE controversy, former putsch leader and now detained Senator Antonio Trillanes IV, along with a number of suspected military rebels, walked out of the Makati Regional Trial Court (which was hearing the rebellion charges against them) and marched all the way to the Manila Peninsula. There, amidst the luxury and opulence of that five-star hotel, the rebels held an impromptu press conference wherein they denounced



corruption in government and called for the expulsion of the President and her replacement by a transition government.²⁵

Four hours later, it was all over and the rebels capitulated; this after a military tank pounded the front gate of the building while government troops lobbed tear gas inside the hotel lobby. Luckily, no one died in that sordid and poorly executed affair.²⁶

The November 29 event was neither the first manifestation of open resistance to the Arroyo administration, nor is it likely to be the last. For throughout the second half of 2005, Metro Manila and the rest of the country's major cities were rocked by a series of massive demonstrations demanding the immediate removal of President Arroyo from office.

These events were precipitated by the disclosure of an alleged taped conversation between President Arroyo and a high-ranking poll official on their attempt to rig the 2004 presidential elections particularly in Mindanao to give her a lead of at least one million votes over her closest electoral rival.

Later, these protest actions were coupled by the mass resignation of 10 of her Cabinet members on 8 July 2005 and the filing of an impeachment complaint by opposition congressmen in the House of Representatives a few months thereafter. The impeachment attempt, however, was roundly defeated, courtesy of the administration's allies in the lower chamber of the legislature.

All these maneuvers and counter-maneuvers culminated on 24 February 2006, with President Arroyo issuing Presidential Proclamation 1017 declaring a state of national emergency to thwart a supposed attempt by some sectors of the military to "withdraw support" from the administration and join the large protest action scheduled on that day. This prompted the government to arrest the alleged ringleaders from the armed forces, and the subsequent filing of rebellion and insurrection charges against more than 50 Left-wing militants, including six (6) party-list congressmen.²⁷

Deadly Consequences

Due to President Arroyo's sheer unpopularity and the various attempts to remove her from office, the administration has been compelled to increasingly rely on its allies within the Armed Forces of the Philippines (AFP), particularly the top brass, to ensure its survival and shore up whatever political leverage it possesses over its ever-increasing opponents.

The Armed Forces, for its part, has responded enthusiastically and has expressed it by initiating a massive clampdown on the various factions of the militant Left. Believing that the underground Communist Party of the Philippines (CPP) and its armed component called the New People's Army (NPA) remains the gravest threat to

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the Philippine state,²⁸ the military launched Operation Plan *Bantay Laya* in 2002 (Arroyo's second year in office).

A scheme whose overall purpose is no less than the "strategic defeat" of the communist insurgency, the *OPLAN Bantay Laya* has (according to military sources) contributed to reducing the NPA force "from 12,000 fighters to about 5,700" and the "dismantling" of 13 guerilla fronts in 2007, with 17 more fronts expected to follow suit by the first quarter of 2008. The strategy seems to be working; for the President has recently boasted that she intends to "crush the insurgents and their 'nonsense ideology' before her term ends in 2010."²⁹

This new AFP offensive, according to political analyst Herbert Docena, also indicates a "significant shift in the mindset of key military officials," characterized by the "increasing refusal to distinguish between armed and unarmed leftists, between those who are in the underground guerilla movement and those in the open legal struggle."³⁰

Retired Navy Captain Danilo Vizmanos was even more frank, stating that the primary feature of *OPLAN Bantay Laya* is its "special emphasis on punitive measures in dealing with the *political component* of the insurgency," which includes "suppressive measures against Congressional Party List representatives and constituencies and 'neutralization' of legal institutions and organizations."³¹

For this reason, Nymia Pimentel Simbulan, Executive Director of the Philippine Human Rights Information Center (Philrights), saw a strong correlation between the dogged implementation of the said national security blueprint and the "unprecedented escalation of extrajudicial killings of progressives, labor and peasant leaders, human rights lawyers, media people and NGO workers" during the first half of 2006.³²

A similar point has also been raised by Amnesty International (AI) in its August 2006 report when it concluded that "the attacks are not an unconnected series of criminal murders but constitute a politically-motivated pattern of killings," adding that "members of security forces may have been directly involved in the killings, or else have tolerated, acquiesced to, or been complicit in them."³³

The consensus, in fact, on the country's human rights situation has been so depressing that a number of human rights groups now claim that on the average, at least one Filipino falls victim to extrajudicial execution every day.³⁴

Human rights violations are not only confined to actual and suspected members of the militant Left but have also been extended to members of the media, particularly those operating in far-flung provinces who are focused on "exposing the



involvement of top government officials in graft and corruption, extortion, smuggling, drug trafficking and other illegal activities."³⁵

This was pointed out by the *Philippine Daily Inquirer* when it released a report two years ago claiming that at least 49 journalists and media personnel have been murdered in the country in a span of five (5) years, from 2001 (when Arroyo first assumed the presidency) to 2006. Such staggering numbers were also seemingly corroborated by *Reporters sans Frontiers* (Reporters Without Borders) when it labeled the Philippines in 2005 as the second most dangerous country for journalists, second only to Iraq.³⁶

Déjà Vu?

Human rights violations are not isolated cases of abuse but are interconnected with other government infractions. These reveal the attitude of the state towards its own people and the lengths that it would go to preserve the power that it possesses.

It is not surprising therefore that the growing incidents of summary executions have been coupled with the upsurge in enforced disappearance. While the number may not have yet reached Martial Law levels, cases have been steadily on the rise since President Arroyo took over in 2001.

The human rights group, FIND, for example, has noted that from 2001 to October 2006, they have received 167 cases of reported "disappearances." Of this number, 128 cases have been verified, with 75 of the victims surfacing alive. These statistics are even higher than those of Arroyo's two immediate predecessors combined, where 145 cases of involuntary disappearance were documented.

For its part, the umbrella group *KARAPATAN* noted the ever-increasing incidents of involuntary disappearance under the Arroyo administration. When she first came to power in 2001, for instance, the said organization was only able to document seven (7) cases of enforced disappearance. This increased slightly the following year with nine (9) cases, and in 2003 with 11 cases.

The number, however, more than doubled in 2004, when 26 cases were reported, and in 2005 with 28 cases. By 2006, the number of cases skyrocketed to 76 and as of August 2007, *KARAPATAN* has pegged the number at 22.

Year	Number of Victims
2001	7
2002	9
2003	11
2004	26
2005	28
2006	76
2007 (as of August)	22

TABLE 2: KARAPATAN's data on enforced disappearances (from 2001 to August 2007).

Even the Commission on Human Rights has also noticed the increase, admitting that in 2006, their "outstanding cases" of enforced or involuntary disappearance had increased by 14, adding up to a total of 615 outstanding cases since 1980.³⁷

Because of the increasing trend in the number of involuntary disappearances being committed under the present administration, some human rights groups are now claiming that the violation of human rights has now become a policy of the state. KARAPATAN Secretary-General Marie Hilao-Enriquez, for instance, emphasized that:

There exists a nationwide state policy of execution and persecution—and that is the reason for all these killings, enforced disappearances and political persecution of so-called leftist leaders.³⁸ (*underscoring supplied*)

A similar idea has been proffered in the human rights publication *In Focus* when it asserted that:

The serious attacks against the people's civil and political rights during the past year by an embattled government indicate that the wielders of political power will do anything just to be able to hold on to that power. The use of State machinery will be maximized at all costs especially if the control over political power is endangered or threatened...Finding it hard to rule the "old way," the GMA government has shifted to the use of repressive measures to keep itself in power.³⁹

State of Denial

The government, however, has simply dismissed all these criticisms, stating instead in the *Philippine National Report to the Human Rights Council for Universal Periodic Review* that “the Philippine government has taken firm measures to address the problem of extrajudicial killings and enforced disappearances.” The Report further asserted that all means are being used to address such concerns, and that “bringing their perpetrators to justice and preventing such killings in the future, remains a priority of Government.”⁴⁰

The Philippine government has also identified the courses of action that it has undertaken to protect human rights. The Report, for instance, claims that “Human Rights Offices have been established in the Armed Forces of the Philippines (AFP), the Philippine National Police (PNP) and the National Bureau of Investigation (NBI).” In addition, “Women and Children’s Protection and Complaint Desks in all police stations and sub-stations are now in place nationwide.”⁴¹ As a result of these measures, “both government and civil society have indicated a significant drop in incidents for the past year.”⁴²

Such assertions, however, were severely criticized by Philippine NGOs, clarifying that despite their willingness “to participate and encourage a national consultation process with the State and the National Human Rights Institution (NHRI) in preparation for the UPR, the Philippine government and the NHRI have not taken any significant steps towards this process and have been either unwilling or unable to institute dialogue with civil society.”⁴³ This was best exemplified by the government’s arbitrary decision to remove the Philippine Alliance of Human Rights Advocates (PAHRA) and FIND from the Presidential Human Rights Committee (PHRC), a multi-agency coordinating body designed to ensure the government’s compliance with UN treaty bodies.

Human rights groups have argued further that human rights violations have continued unabated in the Philippines despite the enactment of numerous measures designed to curb These. This was clearly pointed out in an alternative report that they submitted to the Human Rights Council (HRC) for its first Universal Period Review (UPR) on 17-28 April 2008. In the said document, Philippine human rights NGOs asserted that:



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Members of Claimants 1081 discuss ways to lobby for the international treaty against disappearances.

While there are existing legal, constitutional, and institutional mechanisms that protect and promote human rights, these safeguards are constantly violated in actual practice by the military and law enforcement officials as they continue to disregard due process, abuse their power and commit violations of

human rights. The Philippine Congress and the Department of Justice have also been ambivalent in relation to their role in addressing the issue of human rights.⁴⁴

While the government has boasted that the Philippine legislature has already “enacted various human rights and human rights relevant laws,”⁴⁵ it has also clarified that these included the Human Security Act of 2007, which is supposedly meant to curb terrorist activities in the Philippines. This, however, has alarmed human rights NGOs in the country, saying that the law “violates the basic freedoms and civil liberties of the very people whom it is supposed to protect and secure.”⁴⁶

This was also a cause of concern for UN Special Rapporteur on Terrorism and Human Rights Martin Scheinin who, in a statement issued on 12 March 2007, urged the Philippine Congress to “reconsider the implementation of the law since it could have a negative impact on human rights in the country and could undermine the rule of law.”⁴⁷

This situation is further aggravated by the Philippine government’s inability to meet its commitments to the HRC, among which is the pledge to enact legislation which “would penalize acts of torture and of enforced disappearances, and protect the rights of internally displaced persons,”⁴⁸ since these are not considered as priority measures by the present administration.

An example of which is the anti-enforced disappearance bill which the government has yet to pass into law. Although several versions of the bill have been filed in Congress since 1995, not one has reached the President’s desk for possible approval.

At present, a new version has once again been introduced in the Lower House, this time authored by Representatives Edcel Lagman and Satur Ocampo. A separate version was also filed by Rep. Risa Hontiveros-Baraquel which includes non-state actors as possible perpetrators of enforced disappearance. But its advocates have to again start from scratch and go through the often tedious and cumbersome legislative process.

Because of its present attitude towards the issue of human rights, it is not surprising that the Philippine government has ignored the request made by the UNWGEID in 2007 to once again make an official visit to the Philippines at the soonest possible time. This was further compounded by its failure to sign and ratify a new international measure called the United Nations Convention for the Protection of All Persons from Enforced Disappearance.

Adopted unanimously by the UN General Assembly on 20 December 2006, the said treaty is a universally binding instrument that is meant to specifically address the issue of enforced or involuntary disappearance. It does so by making it "an offense under criminal law as it considers this widespread or systematic practice a crime against humanity."⁴⁹

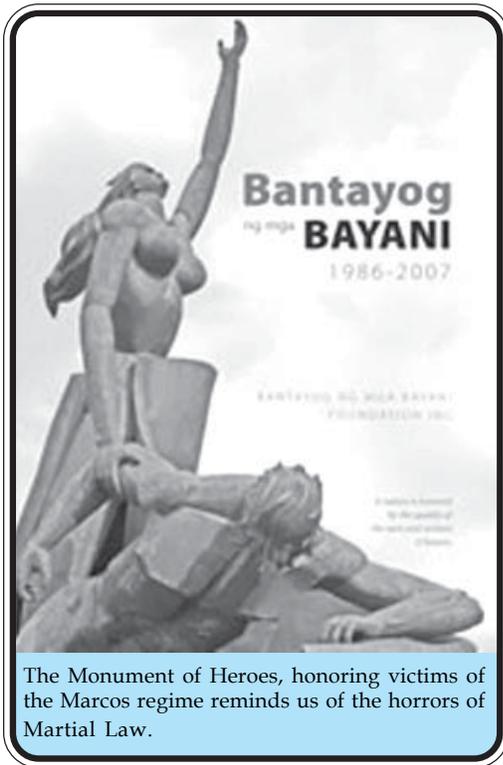
At present, the Convention has already been signed by at least 74 countries, four of which are in the Asian region, namely India, Japan, Azerbaijan and Mongolia and has even been ratified by Albania, Argentina, Honduras, Mexico and France. According to the International Coalition Against Enforced Disappearances, Germany announced its intention to ratify with a reservation on the right to information. The treaty has to be ratified by 15 more member-states if it is to enter into force.

Such inaction from the Philippine government, however, directly contravenes President Arroyo's earlier pledge to support the then draft treaty and enact the necessary domestic law that would criminalize the practice of enforced disappearance during a meeting with the members of FIND and the Asian Federation Against Involuntary Disappearances (AFAD) on 29 August 2001 in Malacañang. This commitment was later reiterated by then Vice President and Foreign Affairs Secretary Teofisto Guingona, who asserted that the Philippine government would do everything that it could to support the treaty.

But all is not doom and gloom for human rights, for certain segments of the Philippine society have begun to take notice of the grave issue of enforced disappearance. In July 2007 for instance, the Supreme Court, headed by Chief Justice Reynato Puno, organized a National Consultative Summit on Extrajudicial Killings and Enforced Disappearances, Seeking for Solutions.

Attended by participants from the different branches of government, as well as human rights organizations, civil society groups and a number of political parties,

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the Summit recommended the immediate ratification of the UN Convention for the Protection of All Persons from Enforced Disappearance and the enactment of a law to ensure its implementation.

This was then followed by the Supreme Court's decision a few months later on 25 September to approve the draft Rule on the *Writ of Amparo*, which provides " a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity." A ruling that took effect on 24 October 2007, the said Writ is supposed to protect people from extrajudicial execution and enforced disappearance thereby ensuring a person's right to life. Moreover, it prohibits government officials and agencies from merely denying custody of the disappeared persons and obliges them to do all possible means to search for the victim.

But such a decision by the high tribunal, while offering hope to many, has been derailed by no less than President Arroyo when she issued Executive Order No. 197, which instructs military officers to observe safeguards against the disclosure of military secrets and undue interference in military operations inimical to national security.

This, however, is somehow offset by the Supreme Court's Philippine Judicial Academy's on-going seminars which aim to deepen the level of understanding of the judiciary on the phenomenon of enforced disappearance. Civil society and academe-based organizations are also undertaking efforts to address this malady, such as the Ateneo Human Rights Center which recently conducted forensic trainings as well as seminars on extrajudicial killings and involuntary disappearances.

These efforts have had significant contributions in raising the awareness of the public and in placing the government under constant scrutiny. However, it remains highly unlikely that the present administration will alter its predisposition, especially now that the next presidential elections are less than two years away.

Views from the Heart

Unsurprisingly, the families of the disappeared have repeatedly expressed disappointment over the government's lukewarm attempt to find their missing kin and

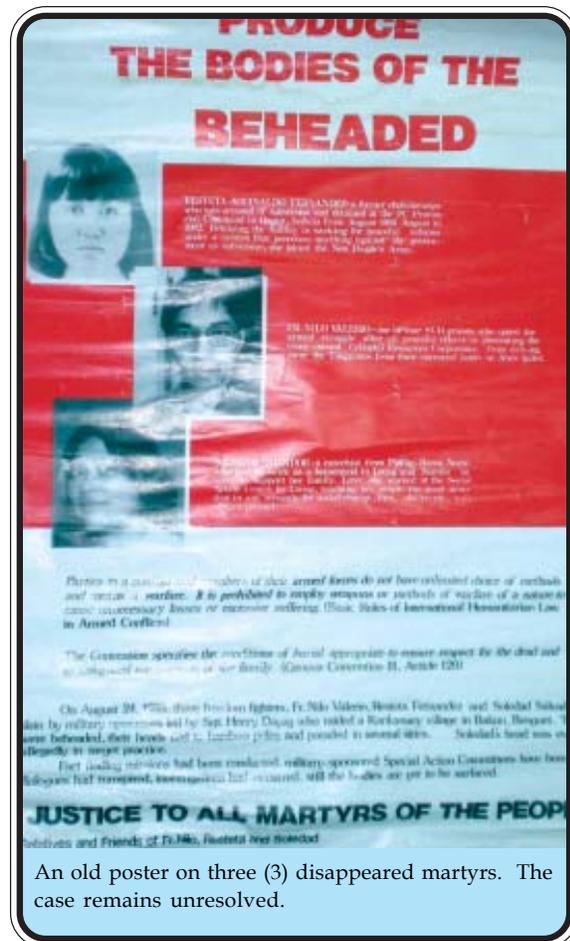
to prosecute those responsible for such dastardly acts. Yet, just as the ever-burning flame of courage of a wife of a disappeared is symbolically expressed in FIND's *Bantayog ng Mga Desaparecido* (Monument of the Disappeared), the endless love of the families to their *desaparecidos* keeps the flame alive in their hearts.

In a speech delivered during a public forum on enforced disappearance at the Ateneo Professional Schools, Jonas Burgos' mother Edita lamented over the administration's glaring apathy over her son's fate, saying that, "we have taken all the remedies available to us in a democratic country to find Jonas. (But) instead of helping us, the government is involved in the cover up. We have appealed, went to court, made an active search, joined mass actions, but Jonas is still missing."⁵⁰

Because of this growing perception of government inaction, the victims' families are often left feeling alone and isolated, or with no hope of relief from the state authorities. This creates a sense of helplessness among those who are left behind and a pervading atmosphere of insecurity shared by all the families of the disappeared. It is this impression of official neglect that prompted a wife of a Filipino *desaparecido* to declare that "the government, which should support human rights victims like me did not give us any support whatsoever."⁵¹

Such profound sadness is also laced with a tinge of the ironic, for the families are painfully aware that the tragedy that they have experienced had all occurred in a country that prides itself as Southeast Asia's bastion of democracy. This was certainly not lost on Ms. Edita Burgos when she pointed out that the "right to freedom, fought for by Jonas' father during the time of the dictatorship is the very right that is deprived of her son, in a so-called democratic country."⁵²

Due to the perceived unreliability of the state, the families have, most often than not, elicited security and support from elsewhere—most especially from relatives' associations, as well as the various NGO working on the issue of human rights and enforced disappearance. Through their modest resources and existing support



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network, the families are given the needed attention and assistance as they cope with the trauma of losing a loved one.⁵³

But apart from such psycho-social assistance, this vast network of civil society actors and social movement players also enable the families to search for their missing kin and pursue the cause of justice.

It must be pointed out however, that these small yet significant victories are just the first tentative steps towards greater social healing and overall justice. In fact, much remains to be done, for the people have yet to firmly address the structural ills that breed discontent and to end a climate inimical to personal dignity and human rights.

That journey is bound to be long and extremely difficult. And taking everything into account, it seems that the Filipino people's Long March to Justice has only just begun.



NOTES:

¹ It was later discovered that the vehicle had been impounded in 56th Infantry Battalion of the Philippine Army due to its alleged involvement in illegal logging activities.

² Jose Burgos has been hailed by the International Press Institute (IPI) as " World Press Freedom Hero."

³ Quoted in Dabet Castañeda (2007). "Jonas Burgos: The Son Makes the Headlines, Too" *Stop the Killings, Abductions and Involuntary or Enforced Disappearances in the Philippines*. Quezon City: IBON Foundation. p. 48.

⁴ Sison, Jose Maria (2001). *Makibaka para sa Pambansang Demokrasya*. Manila: Amado V. Hernandez Resource Center and College Editors Guild of the Philippines. p. 343.

⁵ Timberman, David (1991).

A Changeless Land: Continuity and Change in Philippine Politics. Makati: Bookmark. p. 63.

⁶ Marcos, Ferdinand (1978). *Revolution from the Center: How the Philippines is Using Martial Law to Build a New Society*. Hong Kong: Raya Books. p. 1.

⁷ Tiglao, Rigoberto (1988). "The Consolidation of the Dictatorship," in *Dictatorship and Revolution: Roots of People's Power*. Metro Manila: Conspectus Foundation. p. 26.

⁸ The term "indio" was used by the Spanish authorities to refer to the native inhabitants of the Philippines. For a more detailed discussion, see Ambeth Ocampo (2001). "1896 Philippines: The Racial Context of the Revolution" *Bones of Contention: The Bonifacio Lectures*. Pasig City: Anvil Publishing.

⁹ The actual start of the Revolution, however, remains a continuing debate among historians; with some saying that it began on 25 August, while others claiming August 26 as the more appropriate date. For further study on this topic, see Ocampo, as well as Teodoro Agoncillo (1990). *History of the Filipino People*. 8th ed. Quezon City: Garotech Publishing.

¹⁰ Agoncillo, Teodoro (1996). *The Revolt of the Masses: The Story of Bonifacio and the Katipunan*. Quezon City: University of the Philippines Press. p.162.

¹¹ Independence, however, was achieved at the expense of Bonifacio who was removed as leader of the Revolution by a faction loyal to Aguinaldo. He was then sentenced to death by a kangaroo court, and was immediately shot, somewhere in the mountains of Maragondon. According to his executioners, Bonifacio's remains were placed in an unmarked grave which is yet to be located up to this day, making him the perfect symbol of the modern-day *desaparecido*.

¹² Though the Philippines finally gained independence in 1946, it soon entered into an agreement with the United States allowing the latter to maintain military bases in the country for the next 99 years, in exchange for \$620 million in rehabilitation funds. American troops only withdrew in 1991, after the Senate of the Philippines decided not to renew the said agreement.

¹³ de Lima Leila (2008). *A Renewed Urgency to Adopt the UN Draft Convention for the protection of All Persons from Enforced or Involuntary Disappearance*. Speech delivered at the Forum on Enforced Disappearances organized by AFAD and the Ateneo Human Rights Center. 30 May 2008; pp. 1-2.

¹⁴ Timberman; op. cit., p. 223.

¹⁵ In the Philippines, salvaging has become the colloquial for extra-judicial killing.

¹⁶ See Timberman, pp. 167-197.¹⁷ The presidency of Fidel Ramos lasted from 1992 until 1998.

¹⁸ Rocamora, Joel (1994). *Breaking Through: The Struggle Within the Communist Party of the Philippines*. Pasig: Anvil Publishing. p. 171.

¹⁹ *Ibid.*, pp. 171-172.

²⁰ *Ibid.*, p. 185.

²¹ For a detailed account of the peace negotiations between the Government of the Republic of the Philippines and the MNLF, see Abraham Iribani. (2006). *Give Peace a Chance: The Story of the GRP-MNLF Peace Talks*. Magbassa Foundation/The Philippine Council for Islam and Democracy: Mandaluyong City.

²² These statistics are based on FIND's data.

²³ Malacañang is the official residence of the President of the Republic of the Philippines.

²⁴ For a more detailed account on the Estrada impeachment, see Amado Doronila. (2001). *The Fall of Joseph Estrada: The Inside Story*. Anvil Publishing, Inc.: Pasig City.

²⁵ Ricky Torre (2007). "The Aftermath" *Philippines Free Press*. 15 December 2007. p. 4.

²⁶ *BizNews Asia* (2008). "President vs. President." 31 January 2008. p. 6.

²⁷ Melencio, Sonny (2006). "Ousting Arroyo: Chronicle of the July and February Days in Manila" *Links*. Number 29, May-August 2006. pp. 107-108. See also Ricky Torre and Wendell Vigilia (2006). "1017: What Did She Achieve?" *Philippines Free Press*. 18 March 2006. p. 4.

²⁸ Docena, Herbert (2006). "Killing Season in the Philippines," in *Activist School*. 12 September 2006. p. 4.

²⁹ *Philippines Free Press* (2008). "Going for the Kill." February 9, 2008. p. 12.

³⁰ Docena, op. cit.; p. 5.

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- ³¹ Vizmanos, Danilo (2007). "Oplan *Bantay Laya*: US-Arroyo Regime's 'Final Solution'" Tujan, p. 15.
- ³² Simbulan, Nymia Pimentel (2006). "Civil and Political Rights Violations: When State Abuse Goes Too Far" *In Focus*. January-June 2006. p. 1.
- ³³ Amnesty International (2006). "Philippines: Human Rights, Political Killings and the Peace Process" *Activist School*. 12 September 2006. p. 12.
- ³⁴ Simbulan, op. cit., p. 3.
- ³⁵ *In Focus*. (2005). "Violence, Political Repression and Impunity: Survival Tools of a Struggling Regime." July-December 2005. p. 6.
- ³⁶ Simbulan, op. cit. p. 7.
- ³⁷ de Lima, op. cit., p. 3.
- ³⁸ Hilao-Enriquez, Marie (2005). "A Pattern of Killings in the Philippines: State Policy of Execution and Persecution Exists Nationwide" *Stop the Killings in the Philippines*. Quezon City: IBON Foundation. p. 11.
- ³⁹ *In Focus*. January-June 2005. pp. 16-17.
- ⁴⁰ Government of the Republic of the Philippines. (2008). *Philippine National Report to the Human Rights Council for Universal Periodic Review*. p. 13.
- ⁴¹ *Ibid.*, p. 2.
- ⁴² *Ibid.*, p. 13.
- ⁴³ *Joint Report by NGOs with U.N. Consultative Status and Endorsed by Various (29) Philippine Civil Society Organizations*. April 2008. p. 1.
- ⁴⁴ *Ibid.* p. 1.
- ⁴⁵ Government of the Republic of the Philippines. Op. cit. p. 3.
- ⁴⁶ Andag, Ramil and Vanessa Retuerma (2006). *The Anti-Terrorism Act in the Philippines: A Human Rights Critique*. Philippine Human Rights Information Center. Occasional Paper No. 1, November 2006. Quezon City, p. 32.
- ⁴⁷ *Joint Report by NGOs*; op. cit., p. 3.
- ⁴⁸ *Ibid.*, p. 3.
- ⁴⁹ Bacalso, Mary Aileen. (2008). *The United Nations Convention for the Protection of All Persons from Enforced Disappearance and its Implications to Human Rights in the Philippines*. Unpublished paper; p. 27.
- ⁵⁰ Tronqued-Burgos, Edita (2008). *Search For Jonas, A Year After*. Speech delivered during the Public Forum on Enforced Disappearance. Ateneo Professional Schools, Makati City. 30 May 2008. p. 3.
- ⁵¹ Monsanto, Clea (2005). "Suffer the Innocent" *Healing Wounds, Mending Scars*. Quezon City: Asian Federation Against Involuntary Disappearances. p. 112.
- ⁵² Tronqued-Burgos; op. cit., p. 3.
- ⁵³ For a more detailed study on the role of relatives' organizations in the healing process, see the collection of personal accounts which appeared in the book *Healing Wounds, Mending Scars*.



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SRI LANKA AMID THE TERROR OF DISAPPEARANCES

By Erlinda Timbreza-Valerio



Sri Lanka Amid the Terror of Disappearances

By Erlinda Timbreza-Valerio

The overriding belief in the sacredness of human life has been lost a long time ago in the beautiful island country of Sri Lanka. A taste for justice and peace has remained distant for our brothers and sisters in this part of the globe for decades. Their very situation speaks loudly to the conscience of their powerful government and to the global society appealing for support.

Enforced or involuntary disappearance is a phenomenon in Sri Lanka for almost half a century. Voluminous documents written by progressive Sri Lankan organizations and individuals as well as international human rights organizations and their members speak of this glaring reality. The phenomenon started with thousands of cases in the early 1970s when the country was still headed by a prime minister under the tutelage of the British government, hitting its peak with an estimated 60,000 *desaparecidos* during the so-called "terror years" in Sri Lanka from 1984 to 1994 and the phenomenon continues to this day.

The civil war wherein the Tamils fight for an independent Tamil Eelam or nation is being met with full force by the succeeding Sinhalese-headed governments under the guise of preserving national security. This climate perpetuates enforced disappearances and other forms of human rights violations. The presidents of the land were more preoccupied in preserving themselves and their parties in power than in giving much-needed attention to this dark reality. One or other president claimed that he/she responded to the situation but these were just scratches on the surface of the deeply-rooted problem.

In view of the above, this paper attempts to look into the roots of enforced disappearances in the country, the gravity and extent of cases over the years during the succeeding governments, the effects on the families of victims and what they have been doing to seek justice for their loved ones and heal themselves. It also looks at the succeeding governments' handling of this glaring expression of human beings' cruelty to fellow human beings. Some insights are posed at the end of this paper hoping that these may contribute to the initiation of fresh steps geared towards the resolution of this grave phenomenon.

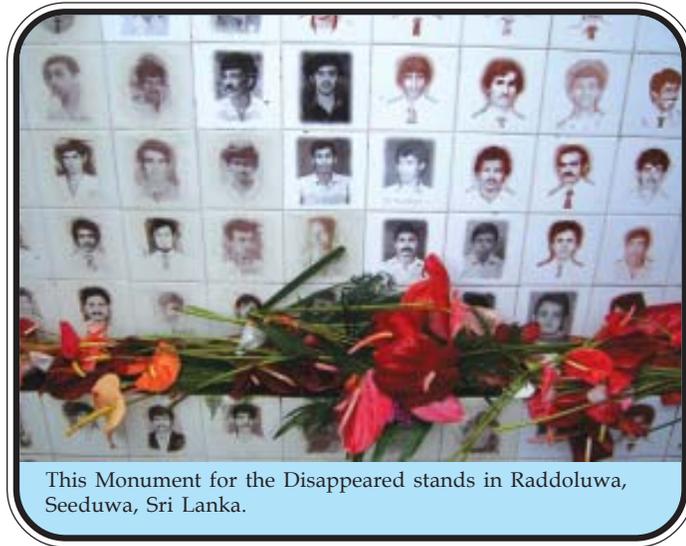
The Roots and Extent of Enforced Disappearance in Sri Lanka

In ancient times, Sri Lanka was known by a variety of names until it was called *Ceilão* by the Portuguese when they invaded the island in the 16th century. The name was later changed into an English word, Ceylon. The country became the Republic of Sri Lanka on 2 March 1972 when William Gopallawa became President.



An island nation in South Asia, Sri Lanka is located about 31 kilometers from the southern coast of India.

Known as the *Pearl of the Indian Ocean*, the country is home to around 20 million people. The Sinhalese are more than 74% of the population and are mostly Buddhist while the Tamils, mostly Hindu, are concentrated in the northern and eastern parts of the island forming the largest ethnic minority at about 18% of the population. The rest are smaller ethnic groups namely the Muslim Moors, Malays and the Burghers. However, the website *tamilnation.org* cites that the total population of the Tamils all over the world is more than 70 million. Most left their country because of government cruelty to them as a people. They remained in solidarity with the struggle for a *Tamil Eelam*. The country is famous for the production and export of tea, coffee, rubber and coconuts. Its natural beauty includes tropical forests, beaches and landscapes.



This Monument for the Disappeared stands in Raddoluwa, Seeduwa, Sri Lanka.

Because of its location in the path of major sea routes, Sri Lanka is a strategic naval link between West Asia and South East Asia, and has been a center of Buddhist religion and culture since ancient times. At present, Sri Lanka is a multi-religious and multi-ethnic nation, with nearly a third of the population following faiths other than Buddhism, notably Hinduism, Christianity and Islam. After centuries of rule by local kingdoms, parts of Sri Lanka were colonized by Portugal and then the Netherlands at the beginning of the 16th century. The control of the entire country was ceded to the British Empire in 1815. The British established the city of Colombo as the administrative center and established modern schools, colleges, roads and churches that brought Western-style education and culture to the people.

By the 1930s, increasing grievances over the denial of civil rights, mistreatment and abuse of natives by colonial authorities gave rise to a struggle for political independence. Finally, after peaceful negotiations, the British granted the country's independence in 1948. The post of Prime Minister of Ceylon was created in the same year. During the World War II, Ceylon became an Allied military base. Thousands of soldiers committed to the war against Japan in Southeast Asia were stationed in the country.

Presently, Sri Lanka is divided into nine provinces and 25 districts. Each province is administered by an elected provincial council. The government is a mixture of presidential and parliamentary systems. Elected for a six-year term, the President is the head of state, the commander in chief of the armed forces and the head of

government. The military of Sri Lanka is composed of the Army, the Navy and the Air Force administered by the Ministry of Defense. In the exercise of duties, the President is responsible to the Parliament, which is a 225-member legislature. S/he appoints and heads a cabinet of ministers composed of elected members of parliament. The President's deputy is the Prime Minister, who leads the ruling party in parliament and shares executive responsibilities, mainly in domestic affairs. The president is bestowed with overwhelming powers. S/he may summon, suspend, or end a legislative session and dissolve Parliament any time after it has served for one year. Since 1948, Sri Lanka has been a member of the United Nations and the South Asian Association for Regional Cooperation.

Sri Lanka characterizes itself as a democratic socialist republic yet the phenomenon of enforced disappearances has continued and cases of enforced disappearances are recorded by the Sri Lankan Police as "minor offences."¹ To understand more deeply the roots of the conflict, the paper entitled; "Sri Lanka: Caste of Mind and the Social Organisation of Sri Lanka since the 9th Century A.D." written by Basil Fernando, ² a Sri Lankan and director of the Hong Kong-based Asian Human Rights Commission (AHRC), offers some answers:

"The essential aspects of the caste system in India are that: (a) a person's occupation is determined by birth, (b) there cannot be intermarriage between persons from different castes, this is called the *principle of endogamy*, (c) that therefore your caste cannot be altered, (d) the positions and privileges each person has is determined by caste and that these positions must be demonstrated externally by the language used to address each other, by dress codes and all areas of life style, and (e) therefore, the hierarchical form of society which accepts these distinctions are more conducive to the making of a harmonious society. On these basic principles of caste, there was no distinction in Sri Lanka and India. There was also no distinction in this regard in the way caste was practiced among the Sinhalese and the Tamil communities in Sri Lanka itself.

Within the caste based societies, the idea of common good is absent. In fact, there is nothing in common. Everything is defined and understood in the context of each caste. For the highest caste the concern is for the absolute privileges and the good of their caste. The idea of the good of the others belonging to other castes does not enter into the equation at all. Thus, the absence of the concept of common good makes the idea of democracy alien to a caste-based society. The recognition of an area in political, social, and a cultural milieu which recognizes aspects of common good is a core concept of democracy. Therefore it is natural for a caste based



society to have centuries-old habits which resist the introduction of any concept of common good.

The caste system is a complete rejection of the collective. Each caste exists as a fragment and therefore a caste based society is by its very definition and nature, a fragmented and divided society.

When for over two millenniums in India and at least for nine centuries in Sri Lanka, the idea of caste was entrenched separating one caste from the other in absolute terms, the mental framework or the mindset that has been created by such long term practices and routines has created the resistance to the development of a civic consciousness based on the recognition of self and the other. Thus, there is a conflict between the centuries old mindset that exists in the country and the basic concepts of the legal system which was introduced after the arrival of colonial powers."

In view of the above, the Sinhalese have been composed of several castes and so with the Tamils for nine centuries. Nonetheless, the Tamils assert that they were living as a people with a separate political system and culture and had a homeland of their own prior to the coming of the European colonizers. Furthermore, since 1948 when it gained independence from Great Britain, up to 1972, the country was under nine successive prime ministers who were all Sinhalese. This aggravated the strife between the Sinhalese and the Tamils as the latter felt they were increasingly being left out of government. Taking all these into consideration, the prevailing situation in Sri Lanka breeds enforced disappearance and other human rights violations.

In 1958, two (2) cases of enforced disappearance were already recorded. This was during a state of emergency declared by the government under Prime Minister Solomon Bandaranaike to quell the first massacre of Tamils conducted by the Sinhala community. The Sinhala opposed an agreement between the government and the Tamil political leaders. The victims were Arlis Silva and David Silva, both of whom were arrested by the police under the dreaded Emergency Regulation (ER).³

On 1 July 1960, the people elected Prime Minister Sirimavo Bandaranaike, the first female head of government and the mother of Chandrika Kumaratunga, who later became president. Sirimavo Bandaranaike served her term until 27 March 1965 when she was replaced by Dudley Shelton Senanayake who was prime minister until 29 May 1970. The lady prime minister was restored to the post on 29 May 1970 and served until 22 March 1972.



The phenomenon of enforced or involuntary disappearance started in Sri Lanka in the 1970s. In 1971, disappearances in large numbers started to occur during the socio-economic rebellion of an organization of Sinhalese youth called the *Janatha Vimukthi Peramuna (JVP)* People's Liberation Front in the southern region of Sri Lanka. The army and the police abducted hundreds of young people. Most of them disappeared while others were killed. The JVP revolt was brutally crushed by the coalition government composed of the Sri Lanka Freedom Party (SLFP) and two parties led by Prime Minister Bandaranaike. Political activists were harassed and kept in detention for long periods while disappeared persons were estimated to be around 17,000 during this period. International human rights organizations were not allowed to visit the country to monitor the massive human rights violations reportedly perpetrated by agents of the state.

The Phenomenon of Enforced Disappearances Under the Succeeding Presidencies

When Ceylon was named the Republic of Sri Lanka on 2 March 1972, William Gopallawa became the President. Gopallawa started to dialogue with all ethnic groups and tried to unite them. However, with the bitter unresolved past of 1970-1971, coupled with the Tamils' continuing fight for self-determination, riots broke out in 1977. The government made a concession to the Tamils by lifting the policy of standardization for university admission that had driven many Tamil youths into militancy. But the militants considered this insufficient. They went on with their struggle even while they were violently attacked. By this time, it had become clear that what the Tamils wanted was not piecemeal solutions but to live as a people in Tamil Eelam, a nation independent from the Sinhala government. Some Tamil writers further state that the name "Sri Lanka" is only meant for the Sinhalese.

Meanwhile, Richard Jayawardene, who was a founding member of the United National Party (UNP) and was active in politics from the early 1940s made use of the situation to bring himself to power. Exhibiting overwhelming anger on what he called the government suppression of peoples' rights, he won a sweeping victory as Prime Minister in the election of 1977. Soon after that, Jayawardene drew up a national constitution which created an Executive President with overwhelming powers. When this was adopted in February 1978, Gopallawa stepped down from office and Richard Jayawardene became the first Executive President of Sri Lanka.

Not long after Jayawardene was catapulted to power, his government became even more repressive than that of Gopallawa. By the 1980s, the Tamil resistance to the repressive economic policies intensified and widened. Some politicians and the majority of the Sinhala business community divided the people based on their own selfish interests so that the resistance was not a united people's campaign against the government but by groups. Meanwhile, Jayawardene crushed the peaceful attempts of the Tamils to win their rights by democratic means including peaceful protests. In retaliation, the Tamils organized in 1983 the militant youth movement



called the Liberation Tigers of Tamil Eelam (LTTE) which decided to meet government repression by force.

As the separatist rebellion launched by the LTTE intensified and spread from the north to the northeast of the country, the government became increasingly violent and a trend of arrests under the cover of national security laws resulted in big numbers of enforced disappearances and extrajudicial killings. The president passed the Prevention of Terrorism Act (PTA) in 1979 giving the police sweeping powers to abduct and detain people on mere suspicion. This further escalated the ethnic tensions and soon, Jayewardene claimed that he needed additional powers to deal with the militants. He held a referendum to cancel the 1983 parliamentary elections and induced the 1977 parliament to continue until 1989. He also passed a constitutional amendment barring from Parliament any MP who supported separatism thus, eliminating the main opposition party, the Tamil United Liberation Front (TULF). Once again, this created havoc in the country at the expense of the common people.

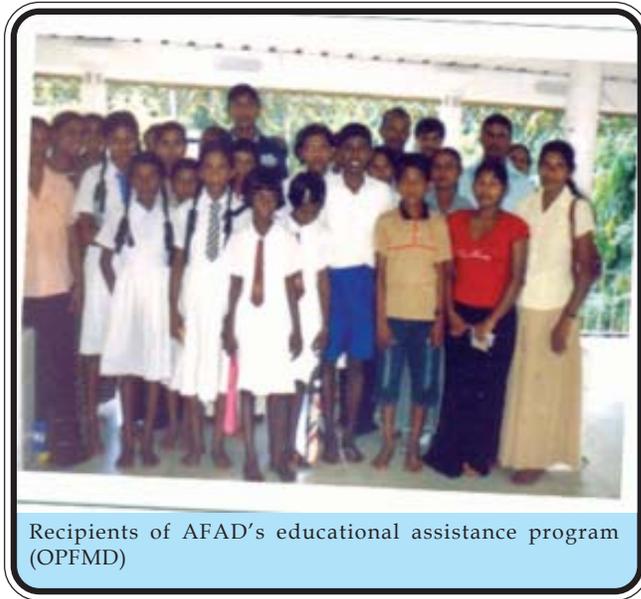
As the LTTE was rallying the Tamils in the north and northeast of Sri Lanka, the Sinhalese JVP from the southern region launched its second uprising. Overwhelmed by two simultaneous attacks, the government responded with all force through its Emergency Laws and the PTA to crush the LTTE and the second rebellion of the Sinhalese youth. In retaliation, the LTTE intensified its campaign by shifting from guerilla warfare to a traditional war against its enemy. These series of events gave birth to the so-called terror years in Sri Lanka from 1984 to 1994. The government files have no complete record as to how many persons disappeared or were killed during the terror years. Based on the estimate of non-governmental organizations, more than 60,000 persons disappeared. Some documents from this period speak of burned dead bodies piled on top of one another in various parts of Sri Lanka while rivers turned red from the victims who were mercilessly thrown into them. No one was safe at the time as families and relatives of victims of enforced disappearance reported that their loved ones were abducted on mere suspicion.

The government's security forces, police and paramilitary squads continued with a campaign against suspected members of both the JVP and LTTE. The so-called "capture and kill campaign" included political opponents of the government as well as



Indian Prime Minister Rajiv Gandhi and Sri Lankan President J.R. Jayawardene sign the Indo-Sri Lankan Agreement. (Photo taken from: <http://www.tamilnation.org>)

RECLAIMING STOLEN LIVES



personal enemies of individual strongmen of the government. Incidents of extra-judicial assassinations, disappearances and torture escalated dramatically. The parliamentary and presidential elections were held in 1989 and 1990 respectively during the JVP rebellion during the state of emergency which had been declared. Most of the persons who disappeared were taken into custody either under the PTA or Emergency Regulations which violated all internationally accepted human rights standards.

The war went badly for the government as the LTTE secured possession of Jaffna and most of the northern provinces. The army counter attacked with an offensive that threatened to re-take the city at the cost of many civilian casualties. Jayewardene had to halt the offensive after pressure from India urged a negotiated solution to the conflict. Jayewardene and Indian Prime Minister Rajiv Gandhi concluded an accord which provided for the devolution of powers to Tamil dominated regions and would provide for the establishment of an Indian peacekeeping force in the north. The LTTE looked at the accord as one that fell short of a separate nation and rejected it. On the other hand, the Sinhala strongmen in and out of government were outraged by both the devolution package and the presence of Indian troops in Sri Lanka.

It was around this time that the Organization of Parents and Family Members of the Disappeared (OPFMD) was formed by activists and members of families of disappeared victims. The OPFMD faced many challenges including threats to the lives of its officers and members but the organization continued with its justice campaign. OPFMD mobilized the families of the victims and other people against the mass killings and disappearances and drew the attention of the government and the international community. The magnitude of the massacres and enforced disappearances slowly abated as the campaign for justice intensified asking the government to take responsibility for the human rights violations more particularly the enforced disappearances it had committed.

After much pressure and persuasion from the local and overseas human rights organizations, the president decided to initiate a Presidential Commission of Inquiry on the Involuntary Disappearances of Persons. This was implemented and organized on a territorial basis only after his term. Jayewardene finally retired from politics in 1989. By the end of his term, his legacy was bitterly divisive in terms of the



ethnic question. Sri Lanka was then facing not one but two civil wars, both featuring unprecedented levels of brutality at the expense of the common people.

The second executive president, Ranasinghe Premadasa, was formally inaugurated on 2 January 1989. Originally from the Labour Party, he transferred to the more popular moderate United National Party (UNP) in order to get elected. Premadasa became popular during his tenure as Minister of Broadcasting under Dudley Senanayake's cabinet. He turned Radio Ceylon, the oldest radio station in South Asia, into a public corporation named the Ceylon Broadcasting Corporation on 5 January 1967.

Some observers say that the new president did not zero in on the key issue of Sri Lanka which is the ethnic question and instead, focused on specific problems. He established a shelter for the poor after the United Nations declared a Year of Shelter. His policies included Jana Saviya, the instrument he used to help the poor, a foster parents scheme, the mobile secretariat whereby he took the central government bureaucracy to the peasants, the Tower Hall Foundation for drama and music and the pension schemes for elder artists. On the economic front, he initiated the garment industry project which aimed to provide employment in the villages and earn foreign exchange.

As soon as Premadasa assumed office, he faced a rebellion in the south from the Sinhala-nationalist and Marxist JVP. His security forces brutally put down the revolt and killed many JVP leaders and members. In the north, he faced the LTTE which occupied the same area as the Indian Peace-Keeping Force. With the unpopular Indian presence on the island, Premadasa eventually requested India to leave. When India left in 1990, the government's war with the LTTE intensified and enforced disappearances escalated. As a whole, Premadasa met very little success in dealing with Sri Lanka's ethnic problems. Premadasa's regime was cut short when he was killed by a suicide bomber on 1 May 1993, during a May Day rally in Colombo. This is widely considered the responsibility of the Tamil Tigers.

As early as 1992, no less than the UN Working Group on Enforced or Involuntary Disappearances (UNWGEID) declared that Sri Lanka, with approximately 12,000 documented cases of involuntary disappearances, had the highest number of recorded involuntary disappearances in the world. While a large figure, the number still falls short of the NGO estimate of about 60,000 persons who had disappeared or were extrajudicially executed during the terror years. The figure does not include the thousands who were detained and tortured.

After Premadasa's death, Dingiri Banda Wijetunga became acting President until the Parliament convened to elect a successor. Wijetunga was unanimously elected by the Parliament to complete the remaining term of Premadasa. The Kandyan peasant was sworn in as the third executive President of the country on 7 May 1993. Observers say that President Wijetunga did his work in his own simplistic fashion and



he offered a relatively more democratic climate in contrast to Premadasa's dictatorial rule.

Wijetunga's regime coincided with the rise of Chandrika Kumaratunga from the ranks of the Sri Lankan Freedom Party (SLFP). Being the daughter of two Prime Ministers, she was very popular and was known to be charismatic and dynamic, a sharp contrast to the president. Soon, Wijetunga appointed Kumaratunga as Prime Minister. Even though Wijetunga was bestowed with wide powers under the Constitution, he chose not to exercise much authority letting the Prime Minister manage the internal affairs of the country. Maximizing such an opportunity, Kumaratunga gained wider and wider popularity.

In the elections in November 1994, Chandrika Kumaratunga was elected president by an unprecedented majority. According to some writers, Kumaratunga was always equipped with the words that each group of people wanted to hear so that some sectors hoped they would have a different president in her. As she took office, human rights organizations in different parts of the world watched how she would handle the thousands of cases of enforced disappearance and other human rights violations and the continuing bloody ethnic conflicts in her country.

During her early speeches, the new president admitted the mistakes of the previous governments and promised to resolve these cases during her term. To the Tamil community and other ethnic groups, she promised autonomy and devolution of powers and to the Sri Lankan people, she promised to seriously work for the union of regions and put an end to enforced disappearances and other human rights violations.

During Kumaratunga's regime, the three Presidential Commissions of Inquiry which were planned earlier were formed and they received about 30,000 cases of involuntary disappearance. Although they were not able to finish their work, the Commissions submitted comprehensive reports in September 1997. The investigation of some 10,136 remaining complaints from the old cases was entrusted to a Fourth Commission appointed on an island-wide basis but its mandate did not include cases under the Kumaratunga government. All in all, about 4,000 perpetrators were identified, about 500 were indicted and a handful was convicted. None of the identified senior officers were prosecuted.

Around 16,000 additional cases of disappearances that had not been reported to the previous Commissions were brought to the All-Island Commission. But since its mandate did not cover new cases, the Commission did not entertain them. The findings of the three Commissions of Inquiry were published together with their recommendations for implementation by the government but these were not acted upon.

After the LTTE unilaterally ended the peace talks with the government in April 1995, several cases of disappearance were reported in the capital of Colombo and the eastern region of the country. The number increased dramatically when the armed



forces regained control over the Jaffna Peninsula. The reported cases of enforced disappearances in this period were 78 in 1995, 623 in 1996, and 92 in 1997 but again, NGO estimates are much higher.

A special Board of Investigation into the disappearances in the Jaffna Peninsula was appointed in 1997 which investigated a total of 2,621 complaints, traced more than 220

disappeared persons and identified a number of perpetrators. In the meantime, the Human Rights Commission of Sri Lanka, with powers vested in it under Section 11(b) of the Human Rights Commission's Act No. 21 of 1996, appointed a Committee to inquire into the complaints it had received regarding disappearances and removal of persons from their residences in Jaffna, Kilinochchi and Vavuniya Districts during the period of 1990 to 1998. This Committee was mandated to investigate among other things, whether the persons in that list were the same persons who disappeared in the North. After a long deliberation and several fact-finding trips to the Jaffna Peninsula, the Committee submitted a summary report in a meeting held in Colombo. The Committee revealed that it was not able to implement its mandate which was that of finding evidence for identifying the person or persons responsible for the alleged disappearances because of the non-cooperation of the army and other government forces. The liberty not to comply with the demands of a fellow government agency like the Human Rights Commission is another indicator of the power of the armed forces.

In October 1999 Chandrika Kumaratunga called an early presidential election. During her final election rally at the Colombo Town Hall premises on 18 December 1999, she lost vision in her right eye (permanent optic nerve damage) in an assassination attempt allegedly by the separatist Tamil Tigers. Kumaratunga defeated Ranil Wickremasinghe in the election held on 21 December 1999 and was sworn in for another term on 22 December of that year. In December 2001, the president suffered a setback in the parliamentary election. Her People's Alliance lost to the UNP and her political opponent Ranil Wickremasinghe took office as Sri Lanka's new Prime Minister. She continued as President of Sri Lanka although her relationship with Wickremasinghe was strained. This time, Sri Lanka had to contend with a situation



Sri Lankan women, holding photos of their loved ones, call for justice.

wherein its government was acutely divided due to the differences between the president and the prime minister and their respective parties.

In February 2002, Wickremasinghe and the LTTE signed a permanent ceasefire agreement to pave the way for talks aimed at ending the long-running conflict. In December of that year, the prime minister and the LTTE agreed to a ceasefire and hold peace talks in Norway. By then, President Kumaratunga believed that Wickremasinghe was being too lenient towards the LTTE. In May 2003, she indicated her plan to sack the prime minister because she felt that he was making too many concessions to the rebels. On 4 November 2003, while Wickremasinghe was on an official visit to the United States, Kumaratunga suspended the parliament and deployed troops to take control of the country, effectively putting it into a state of emergency.

The move, which was widely believed to be a wrong strategy (and which Kumaratunga had later accepted as one of her mistakes during her term) gravely weakened the Kumaratunga government. In an effort to re-strengthen itself, Kumaratunga's PA and the leftist JVP (People's Liberation Front) formed the United People's Freedom Alliance (UPFA) in January 2004. Having won the election held on 2 April 2004, the UPFA chose Mahinda Rajapaksa as prime minister. For the first time in history, the JVP which was an underground organization a decade earlier became a partner in the Sri Lankan government. In June 2005, the JVP unprecedentedly left Kumaratunga's government. This was due to a disagreement regarding a joint mechanism with LTTE rebels to share foreign aid to rebuild the *tsunami*-devastated Northern and Eastern areas of the country which killed more than 40,000 people.

Kumaratunga's term was to end in 2005. The president argued that since the 1999 election was held a year earlier, she should be allowed to serve another year. But this was rejected by the Supreme Court so that Kumaratunga's term ended in November 2005. During the Kumaratunga government specifically from 1995 to 1999, temporary death certificates were issued to 15,000 *desaparecidos* mainly during the terror years. In 2002, the government provided the amount of Rs. 25,000.00 (\$240) to 16,324 families of the disappeared. In dire need, the families accepted the amount although they knew that no amount of money could compensate for the loss of their loved ones. By the end of Kumaratunga's term, thousands of victims of enforced disappearance during Sri Lanka's "terror years" were documented. Consonant with the governments before her, Kumaratunga was not able to resolve the bloody conflict among the ethnic groups, the civil war continued and government armed forces and security groups responded in the same cruel manner.

In the 2005 election, Mahinda Rajapaksa succeeded Kumaratunga as president. Together with the prime minister, Ratnasiri Wickremanayake, he took office on 21 November 2005. Sources say that Rajapaksa's victory was largely due to the mass support from the southern Sinhala-Buddhists. In the north-east, the LTTE



called for a boycott of the polls from Tamils in areas under its control and forcibly prevented a large section of the people from voting.

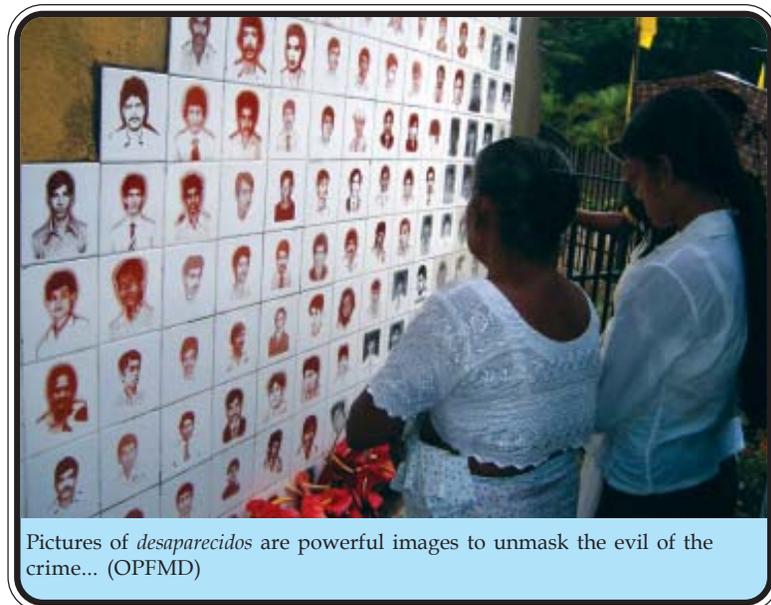
When the new president assumed office, the politics in Sri Lanka was controlled by rival coalitions led by the SLFP which Rajapaksa heads, the United National Party (UNP) led by former prime minister Wickremesinghe, the Marxist-Nationalist JVP and smaller Buddhist, socialist and Tamil nationalist political parties that oppose the separatism of the LTTE but demand regional autonomy and increased civil rights. M.C.M. Iqbal, the National Liaison Officer of the International Independent Group of Eminent Persons (IIGEP) wrote:

“The slender majority the President received at the parliamentary election compelled him to rely on the support of radicals such as the JVP and the JHU who did not believe in negotiating for a peaceful settlement with the LTTE. Subsequent actions of the President such as the appointment of persons known to be favourites of the Sinhala chauvinists to key posts as that of the Prime Minister, the Commander of the Army and the Adviser on Police Affairs sent wrong signals to the Tamils and the militants. These actions were capped by the appointment of the President’s brothers as Defence Secretary and his Chief Adviser.”⁴

President Rajapaksa was standing on a shaky ground from the beginning of his term. On one hand, he had to please the powerful people who supported him and his first appointments to the top posts, according to some observers, are seen as concessions to the group. These actions on his part must anger the LTTE as seen in its succeeding retaliations.

When he was still prime minister, President Rajapaksa faced allegations of corruption in relation to USD 1Million supposedly for *tsunami* victims allegedly transferred to his private account. Soon after he was elected to the presidency, the case was dismissed for lack of evidence.

Unlike some members of his coalition, Rajapaksa used to support peace talks with the Tamil Tigers as a means of



Pictures of *desaparecidos* are powerful images to unmask the evil of the crime... (OPFMD)

ending the civil war. However, immediately following his election victory, a series of mine blasts blamed on the LTTE in the north claimed the lives of more than 150 servicemen. In addition, the LTTE closed a reservoir supplying water to 15,000 people in government-controlled areas on 21 July 2006. The president publicly warned the LTTE not to "push him to the wall." Soon, the military launched a series of offensives against the LTTE, bringing the entire reservoir under government control and driving out the LTTE from almost the whole eastern province. With these increased military activities, a 40% increase in defense spending was projected for 2007.

In his speeches, Rajapaksa never fails to mention what he calls his human rights background and his supposed continuing concern for human rights in Sri Lanka. Below is a part of his first presidential speech at the 61st UN General Assembly in September 2006:

"Having been a human rights campaigner at the grassroots level throughout my political life, it was natural that my new government should be committed to carrying the message of democracy to all corners of our multi-ethnic, multi-cultural and multi-religious country. Democracy, equity and prosperity is our clarion call. In addition, my country has been influenced by the core Buddhist values of non-violence, loving kindness, compassion, equanimity and mindfulness. "

President Rajapaksa also stated, "Given my personal commitment to the promotion of human rights at both local and international levels, the establishment of the Human Rights Council with enhanced status and capacity to promote and protect human rights worldwide is a cause for delight. I am happy that Sri Lanka was elected to the Council in May this year. In honouring a pledge made at the Presidential election last year, we have already started work on crafting a Human Rights Charter in Sri Lanka. Consistent with our goal of safeguarding human rights, my government will establish an international panel to observe investigations into certain alleged human rights violations which my Government has already condemned."

During its candidacy to the UN Human Rights Council for a two-year term, the Sri Lankan government pledged to form a new Human Rights Ministry and introduced a Human Rights Charter. But the barely two and a half year-old Rajapaksa government is already being criticized from all sides because of the growing numbers of victims of enforced disappearances and other violations on human rights and humanitarian law. M.C.M. Iqbal of the IIGEP cited:

"Sri Lanka has had a history of large numbers of persons having disappeared during the period prior to 1995. This phenomenon has re-appeared once more. A Civil Monitoring Committee is



engaged in monitoring current involuntary disappearances, abductions, extrajudicial killings, arbitrary arrests and detentions in Sri Lanka. They have recorded that 88 persons have been either abducted or gone missing in and around Colombo between 1st August 2006 up to 9th April 2007. The Human Rights Commission received 4,787 complaints of human rights abuses in 2006, including 3,128 regarding illegal arrests, torture and disappearance. It received 419 complaints of disappearances in the Jaffna Peninsula alone since December 2005.”⁵

The above mentioned human rights violations are attributed to the government's security forces, the LTTE and the *Karuna* Group. *Karuna* being once an LTTE officer, said to have defected to the government in 2004.

Since October 2006, the UN Working Group on Enforced or Involuntary Disappearances (UNWGEID) has repeatedly requested the government for a visit to the country in 2007. The government responded that a visit was not possible at that time because other UN officers were visiting the country. Based on its 10 January 2008 report, the UNWGEID has had a number of communications with the government and also a number of meetings with government representatives outside Sri Lanka in 2007. Under the standard procedure, the UN body transmitted to the government 107 cases that occurred from January 2006 to April 2007 and sent 37 cases under the urgent action procedure. However, the government responded to only four cases. The UNWGEID also cited that local NGOs informed the body concerning obstacles they encountered in the implementation of the Declaration and again, the body transmitted this to the government. At the end of the period, the UNWGEID had 5,516 outstanding cases under review. Among others, the Working Group also cited in the same report that it is encouraging the Government to report on the implementation of the recommendations from the Working Group visits to Sri Lanka in 1991, 1992 and 1999.

A quick glance on the 2007 human rights report made by several groups shows that the roots of enforced disappearance in the country at present are centered in the same ethnic strife and most of the victims are Tamils.



A mother of a young ethnic Tamil man who was abducted and killed by unknown perpetrators in May 2007 mourns outside a hospital in Vavuniya. (Photo taken from: <http://hrw.org> by Reuter 2008)



A woman weeps as she holds a picture of a missing relative during a protest in Colombo, Sri Lanka. (Photos taken from: AP Photo/Enranga Jayawardena)

“The vast majority of victims of the “disappearances” and abductions have been young Tamil men, although some Sinhalese and Muslims have also been targeted. Statistics presented by the Civil Monitoring Commission, Free Media Movement, and Law and Society Trust suggest that of the cases where the ethnicity of the victim was known, approximately 80 percent of the “disappearance” victims were Tamils, 1.8 percent were Sinhalese,

and 3.5 percent Muslims. Men represented 98 percent of all missing persons. Most but not all of the reported “disappeared” were young—according to Law and Society Trust, 60 percent of the victims were 30 years old or younger.⁶

Effects of Enforced Disappearance on the Victims’ Families and Their Response to the Situation

Based on recently documented cases, the manner by which people disappear today is more or less the same as in earlier years. Some victims are forcibly taken in broad day light in public places, in their work places or while people are on their way to visit relatives and friends. Others are taken in the darkness of the night in the presence of their crying parents, brothers and sisters or wives while still others are suddenly separated from their families during the aerial bombings or are caught in the crossfire during the bloody conflicts between the government and rebel forces.

The disappearance of a victim happens under different situations but in terms of effects on victims’ families and their reaction to this cruel situation, there seems to be more commonalities than differences. After a day has passed without any trace of the missing loved one, the family begins to panic and start looking for the person in all possible places they can think of. Hoping that the disappeared is still alive, the family asks friends or go to the police detachments and offices of the army and security forces. Others report the cases to the Human Rights Commission.

Despite the threats and harassment to their own lives, many families who were met by this writer during two separate visits to Sri Lanka in the late ‘90s and in



2000 cited that they have been searching for their loved ones for years. Likewise, sympathetic Sri Lankans including professionals have been exerting efforts to help, leading to the formation of human rights organizations in the country. Despite the continuing repression and even killing of some of their members, human rights NGOs in Sri Lanka have remained steadfast in their mission of campaigning for justice for the disappeared.

As cited above, one organization to note is the Organization of Parents and Family Members of the Disappeared (OPFMD) which was founded by families and relatives of victims at the height of the so-called terror years in the late 1980s. The organization has been active in documenting cases of involuntary disappearances, in lobbying the government and demanding reparation for the victims' families. OPFMD also joined other organizations for the disappeared in Asia through the Asian Federation Against Involuntary Disappeared (AFAD) in the justice campaign on the involuntary disappearance issue at the regional and global levels.

Most victims of involuntary disappearance come from poor families but some, particularly students, are from the lower middle class. Because of the prolonged period of search that does not yield any light on the whereabouts of their missing loved ones, many parents especially mothers and also wives suffer from mental disturbance. It took years for many before they somehow recovered but the pain keeps on coming back. Since most of the disappeared are men who were the families' breadwinners, the women, who used to be mostly housekeepers, had to suddenly earn for their families' basic needs after the disappearance of their husbands. This is very difficult as unemployment especially for women is one of the big problems in Sri Lankan society.

Some relatives narrated verbally or in writing that joining other families of disappeared victims is a source of consolation for them. As they collectively lobby the government for their just demands, they draw strength from one another and as they work on particular cases, they feel that a case resolved is contributory to the eventual resolution of the case of their own loved ones and other cases. Other families resort to religion for consolation as in the case of one father who in relation to the case of his son, said, "I simply console myself by clinging to my Buddhist faith — that maybe his disappearance is part of his *Karma*. This, however, did not prevent me from experiencing great mental pain for five years."⁷

Likewise, psychosocial processing facilitated by their organization in coordination with AFAD is a great help for the families. These activities helped greatly in their self-healing and families usually come out from these with a wider perspective. As a brother of a disappeared victim in Colombo during the "terror period" said, "For years, our family searched for my disappeared brother in all possible places but all our efforts were in vain. When our tears were gone, the next thing my father and I did was to get in touch with other families of victims. We soon realized that we, families of victims, are also victims ourselves. As we firmed up our resolve to continue campaigning

for justice for our missing loved ones, we were gradually developing into human rights defenders.”

Some relatives of the disappeared in collaboration with the Asian Human Rights Commission erected a monument of the disappeared at the Raddoluwa junction in Colombo.⁸ This was inaugurated on 4 February 2000. Behind the monument stands the Wall of Tears, in which some 400 pictures of the disappeared are exhibited. Since then, this monument has drawn the attention of many families and relatives of disappeared persons. On October 27 every year, families, relatives and friends of disappeared persons together with human rights organizations gather together in memory of victims of enforced disappearance in Sri Lanka. Like other families, relatives and friends of disappeared victims all over the world, they will never forget their disappeared loved ones.

The Present Government's Position on the Enforced Disappearance Issue and its Performance in the Promotion and Protection of Human Rights

As presented above, not one of the succeeding administrations has responded satisfactorily to the phenomenon of enforced disappearance in Sri Lanka. Thus, this continues to weigh heavily on the families and relatives of victims and to the country as a whole. The present government's recent position on the issue can be gleaned below.

Sri Lanka was the only Asian country that sponsored the resolution of the then UN Commission on Human Rights (UNCHR) (Resolution 2001/46) dated 23 April 2001, which stated the creation of the then Inter-Sessional Working Group (WG) to Elaborate a Draft Legally-Binding Normative Instrument for the Protection of All Persons from Enforced or Involuntary Disappearances. The said resolution was endorsed by the Economic and Social Council of the UN (2001/221) dated 4 June 2001. This position of Sri Lanka could have been a breakthrough had this been concretized in its succeeding steps. However, in the three-year negotiation process at the UNCHR as regards the same Inter-Sessional WG, Sri Lanka was inactive. It was present only during the last session in September 2005, but its representative did not say a word. Several times, AFAD requested its Permanent Mission to the UN in Geneva and its foreign office in Colombo to be present during the bi-annual session of the Inter-sessional WG but such appeals turned on deaf ears.

At the UN in Geneva, AFAD appealed to the Sri Lankan representatives several times to speak up during sessions of the workinggroup drafting the treaty against disappearances. However, they said that they did not wish to contradict what India would decide as regards the Convention.

AFAD, FEDEFAM, We Remember-Belarus and Linking Solidarity visited Sri Lanka's Permanent Mission in New York in October 2006 and appealed for its support



to the Convention, which was to be tabled for final adoption by the UN General Assembly at that time. The Ambassador just told the delegation that Sri Lanka would not oppose its adoption and would want consensus rather than a division of the house.

Once again, AFAD visited Sri Lanka's Foreign Affairs Ministry in May 2007, but unfortunately, the person that the federation spoke to did not know anything about the Convention.

Finally, at the signing of the Convention on 6 February 2007, Sri Lanka was not among the signatories even if India signed. Sri Lanka contradicted what it said earlier that it would follow the position of India as regards the Convention. To date, Sri Lanka does not have a law criminalizing enforced disappearances despite the persistent lobbying of local organizations of families of the disappeared, AFAD and other international human rights organizations.

Delivered at the 7th Session of the UNHRC on 14 March 2008, the Joint Oral Statement of the Asian Legal Resource Centre (ALRC) and Lawyers Rights Watch Canada (LWRC) strongly denounces the human rights situation in Sri Lanka.⁹ A part of said statement follows;

"Sri Lanka, one of this Council's Vice-Presidents, is also the State with the highest frequency and number of victims of forced disappearances in the world at present. During parallel events connected to this session, government representatives, like Yasantha Kodagoda, have sought to counter accusations about this reality by making dubious and unsubstantiated claims that the situation of human rights has been improving during its membership in the Council...

This state of denial about the gravity of the situation and the unwillingness to cooperate with the OHCHR and accept its obviously required assistance and presence on the ground makes these persons directly, personally and morally complicit in the ongoing violations. How can the situation be getting better when new victims are being added on a daily basis, when none of the disappeared is resurfacing alive and well, and when no single effective



An AFAD delegation lobbies the Ministry of Justice's support to the international treaty against disappearance.



President Kumaratunga “conquers” Jaffna and holds a medieval victory ceremony. (Photo taken from: <http://www.tamilnation.org>)

investigations or prosecutions are taking place? Any thoughts of re-election to this Council must surely be nothing but a twisted joke.”

There is no denying that Sri Lanka is at the center of the world’s attention today. The unabated violations of human rights particularly enforced or involuntary disappearance which have occurred in Sri Lanka for almost half a century have attracted criticisms of observers from different parts of the world. However, the government seems unaffected. The phenomenon goes on and impunity continues to be a widespread practice in the country.

Among the hottest news on Sri Lanka in March and April of this year was that the country has been facing a possible loss of seat at the UNHRC when the body was to hold its election in May of this year. The political situation in Sri Lanka when it was elected in the then newly-constituted UN body on 9 May 2006 greatly differed from the situation now. At that time, the Ceasefire Agreement of 2002 with the LTTE was in place, peace talks had been held and the war was temporarily in abeyance. As Sri Lanka sought re-election at the UN seat in 2008, the Ceasefire Agreement has been abolished and the government is facing international criticisms from UN bodies and human rights organizations at home and abroad. This is due to the widely known human rights violations committed by government forces particularly enforced disappearances, attacks on journalists and religious people and the perceived support of the government to paramilitary groups operating among the Tamils in the northern and eastern parts of the country.

The present government has yet to demonstrate that it is different from the past governments in terms of handling the situation. But according to the Human Rights Watch, “In dealing with the international community, the Sri Lankan government has engaged in both subtle diplomacy and public bluster.”¹⁰ Based on official statements and interviews of President Rajapaksa along with other government officials, the violations of human rights and humanitarian laws in Sri Lanka “are not as bad as in other countries.” Some government officials even went to the extent of saying that those who were criticizing the Sri Lankan government were supporters of the LTTE. On the other hand, other government officials ensure the international



community that the government is exerting all efforts to resolve cases of enforced disappearance and other violations of human rights and humanitarian law.

Yet, many international observers continue to believe that the present government does not have strong political will to promote and protect human rights. The concrete incidence of human rights violations in the country are simply too glaring. In this regard, the UN and international human rights organizations have been suggesting since 2006 to create a human rights monitoring mission in Sri Lanka under the Office of the UN High Commissioner for Human Rights. According to Human Rights Watch, "International monitoring has proven particularly effective in dealing with the problem of large-scale "disappearances" and abductions. With sufficient mandate and resources, the monitoring mission could achieve what the government and various national mechanisms have not been able to do so far— establish the location of "disappeared" persons through unimpeded visits to government and LTTE detention facilities; request information regarding specific cases from all sides to the conflict; assist national law enforcement agencies and human rights mechanisms in investigating the cases and communicating with the families; and maintain credible records of the reported cases."¹¹

If President Rajapaksa accepts the proposal to have a UN human rights monitoring mission in Sri Lanka, this might be one proof that he has remained faithful to his "human rights background" which he often cites during his speeches and statements. But accepting the offer would be a great challenge for him considering that not all the powerful parties within the government and outside it may be agreeable. Time and again, it has been seen under the past governments that decisions made by the president which were opposed by strong parties created havoc within the whole of Sri Lankan society. Since he assumed power in November 2005, President Rajapaksa has yet to prove that he is willing and capable to optimize the highest position in the land to facilitate the dawning of a human rights culture in Sri Lanka. One important step towards this direction would be for him to accept the offer of a UN monitoring mission in his war-torn country.

On Sri Lanka's Defeat in the UN Human Rights Council During the UN General Assembly in New York on 21 May 2008

Composed of 47 members, the council had 15 vacant seats, four seats of which were open for Asian countries. Six candidates competed for the four open seats. The UN assembly elected Japan with 155 votes, Bahrain with 142 votes, South Korea with 139 and Pakistan with 114 votes. Sri Lanka received 101 votes and the new state of Timor Leste 92 votes. Sri Lanka was one of the first members elected to the council in 2006. The following are excerpts from an article of the Human Rights Watch dated 22 May 2008 entitled, *UN: Sri Lanka's Defeat a Victory for Human Rights Council*¹²

RECLAIMING STOLEN LIVES

"We applaud UN members for rejecting an abusive state which has used its position on the Human Rights Council not to promote human rights, but to protect itself and other violator states from scrutiny," said Steve Crawshaw, UN Advocacy Director at Human Rights Watch and spokesman for the NGO Coalition for an Effective Human Rights Council...

In opposing re-election, a coalition of Sri Lankan non-governmental organizations (NGOs) said that their government has "presided over a grave deterioration of human rights protection" since winning membership, and "has used its membership in the Human Rights Council to protect itself from scrutiny." A coalition of NGOs from all regions of the world charged Sri Lanka with widespread disappearances, extrajudicial killings, torture, and a failure to cooperate with UN human rights experts. Three Nobel Peace Prize winners, Archbishop Desmond Tutu of South Africa, Adolfo Perez Esquivel of Argentina, and former President Jimmy Carter of the United States also called on UN Members to oppose Sri Lanka's re-election bid.

"The rejection of Sri Lanka after a global campaign lends vital support to the victims of abuse, and sends a strong message to the government of Sri Lanka," said Michael Anthony, program coordinator of the Asian Human Rights Commission in Hong Kong. "We hope this result will open a new international dialogue with Sri Lanka that encourages the government to put an end to rampant violations by its security forces, and accept the assistance of human rights monitors from the United Nations..."

Sri Lanka waged a massive campaign in Geneva, New York and other cities in the world for re-election in the UNHRC this year. Its defeat during the election must be seen as a big blow. Nevertheless, international human rights advocates and observers continue to hope that this will serve as a challenge for the country to exert sincere efforts in promoting and protecting human rights as well as in maximizing all forms of support including that of UN and its mechanisms for its own good and its people.

Earlier, at the 12th Council Meeting, on 13 May 2008, Hon. Mahinda Samarasinghe, Minister of Disaster Management and Human Rights of Sri Lanka, clearly cited that his government does not agree with the proposed UN monitoring mission in the country. Taken from the results of the Universal Periodic Review on Sri Lanka published by the UNHRC on the 5th of this month, June 2008, "The Government is not in agreement with the suggestion for the establishment of a monitoring mission. The imposition of foreign institutions will stifle the potential for growth of national institutions charged with these functions at present. Sri Lanka cherishes and wishes to nurture national institutions which benefit all its people."¹³



In the midst of the recent developments, families of the disappeared and other victims of human rights organizations as well as local and international human rights organizations eagerly await the forthcoming moves of Sri Lanka hopefully towards a positive end.

Conclusion and Recommendations

Sri Lanka continues to be haunted by its dark past and weighed down by its burdensome present. For almost half a century, much blood has been shed mostly from among the common people - the Tamils and Sinhalese, most of whom were young but this also includes Tamil professionals including a number of parliamentarians particularly those who were perceived to be supportive of the creation of a *Tamil Eelam*. Indeed, the Sri Lankan problem is complex.

Faced by the continuing Tamil struggle for self-determination, it has become all-too-common for the succeeding governments under the guise of national security laws to respond in a most brutal manner. History has proven that the governments' responses to the problem were not effective but rather resulted in thousands of cases of enforced disappearance and other violations of human rights and humanitarian law. It is difficult to speak of a country when its people, especially the young are being continuously eliminated.

No one in his/her sensible mind would buy the argument of some Sri Lankan government officials that "there are other countries whose figures of enforced disappearances are much higher than that of Sri Lanka so that international attention should be given to these countries." The undeniable reality is that for almost half a century, thousands of Sri Lankans have been suddenly made to disappear or were executed, a big percentage of whom are not even documented so that they barely left any trace that they once lived on this earth except for the lifetime memories of their loving families, relatives and friends.

At the core of the multi-faceted problems in Sri Lanka is the Tamils' continuing rejection of their "re-integration" into what they call, the "Sinhalese Sri Lankan government" and their assimilation as "second class citizens" into Sinhalese society.



An AFAD delegation lobbies for the Sri Lankan government's support to the international treaty against enforced disappearances.

RECLAIMING STOLEN LIVES

Some Tamil writers define this as genocide or a form of elimination of a people from the face of the earth. For decades now, the Tamils have been demonstrating that they are not cowed by the violent reaction of the government as they keep on with their struggle for self-determination as *Tamil Eelam*. The following quotation is very moving:

"...It is the Sri Lankan government which has failed to learn the lessons from the emergence of the struggles for self-determination in several parts of the globe and the innovative structural changes that have taken place... We are not chauvinists. Neither are we lovers of violence enchanted with war. We do not regard the Sinhala people as our opponents or as our enemies. We recognize the Sinhala people. We have no desire to interfere in any way with the national life of the Sinhala people or with their freedom and independence. We, the Tamil people, desire to live in our own historic homeland as an independent nation, in peace, in freedom and with dignity..."¹⁴

It has been proven over the past decades that national mechanisms did not work in Sri Lanka. At this point, a key step towards the resolution of the problem may be the proposed UN human rights monitoring mission under the Office of the High Commissioner for Human Rights to be stationed in Sri Lanka. As of this writing though, the Sri Lankan government has strongly rejected the offer so that the question now is how to make this a reality. A strong international appeal to the Rajapaksa government, the LTTE and other political and ethnic groups may be the answer. Who knows the appeal might touch the hearts of the Sri Lankan powerful men and women and inspire them to conduct an in-depth self-examination and self-processing resulting in their acceptance of a UN human rights mission with which they would afford full cooperation?

The concrete results of the work of the UN human rights monitoring mission may yet signal the long-awaited advent of justice and peace in Sri Lanka and the experience may eventually serve as a learning situation for other countries. When it finally starts to shape up, the government led by President Rajapaksa will be remembered in history as one which is different from its predecessors. Then, all the efforts and resources put into the mission would have not been wasted as its concrete achievements on the first decade of the third millennium may be a powerful contribution to humanity's continuing march towards a higher level of existence.

Up to the point when they were about to be arrested by Adolf Hitler's men in their secret annex, the young girl Anne Frank continued to believe in the goodness that lies in the hearts of human beings. Indeed, at the end of the darkest tunnel, a ray of light is always there. No matter how dark the night, the dawn will certainly come. In different societies, breakthroughs were made at some point of their history which facilitated their development. Sooner or later, this may yet take place among our brothers and sisters in Sri Lanka.



Notes:

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²Fernando, Basil. (2008, March 18). Sri Lanka: Caste of Mind and the Social Organisation of Sri Lanka since the 9th Century AD. Retrieved March 28, 2008 from <http://www.ahrchk.net/statements/mainfile.php/2008statements/1433/>.

³K.D.C. Kumarage (2005), "A Series of Unfortunate Events," in *Healing Wounds, Mending Scars*. Quezon City: Asian Federation Against Involuntary Disappearances. p. 115-132.

⁴Iqbal, M.C.M. (2007, May 7). Current Human Rights Issues in Sri Lanka. Retrieved April 2, 2008 from <http://www.ruleoflawsrilanka.org/resources/writings-of-m-c-m-iqbal/2007-current-human-rights-issues-in-sri-lanka>.

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⁶Civil Monitoring Commission, Free Media Movement, and Law and Society Trust. (2007, October 31). "Second submission to the Presidential Commission of Inquiry and public on human rights violations in Sri Lanka: January-August 2007." Retrieved March 28, 2008 from <http://www.lawandsocietytrust.org/PDF/Public%20report%20on%20Killings%20and%20Disappearances%20from%20-%20Jan%20-%20Aug%202007%20.pdf>.

⁷Wijayasundara, Tikiri. (2005). "Plucked from the Family's Bosom," in *Healing Wounds, Mending Scars*. Quezon City: Asian Federation Against Involuntary Disappearances. p. 133-136.

⁸ Fernando, Basil. (2007, November). Sri Lanka: A Day for the Disappeared. *Human Rights Solidarity* 17 (6).

⁹Asian Legal Resource Centre (ALRC) and Lawyers Rights Watch Canada (LWRC). (2008, March 14). Joint Oral Statement to the 7th Session of the UNHRC. Retrieved April 3, 2008 from <http://72.14.235.104/search?q=cache:IVjt7TUjwMJ:www.lwrc.org/documents>.

¹⁰Human Rights Watch. (2008, March). *Recurring Nightmare State Responsibility for "Disappearances" and Abductions in Sri Lanka*. p. 126. Retrieved March 28, 2008 from <http://www.hrw.org/reports/2008/srilanka0308/>.

¹¹ Ibid, p. 128-131.

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¹² Human Rights Watch. (2008, May22). UN: Sri Lanka's Defeat a Victory for Human Rights Council. Retrieved April 5, 2008 from <http://www.hrw.org/english/docs/2008/05/21/slanka18912.htm>.

¹³ UN Human Rights Council. (2008, June 5). Universal Periodic Review for Sri Lanka. Eighth session Agenda item 6 (8).

¹⁴ Velupillai Pirabakaran. (1993, November). Maha Veerar Naal Address. Retrieved April 5, 2006 from <http://www.tamilnation.org/lte/vp/index.htm>.





THE GRIM TALES OF DISAPPEARANCES ...

By Darwin B. Mendiola



The Grim Tales of Disappearances in a Troubled Democracy

By Darwin B. Mendiola

A Banana Republic?

Thailand is a nation at the crossroad. It has followed a troubled but more or less democratic political path since its establishment as a constitutional monarchy in 1932, slipping from the vicious cycle of *coup d'etats* and military rule (except from the period after May 1992 to September 2006) when it achieved a relative political stability and economic development. The reverting act of changing the government not by popular elections but through series of *coups d'etats* is hardly new to Thailand which has witnessed military interventions in the affairs of the state not only once but eighteen times over the past seventy-five years. The country has characteristics that best describe a banana republic. It is characterized by a squabble for political power that takes place within the factions of government usually from the military. Hence no regime is able to survive for any length of time without the interest, articulation and participation of the monarchy, bureaucratic elites and military cliques who dictate the future that holds together a brittle democracy. While the contending forces claim they defend the utmost interest of the general public, the people are the ones who bear the brunt of the impact of political turmoil, notwithstanding, the curtailment of their rights and freedom and the havoc it brings into their lives.

When everyone thought of Thailand as one of the rising tiger economies of Asia with its fledging democracy already in an upsurge, the country was suddenly caught in a political whirlwind. On 19 September 2006, a military *coup* ousted Prime Minister Thaksin Shinawatra from office while he was in New York attending a meeting of the UN General Assembly. The *coup* plotters led by General Sonthi Boonyaratglin installed a military junta. Thaksin attempted to assert his emergency powers but failed.

The *coup* was not unexpected. Rumors were already circulating months before the military takeover took place. The Thaksin administration was already shaken by a political crisis in January 2006. His critics accused him of garnering billions from a controversial telecommunication deal his family brokered with a foreign company. He was held responsible for the resurgence of violence in the south and the increasing human rights violations brought about by the government's "war on drugs" and counter-insurgency campaigns. Thaksin was allegedly behind the military crackdown on political dissidents and human rights defenders. The international



community condemned the military takeover, but for the Thai people, it was largely accepted as a necessary evil to bring down the rule of a corrupt leader and his government. Thus, it initially enjoyed significant public and royal support.

Consequently, the *coup* placed the country under martial law. The 1997 constitution was abrogated, parliament was dissolved and the judicial court was replaced with an appointed military tribunal. Civil and political rights particularly the freedom of the press and of association and assembly were restricted. An interim civilian government called the Council for National Security (CNS) was established within a few weeks with former army commander Surayud Chulanont as interim prime minister. CNS promised to restore a democratic government at the end of the year and guaranteed to protect human rights to appease the escalating violence in the south and to bring normalcy to the country. But the situation did not turn out better. The public confidence in the interim government eventually declined. A new constitution was passed in August 2007 that spelled out the Thai people's democratic aspirations. A general election was held on 23 December 2007 to signal the return of civilian government.

The People Power Party (PPP) headed by Samak Sundaravej, a reformed Thai Rak Thai Party of ousted PM Thaksin Shinawatra won a plurality of seats, a clear rebuke to the military rule.¹

The Disappearing Act

*"I don't want it to be believed that forced disappearance is a personal matter; it is actually a public issue that everyone must pay attention to."*²
 - Angkhana Neelapaijit

Awzar Thi, a pen name of a member of the Asian Human Rights Commission (AHRC) who worked for more than 15 years as an advocate of human rights and the rule of law in Thailand and Burma, once described the phenomenon of disappearances in Thailand when he wrote that "forced disappearances in Thailand are not a problem particular to the south of the country, not a peculiarity of internal



conflict as they are in some parts of the world. Rather, they are a nationwide feature of what can be labeled as orderly lawlessness.”³

Orderly lawlessness simply means that cases of disappearance cannot simply be relegated to the work of rogue elements of the military as most governments claim it to be but the inability of the government to address it only creates a climate of impunity. The International Convention for the Protection of All Persons from Enforced Disappearance which was adopted by the United Nations General Assembly on 20 December 2006, strongly holds that enforced disappearance as a crime against humanity is considered as a widespread and systematic practice. Under this international convention, the state is held responsible for the proliferation of this crime.

Disappearance is nothing new in Thailand. In fact, it has borne witness to several social upheavals in its recent history which were openly and forcibly suppressed by the military.

a. Thammasat University Massacre (1973-1976)

By the early '70s, the level of political awareness of the Thai people reached a point of becoming critical of the authoritarian regime. It was exemplified in the publication of an article against the government by nine students in Thammasat University's student newspaper in June 1973. By order of the government, the nine students were expelled from the university. Instead of cowing the students to silence, it only ignited their radicalism as thousands of students marched at the Democracy Monument demanding for re-admission of the nine students. To pacify the tension, the government gave in and allowed the nine students to re-enroll. However, the situation became even worse when the military arrested 13 students on charges of conspiracy to overthrow the government in October 1973. This added fire to the fiery sentiments of students as they once again took the streets to protest the arbitrary arrest of the 13 students. They were later joined by other sectors of society who were not only demanding for the immediate release of the students but were also calling for an end to a military rule and a return to a constitutional government.

When the military was called in to disperse the swelling crowd, a riot broke loose as tanks rolled down Rajdamnoen Avenue and helicopters flew overhead to fire at Thammasat University, leaving a number of casualties numbering 77 dead, 800 injured and an unaccounted number of disappearances. The King condemned the government's excessive use of force against the demonstrators and ordered Field Marshal Thanom Kittikachorn to leave the country. FM Thanom Kittikachorn eventually resigned from his post and left the country in exile.

The events of October 1973 amounted to a revolution in Thai politics. For the first time the urban middle class, led by the students, defeated the combined forces of the old ruling class and the army,



and gained the apparent blessing of the king for a transition to full democracy, symbolized by a new constitution which provided for a fully elected unicameral legislature.⁴

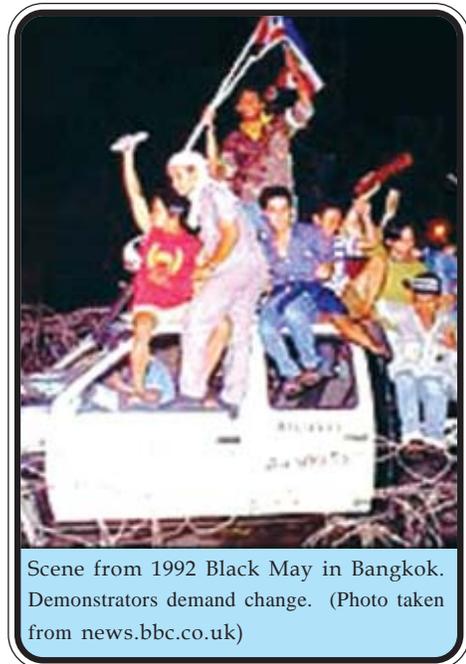
The political mood was a little different in 1976. The defeat of the US forces at the hands of the Communists in Vietnam and Cambodia haunted the Asian region like a specter. The Thai government became apprehensive about the arrival of communism within its borders. This unsettling condition was compounded with the return of FM Thanom Kittikachorn from exile as an ordained monk. With bitter memories of the October 1973 event still fresh in their minds, hundreds of students angrily held a protest at Thammasat University. The government accused them of a communist conspiracy. Violence sparked when the students hung an effigy of the Crown Prince. The police and the military stormed the campus in an orgy of violence during which hundreds of students were tortured, disappeared and killed.

Relatives of the dead and missing bemoaned the lack of public concern for the victims of 6 October 1976 who were not held in the same regard as the martyrs of 14 October 1973.⁵

b. Black May of 1992

History repeats itself. A series of unarmed demonstrations took place on 17-20 May 1992 and were crushed by the Thai security forces under the command of General Suchinda Krayprayun, who seized power by overthrowing the elected government of Chatchai Choonhavan in a *coup d'etat* the previous year. He, together with other military officials, established a caretaker government called the National Peacekeeping Council (NPKC) and then promised to call a general election but rather assumed the post of Prime Minister. Tension erupted. Thousands of people marched in the streets of Bangkok to demand Suchinda to step down. But the peaceful demonstrations were met with brutal and violent suppression by the military.

The video, *Healing Wounds, Mending Scars* featuring footage from the Relatives Committee of the May 1992 Heroes, a member-organization of the Asian Federation Against Involuntary Disappearances, vividly reflects the cruelty of the Thai soldiers against innocent civilians. Guns were pointed at helpless and frightened civilians mercilessly kicked by the soldiers in the name



Scene from 1992 Black May in Bangkok. Demonstrators demand change. (Photo taken from news.bbc.co.uk)

of national security. Wounded and killed victims were dragged like pigs amidst a country in turmoil and violence. Later dubbed as the Black May massacre, the pogrom stained the country's image as the "Land of Smiles."

The violence resulted in 52 officially acknowledged deaths, hundreds of injuries, and many disappearances. Over 3,500 people were arrested; hundreds of them were women and children. Many arrested people were tortured; some were beaten, left to sit in sweltering sunlight, soaked in gasoline and threatened with immolation, and left to starve.⁶

There were witnesses who recalled that the corpses of demonstrators being carried away to unknown locations in army trucks have remained missing.

Black May marked a turning point in Thai political life. After the massacre in Bangkok, the military has remained in their barracks and generally refrained from interfering in politics.⁷

c. Unrest in the South

The southern border provinces of Thailand have been the scene of insurgency for more than a century. Before it was annexed by Thailand (then Siam) in 1902, the region was under independent Muslim sultanates. Based on Stockholm International Peace Research Institute (SIPRI) report in September 2007, "Pattani, Yala, and Narathiwat are among the 20 poorest of the 76 provinces of Thailand and have some of the highest rates of poverty in the country."⁸ The majority of the populations are ethnic Malay Muslims who speak a local dialect of the Malay language known as Jawi and are faithful to Islam.

Since then, its distinctive religious, ethnic, linguistic, cultural, and historical traits have often continued to clash with Thailand's Buddhist and nationalist culture.⁹

The imposition of Siamese power which was accompanied by a range of measures aimed at strengthening Thai culture in the southern provinces by way of suppression and assimilation of the people's way of life, sowed local discontent among the ethnic Malay Muslim population who felt that they have been subjected to decades of corruption, exploitation, and violence at the hands of Thai regimes. This growing resentment became the seedbed for insurgency.

The changes in Thailand politics have contributed to the growing instability in the South as it mirrored a broader struggle for their self-determination. When Thaksin Shinawatra was elected Prime Minister in 2001, he immediately set a different but



ruthless security policy in the region. As a former police officer, his view of the situation in the south was simply a criminal matter.

In 2002, Thaksin stated: 'There's no separatism, no ideological terrorists, just common bandits.' By 2004, he had reversed his position and increasingly regarded the insurgency as the local front in the global fight against terrorism. Thaksin was vocal in his support of the United States in its 'global war on terrorism' and sent a small contingent of Thai troops to Iraq with the US-led coalition forces, gaining Thailand the status of 'major non-NATO ally.'¹⁰

The Muslim insurgents took it as an opportunity to gather support for their separatist cause. On an almost daily basis, they carried out shootings, bomb attacks, arson, beheadings, *machete* attacks and other forms of brutal and more frequent attacks on government forces as well as on civilians.

In January, more than 100 attackers raided a military depot, killing four soldiers and taking with them 400 firearms. In a series of coordinated attacks on 11 bases and checkpoints in April, insurgents killed five members of the Thai security forces, who responded with attacks that left more than 100 people dead.¹¹

The Thai security forces retaliated by storming the historic Krue Se Mosque in Pattani in April of 2004, which claimed dozens of Muslim lives.

In one of the bloodiest actions by the security forces, 107 persons, mostly teenagers were killed and 17 others were arrested. The youth, mostly armed with machetes with only a few carrying assault rifles, allegedly battled policemen and soldiers in Pattani, Yala and Songkhla. More than 30 were killed inside the historic Krue Se Mosque alone on the outskirts of Pattani in Narathiwat Province.¹²

The situation turned even worse when the military became even more brutal with the death of 78 protesters by suffocation in overcrowded army trucks at Tak Bai in Narathiwat.

On 25 October 2004, at least 78 persons were suffocated or crushed to death after being arrested and packed into trucks



Krue Se Mosque Massacre. (Photo taken from <http://myshinshin.blogspot.com>)

RECLAIMING STOLEN LIVES

by security forces for transportation to the military barracks in Pattani, the provincial capital of Narathiwat. About 2000 people were demonstrating, demanding the release of six (6) detainees. The security forces resorted to firing to quell the protesters. Six (6) protesters were killed on the spot and several others were believed to have been injured. The military officials arrested at least 1,300 persons and loaded others into army vehicles and transported them to Pattani. 78 demonstrators were found dead on reaching Pattani.¹³

This gave the Muslim insurgents grounds to direct their attacks on civilians and justify their brutality as retribution for state-perpetrated abuses and the prevailing culture of impunity. The government declared martial law and introduced draconian security laws into most parts of Narathiwat, Pattani, and Yala provinces in July 2005 which were extended and broadened in October 2005. Martial law was once again imposed in January 2006 which afforded the security forces the license to kill or make people disappear.

The proliferation of disappearances and the lack of available legal mechanisms for the families of the victims to seek justice are only aggravating the increasing distrust in and resentment by the majority of the Muslim population in the south to the Thai government. Even in the creation of the National Reconciliation Commission in 2001, which was set up to resolve the violence in the south, did not make any difference. NRC put most of the blame on heavy-handed government policies and the intensified militarization in the region.

In 2006, NRC reported that twenty-three (23) local men aged 20-50 had been missing in the southern border provinces of Thailand since 2002. Ten of them lived in Pattani Province, seven in Narathiwat and six in Yala.¹⁴

Although, there were efforts by government agencies and civil society to establish mechanisms whereby relatives of the disappeared could lodge complaints, the frequent attacks and anonymous death threats against those living in the South had greatly hampered the attempt to conduct investigations and document the cases. Human rights defenders working on the issue had extremely experienced difficulty in discerning the actual number of disappearance not only because the families of victims are reluctant or afraid to come forward but also because they themselves are targets of intimidation, harassment and threats.

The number of disappearance is believed to be far higher but there is no reliable database available. In January 2005, 300 unidentified bodies were discovered at Ton The Seng Tung Chinese Cemetery in Muang district, Pattani Province and 20-30 unidentified bodies in Muslim cemeteries in the region where most of the Muslim

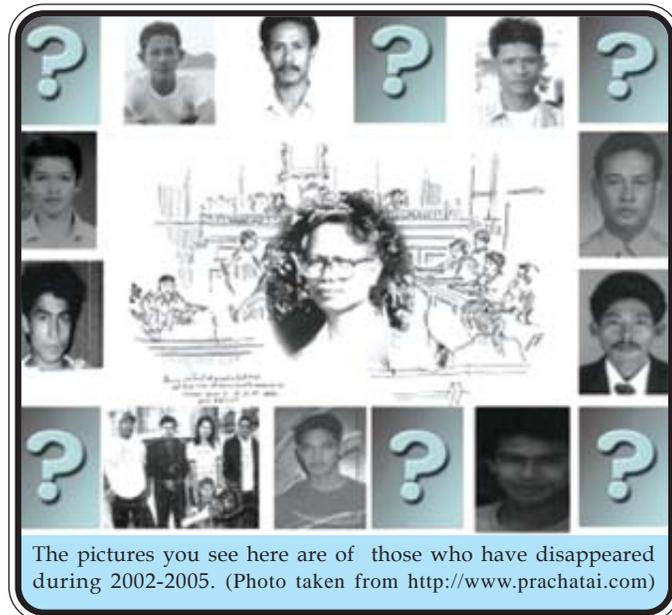


communities were protesting. According to Dr. Porntip Rojanansunan, director of the Central Institute of Forensic Science, "most of the corpses are likely to be of migrant workers from surrounding countries, while others may be Thais who disappeared after being extra-judicially executed by police or military personnel."¹⁵ The local human rights groups called for exhumation of these bodies in order to possibly identify the remains and determine the cause of their death. Yet, the Thai government showed little interest to proceed with the investigation. The plan for exhumation also faced strong opposition from local religious leaders arguing that it is against Islamic belief to disturb the body of a person who has been buried. Although exhumation has taken place in other Islamic countries, the Muslim tradition requires a senior Islamic leader to give consent by holding a *fatwa* or a prayer for the dead in order to allow the exhumation. But asking for a *fatwa* is found to be very difficult because many Islamic leaders fear being targets of retaliation from the perpetrators.

In 2005, disappearances were alleged to exceed 50 while under the custody of security forces. According to a petition submitted by the Muslim community leaders to the government peace envoy Pakorn Buranupakorn on 31 March 2005, "around 50 Muslims have disappeared under mysterious circumstances following questioning by security officials concerning southern violence."¹⁶

After the successful September 2006 *coup*, the interim government, headed by former army commander General Surayud Chulanont pledged to take a more peaceful approach to the southern insurgency. He even issued a public apology for the past atrocities of the government. But his government has done nothing to resolve the conflict and instead adopted the government's previous counterproductive anti-insurgency approach. In fact, it even recruited poorly screened and trained paramilitary troops which continued to terrorize the Muslim communities. As a result, the climate of fear and violence reigned and continued to haunt the region.

Mr. Brad Adams, Asia Director of Human Rights Watch had accused Thai security forces of using enforced disappearances as a tool to intimidate the majority Muslim population in the south, where 2,000 people are believed to have died or



disappeared in three years of separatist unrest.

“The Thai security forces are using ‘disappearances’ as a way to weaken the militants and instill fear in the Malay Muslim community.”¹⁷

Both the government and the insurgents, however, were equally guilty of human rights violations. Nevertheless, the state security forces have a greater responsibility to observe the fundamental law of war that guarantees protection of innocent civilians. In March 2007, 24 southern Muslims sought asylum in Malaysia citing enforced disappearances as a reason.¹⁸

Since June 2007, more than 600 people have been arrested as a part of the continuing military operation in the south. Relatives and lawyers were barred from visiting and there have been reports that the military is employing torture as a means to extract information during interrogation.

At least two disappearance cases were reported confidentially since this sweeping operation; one has been missing since 28 June 2007 and another has been missing since 11 July 2007. Both persons reportedly disappeared from Yala Province.¹⁹

d. Threats Against Human Rights Defenders

Human rights defenders are under constant threats in Thailand. Nonviolence International Southeast Asia reported that:

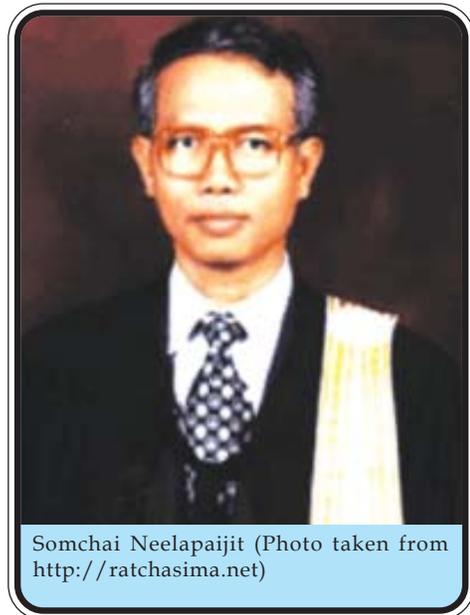
Since 2001, nineteen (19) human rights defenders have been killed. Human rights activists have reported to be facing threats of armed violence for investigating and exposing the human rights situation by the authorities in the southern provinces.²⁰

Among these cases of human rights defenders, the one that stands out is the abduction and consequent disappearance of prominent human rights lawyer Somchai Neelapaijit. The case is believed to be connected to the spate of killings and disappearances in the south.

Somchai Neelapaijit, then chairman of Thailand’s Muslim Lawyers Association and vice-chairman of the Human Rights Committee of the Lawyers’ Council of Thailand, involuntarily disappeared at a time when he was representing five persons arrested in relation to the militant raid on the Narathiwat Rajanakarin Camp of 4 January 2004. The authorities arrested and detained them on charges of conspiracy to commit rebellion. Somchai turned the tables against the police by accusing them of torturing his clients. He alleged that the police used torture to force

his clients to confess to the crime while they were detained at Tanyong District Police Station, Narathiwat.

The following day, Somchai suddenly disappeared. He was last seen at the Chaleena Hotel on Ramkhamhaeng Road in Bangkok on 12 March 2004. He was supposed to leave for Narathiwat the next morning to attend a court hearing. His car was found abandoned in Kamphaeng Phet Road near Mor Chit bus terminal. Before he disappeared, Somchai had been receiving numerous threats since he had taken on the cases of two Thai alleged members of the Jemaah Islamiyah, a violent, Southeast Asia based Islamist group accused of carrying out bomb attacks in Thailand and the threats became more frequent after taking on the five Narathiwat Camp raid suspects. He informed his family and colleagues about the threats to systematically monitor his movements.



On the day of his supposed flight to Narathiwat, Somchai did not appear. One of his colleagues even checked if his flight was changed or cancelled only to find out that it was not. His family and friends started to suspect that Somchai was abducted and feared for his safety. When his family reported the incident to government authorities, it was downplayed as merely due to a “family or personal problems” and not a case of disappearance. But when his family and friends decided to come out in the open to expose the issue of Somchai’s disappearance, the government could no longer deny it.

Awzar Thi believed that, “this sort of silliness is floated whenever a troublemaker goes missing in Thailand,”²¹ when he reported the recent disappearance of Kamol Laosophaphant on 7 February 2008. According to Thi’s report, Kamol, a 49-year-old delivery contractor had been receiving threats because he exposed the corruption of the local government officials in Khon Kaen province over state railway land deal. For this reason, Kamol took a life insurance policy to prepare his family for any untoward incident that might happen to him. On the day of his shocking disappearance, he went to the Baan Phai station to lodge complaints on the threats he received. He never came back home despite the fact that his house is only a few hundred meters away from the police station. His family tried to contact him on his cell phone but no one answered. When his wife tried to call him again, the line suddenly went dead. The following day, his family reported to the authority about his disappearance but it was not taken seriously. Instead, the police waved it off and declared that there was no sufficient evidence of abduction. There is even an insinuation that Kamol might have run off with a woman and gone to Cambodia. A few

weeks later, his car mysteriously turned up outside a hospital some 20 kilometers to the north. Until now, his whereabouts are still unknown.

e. War on Drugs

The former Prime Minister Thaksin Shinawatra declared a “war on drugs” campaign in February 2003. At first, the drug war received widespread public support amid strong public outcries against the deadly menace. Many Thais believed in the need to have a tougher stance against the drug dealers.

Kalasin is the first province of Thailand that the government declared as a “drug-free” zone for having wiped out the illegal drug operations. But the police in Kalasin district of northeastern Thailand were later accused of abducting and killing at least 24 persons in the past two years. Most victims were young people accused of being involved in drugs and other petty crimes. Some of the victims had been detained in the Kalasin District Police Station before their death or disappearance. The victims were shot several times, tortured to death, or abducted and never seen again.

The public opinion began to change when the death toll began to increase drastically.

Public outrage peaked when the killing of 9-year-old Chakraphan Srisa-ard by undercover police was reported in March 2003. The boy was shot twice in the back when police opened fire on his mother’s car. The police had just arrested her husband in a sting operation.²²

During this 3-month killing spree, more than 2,500 people suspected to be involved in the drug trade were killed and disappeared by the police who were using “black lists” or lists for an order of battle.

The Thaksin government was heavily criticized for allowing the police to completely disregard human rights and due process. It was even accused of heavy handedly pursuing small-time drug pushers and not the big-time drug dealers who were believed to have strong political backing. But the authority insisted that the killings and disappearances were results of gang warfare, not from the police. Thaksin’s “war on drugs” might have weakened the illegal drug trafficking in the country but it certainly was not able to wipe it out.

In the return of civilian government after the December 2007 election, the new Thai government announced its plan to re-launch the “war on drugs” campaign. But the public raised grave fears that it would only revive the 2003 series of tragedies.



Justice Delayed, Justice Denied

***"I want the government to pay concern to everyone and address this matter seriously. Our family members should not be forced into disappearance without accountability from the government."*²³ - Angkhana Neelapaijit**

Thailand is a signatory to several international human rights treaties. Its 1997 Constitution even recognizes and upholds the fundamental human rights of all persons. However, in the deterioration of human rights conditions, what matters to the government is not what the laws say but how it can circumvent the laws in order to justify their actions. By looking at the Thai government's attitude towards human rights violations over recent years, it can be characterized by outright closure, lack of enthusiasm to investigate, continuing state of denials and failure to ensure accountability. The prevailing culture of impunity for human rights abuses by state actors, growing threats for human rights defenders, resurging violence in the south and the breakdown of civil safeguards have combined to undermine the rule of law.

The 1973-76 uprisings, though, moved the country from military rule to civilian government but only ending up in oblivion. The government wanted people to forget what had happened. No one has been brought to justice for the deaths and disappearances of hundreds of people. Those who are responsible were simply removed from their post only to be given honorary status by the government.

Several committees were established by the government to conduct investigations on the aftermath of the Black May 1992 events. Although some parts of the committees' reports have been made public, no one has been named responsible for ordering the troops to open fire on unarmed demonstrators. The families of the victims lodged charges against five leaders of the National Peace Keeping Council (NPKC) but they were dismissed due to the legal effect of an Amnesty Decree issued by Prime Minister General Suchinda Khraprayun on 23 May 1992 shortly before he resigned from his post as prime minister. The Amnesty Decree provided pardons to both the state forces and the demonstrators. Ironically, the Thai judiciary upheld the Amnesty Decree.



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During the tenure of General Chavalit Yongchaiyuth as Prime Minister, the families of the victims constantly received some kind of support. But the demand for the return of the remains, if they had been killed, has never been fulfilled by all previous administrations after the May '92 incident. The military uses national security as an excuse to conceal information about the whereabouts of the victims. In 2001, the National Human Rights Commission (NHRC) of Thailand was established under

provisions of the 1997 Constitution. The NHRC has a limited mandate to investigate and redress past human rights violations, including the events of May 1992. With government restrictions and financial control, NHRC has failed to function fully and autonomously in accordance with the international standard of operation for a national human rights institution. NHRC can issue reports of any findings and make recommendations but it does not have power to enforce its decisions.



AFAD members conduct a summing-up of its three-year direct assistance program with the theme: "Sharpening our Healing Capacities Towards Empowerment."

In an effort to halt the resurgence of violence in the southern border provinces, the Thai government created several investigative committees to examine

both Tak Bai and Krue Se incidents. A significant step was made by the government in the creation of the National Reconciliation Commission in April 2005. NHRC, in its final report, concluded that the military has committed a dereliction of duty in handling the Tak Bai and Krue Se incidents. However, no one was prosecuted. Compensation, however, was paid to victims on condition that a legal case against the authorities should be dropped.

In August 2006, 23 reported cases of forced disappearances in the south that occurred from 2002 to 2005 were acknowledged by the Thai government. The families of victims were offered 100,000 Thai baht (USD 2,500) each as compensation. However, the government did not give any information about the whereabouts and fate of their loved ones. Angkhana Neelaphajit, the chairperson of the Working Group on Justice for Peace, and wife of disappeared lawyer Somchai Neelaphajit, rejected the notion of compensation saying that, "the acceptable compensation is to review the truth and to bring the responsible person(s) to justice according to the law."²⁴ The Internal Security Act was passed on 20 December 2006 that confers immunity from prosecution for human rights abuses to nearly all government authorities.



Of all the reported cases of disappearances connected with the counterinsurgency operations of the Thai government against the Muslim insurgents in the south, the disappearance of Somchai Neelapaijit is the only case that has been brought to court and has elicited a significant level of public attention. With widespread publicity and pressures from local and international human rights communities, one of the five police officers, charged for Somchai's abduction was convicted but only on a minor charge of coercion and sentenced to three-year imprisonment. He was later freed on bail pending appeal. The other four returned to active duty while one of them was even promoted while the trial was still under way.

Human Rights First, a leading human rights advocacy organization based in New York City and Washington, D.C., which monitored Somchai's case from the onset, believed that this trial did not conclusively address the disappearance of Somchai Neelapaijit because according to their monitoring report, the charges never reflected the gravity of the crime to which Somchai fell victim.

The charges of gang robbery and coercion simply do not encompass the disappearance and apparent killing of Somchai. The root of the problem in this case seems to be the absence of evidence due to a half-hearted investigation. The weak inquiry, including inadequate forensic investigation and the failure to follow key leads, was due primarily to the problem of the police force being entrusted to investigate its own members. Additional concerns include inadequate protection of witnesses (a responsibility also entrusted to the police), and rules of evidence that interfered with the effective presentation of the case.²⁵

In response to the growing public demand to reopen Somchai's case, the newly elected government of Samak Sundaravej appointed Sompong Amornwivat as Minister of Justice. He is the elder brother of a former DSI Director-General, Police General Sombat Amornwivat who was removed from his post following the failure to gather convincing evidence on finding the truth behind the disappearance of Somchai and to prosecute the perpetrators.

At the height of the "war on drugs" campaign, the Thaksin government bowed to the mounting public pressure to investigate the unexplained killings of 2,500 suspected drug dealers. He then appointed an investigation panel led by former deputy attorney-general Praphan Naikowit to look into these deaths, but nothing came from its investigation. After the military *coup* of 19 September 2006, the interim government set up another committee to conduct an investigation on the issue but that panel also failed to come up with conclusive findings. Until now, what really happened in 2003 remains a mystery.

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Muslim insurgents target civilians. (Photo taken from <http://news.bbc.co.uk>)

When the practice of enforced disappearances in Thailand was brought to the attention of the United Nations, the international body has consistently expressed its concern and called on the Thai government to take necessary steps to address the situation. Unfortunately, the Thai government has so far ignored it.

Specifically, in 2005, the treaty body monitoring compliance with the International Covenant on Civil and Political Rights, the UN Human Rights Committee, recommended investigations of gross human rights abuses in the country and the bringing of emergency

regulations in force in the south into line with international law. None of these things has been done, nor is there any evidence of intent, although Thailand has committed itself to comply with the covenant. In July 2006 the UN Special Rapporteur on Extrajudicial Killings said that the emergency regulations make “impunity look like the official policy” of the government. He has repeatedly requested to visit Thailand but has been ignored. For its part, the UN Working Group on Enforced or Involuntary Disappearances has received and followed a growing number of cases from Thailand with concern, although the number remains small due to the persistent intense fear among the families that they would face retribution if they complained, particularly to international agencies.²⁶

As a consequence, there has been no successful prosecution of anyone for a crime of enforced disappearance in Thailand. Neither is there a law criminalizing such an act, nor has there been any satisfactory steps that the Thai government has undertaken to sign and ratify the UN Convention for the Protection of All Persons from Enforced Disappearance. In fact, during the three-year negotiations from 2003 to 2005 of the Inter-Sessional Working Group to Elaborate a Draft Legally-Binding Normative Instrument for the Protection of All Persons from Enforced Disappearances, it was observed by the Asian Federation Against Involuntary Disappearances (AFAD) that the Thai delegation was present but did not actively participate. Although, it joined the consensus for the adoption of the text for the Convention, it didn't present its official position. During this time, international human rights groups like AFAD had been lobbying for Asian governments to support the treaty. When AFAD together with one of its two member-organizations in Thailand, the Relatives Committee of the May

1992 Heroes spoke to the delegates of the Permanent Mission of Thailand to the UN in Geneva, the Thai government representatives did not give any commitment except to further study the text. On the occasion of the 75th session of the UNWGEID which was held in Thailand in May 2005, AFAD sought an audience with Thailand's Ministry of Foreign Affairs. But Thai Foreign officials explicitly declared that it was not the government's priority. During the Thaksin administration, the government did not only give a cold shoulder but it very nearly told the human rights groups to get out the door. However, the attitude of the Thai government eventually changed after the adoption of the Convention by UN General Assembly in 2006. It became receptive to the idea of dialogue when it attended a forum on the international treaty against enforced disappearances sponsored by civil society in Thailand in February 2008.

During the March 2008 session of the UN Human Rights Council, international human rights groups held a parallel activity sponsored by the International Coalition Against Enforced Disappearance and the French government. Angkhana Neelapaijit, wife of Somchai Neelapaijit, was invited to present her husband's case. Mr. Sihasak Phuangketkeow, Thai Ambassador to Geneva who was present during the event, responded positively by promising to recommend to the Thai government the immediate resolution of Somchai's case and to adopt necessary measures to stop enforced disappearances in the country.

Families Who Are Left Behind

*"When there is violence, the impact is on the women and children,"*²⁷ - Angkhana Neelapaijit

Disappearance causes grave sufferings not only to victims but also to their families. They are suddenly placed in a never-ending ordeal of searching and longing for their disappeared loved ones. They are living under constant threat and violence, both physically and emotionally from the continuing presence and operations of the military forces and the insurgents. Families of the disappeared are trapped in a web of violence, fear, and isolation. The southern provinces of Pattani, Yala, and



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Narathiwat are among poorest provinces of Thailand. People rely mainly on agricultural production. In the revival of armed conflict, farmlands become killing fields where lives and pieces of property are destroyed; people are displaced and live in total deprivation. Most suffer from malnutrition and illness because of the poor living conditions and inadequate medical care.



Families of the disappeared in Southern Thailand participate in an evaluation of AFAD's rehabilitation program.

In Thailand and elsewhere in the world, the most battered by the experience are not only the poorest but the most vulnerable sectors of society - women and children. Because victims of disappearances are usually men of working age who are most of the time, the families' breadwinners, disappearances tear their families apart and wives often find themselves alone to fend for the needs of their families. In most Muslim communities, the role of women - mothers, wives, and daughters is primarily that of tending the household. Ayaan Hirsi Ali, an active critic of Islam, an advocate

for women's rights and a leader in the campaign to reform Islam, said that:

"...in the Koran and more elaborately in the Sunna, Islam assigns to girls a position in the family that requires them to be docile, makes them dependent on their male relatives for money and gives dominion over their bodies to these same male kin."²⁸

In the disappearance of their male relatives, they are left with no means or capacity to take their place. Half-widowhood, the Kashmiri Muslims say, is marked as the loss of the woman's social status. The situation of the wives of the disappeared persons is more difficult. Because disappearance cannot establish certainty of death, the wives of the victims are simply considered half-widows. Their undefined legal status consequently deprives them of their rights to property, inheritance, custody and even remarriage. They are further subjected to discrimination not only for being Muslims but also for being branded as "wives of bandits, murderers or terrorists." Indelibly marked with a stigma, they are commonly ostracized by their communities.

The children of the disappeared also bear the brunt of disappearance. They are not only denied the presence and comfort of their parents but more importantly the possibility of living a normal life and of dreaming of a better future. They usually are forced to leave schools because their families can no longer afford to support their

studies. The Thai school system offers basic education from grade 1 to 6. After graduation, students can choose to work or study in Muslim schools. With little support from the Thai government, children tend to work and help augment their families' meager income. Conflict-ridden areas are not conducive to learning. In some remote parts of the southern provinces, schools are often the target of attacks by both state security forces and Muslim insurgents.

More than 1,000 schools in Pattani, Yala and Narathiwat province were closed after the director of a community school in Pattani was shot and burnt by Muslim militants. More than 50 teachers have been killed since the violence re-emerged in 2004.²⁹

Illegal drugs are a perennial problem in the region. Muslim children are vulnerable to temptation and social pressure. Drugs provide them with a temporary escape from their miserable condition. It even offers an opportunity to earn money. In the peak of the Thaksin government's "war on drugs" campaign in 2003, most of the victims of arbitrary arrests, disappearances and killings were young people allegedly involved in the drug trade.

Family members of the disappeared human rights defenders who seek justice are often subjected to threats, intimidation, and violence. In the case of Angkhana Neelapaijit, her crusade to find justice for her husband was always shadowed by threats to her safety. She withdrew from the witness-protection program of the Ministry of Justice fearing that it would only place her in greater danger under police care.

Moving on, Fighting on

*They don't really stand up for their rights as just trying to make sure the family has enough to eat is difficult enough. But, if women don't fight for their rights, I don't know who will do it for them.*³⁰

- Angkhana Neelapaijit

Despite the tragic experience, there are families of the disappeared who choose not to be confined to the four walls of their homes but rather courageously come out into the open to seek truth and justice. They are able to overcome the fear and defy the odds and usually find solace and safety from each other's company, strength and unity from their common pain and hope. They have also seen the need and importance of having an organization to articulate their struggle against enforced disappearance, to seek legal remedies and retribution, provide a support system and assistance and collectively reconstruct the memory of their loved ones.

In Thailand, organizations of families of victims and human rights advocates are established to urge the government to address the issue of enforced

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disappearances. One of these organizations is the Relatives Committee of the May 1992 Heroes.

Since its establishment, the Relatives Committee of the May 1992 Heroes has been working to force the Thai government for the return of the remains of their disappeared loved ones, for the rehabilitation and provision of services and assistance to the survivors and the relatives of the disappeared, for the full disclosure of the investigation and for the construction of a memorial in honor of the May heroes.

They have repeatedly made pleas to the government and have even organized a procession carrying coffins in front of the Ministry of Defense to remind the public and the government of the horrors of the Black May event. When the Thai government repeatedly ignored their plea, they finally submitted the cases of disappearances to the UN Working Group on Enforced or Involuntary Disappearances in October 2001 wherein 31 of 34 cases of people who disappeared during the May 1992 events were accepted. These are 33 cases that were taken to court. Although, more disappearances took place during the Black May event, only 33 families had the means and capacity to take the case to court. Many of the families of the victims lived outside Bangkok and could not afford the time and cost to attend court hearings.

The Relatives Committee of the May 1992 Heroes is currently finalizing its plan to build a government-funded monument in memory of the Black May 1992 victims in the same location where the uprising occurred in Bangkok. The government funding and the future monument shall serve as clear symbol and manifestation of an implicit or explicit admission of guilt brought about by the brutal and devastating massacre of May 1992.

The other group which was formed in 2006 as a response of civil society to the increasing cases of disappearances particularly in the southern provinces of Thailand is the Working Group on Justice for Peace (WGJP), an organization of human rights advocates working to promote justice and the rule of law to achieve peace in the southernmost provinces. It specifically aims to promote justice for families of disappeared persons in southern Thailand by assisting them in the investigation of the whereabouts of the missing, bringing perpetrators to justice and claiming adequate remedies and compensation in order to prevent further abductions and disappearances; protecting the rights of all detainees both under the emergency decree and criminal procedures in respect to human rights; and promoting the rule of law and due process by providing legal aid to human rights victims or anyone outside the protection of the law.

It holds activities such as symposia, fora and press conferences to disseminate information and educate the general public about the issue of enforced disappearance. The group is also lobbying the Thai government to sign and ratify the UN Convention



for the Protection of All Persons from Enforced Disappearance. Through its incessant campaign and lobbying, WGJP was able to bring the issue of enforced disappearance into public attention and to make it as a subject of policy discussions. In fact, civil protection against enforced disappearance has been stipulated for the first time in the Constitution of Thailand as part of the rights guaranteed by the state to its people. It also gains support from the government particularly the Ministry of Justice and the National Human Rights Commission for the need to investigate past and present cases and to provide compensation to families of victims. The Thai government appeared to have made a shift from the policy of denial by the previous administrations to reality-check approach of responding and acknowledging the cases of disappearances brought before United Nations bodies by human rights groups. This policy has certainly contributed to the diminishing of the number of cases of disappearances since 2006.



The WGJP is providing services and assistance to victims' families. In cooperation with the Asian Federation Against Involuntary Disappearances (AFAD), it recognizes the importance of psycho-social rehabilitation for the families of the victims who are deeply traumatized by the tragic incidents and provide educational assistance to 40 children of low-income families of the disappeared. The group conducts research and documentation of past and present cases of disappearances in the country in order to assess the human rights situation and to pressure the government to address it. In August 2006, it had submitted to the UN Working Group on Enforced or Involuntary Disappearances a 45-page documentation of the 12 cases of disappeared persons in the south allegedly committed by state security forces.

Both organizations are members of AFAD, a federation of human rights organizations working directly on the issue of enforced disappearances in Asia. It aims to highlight the issue of enforced disappearances in Asia, lobby for signatures and ratification of the Asian governments on the UN Convention for the Protection of all Persons From Enforced Disappearance; to forge solidarity among families of the disappeared and to establish cooperation with organizations of victims' families in

other continents. For already decade, it has been committing itself to the struggle of building a world without *desaparecidos*.

Looking Forward

*"If the mechanisms in Thailand cannot protect the people, perhaps the UN declaration can guarantee our basic right. The act of enforced disappearance is an offence under criminal law; we should stop it. No one can understand the pain of a family who has lost a loved one under this circumstance."*³¹ - Angkhana Neelapaijit

Samak Sundaravej, head of the People Power Party (PPP) was elected as new prime minister on 28 January 2008, "after receiving parliamentary votes of 310 against 163 for Abhisit Vejjajava of the Democrat Party — a choice that could put the new government on a collision course with the generals who toppled Thaksin for alleged corruption and abuse of power."³²

Shortly after being elected as Prime Minister, Samak was criticized for being Thaksin's proxy and for working under the shadow of his predecessor. He was also labeled as reactionary for strongly supporting the violent crackdowns on students and pro-democracy campaigners in the 1970s and 1990s when he was still the Deputy Minister of the Interior. Samak dismissed the allegations as baseless and pleaded to his critics to give him a chance to do his work.

A rumor of another *coup* in the offing which surfaced in late March 2008 was causative to the growing political instability. Prime Minister Samak Sundaravej even admitted during an interview of hearing a '*coup* buzz' but has not seen the bee yet when asked about the report of the meeting of battalion commanders at the Department of Royal Infantry 11 in April.

Samak himself even alleged that an "invisible and dirty hand" was conspiring to subvert the PPP's prospects of forming the government.³³



A poignant face of a father holding a picture of his disappeared son. (Photo taken from <http://ratchasima.net>)

On 10 July 2008, one of his top cabinet members resigned amid political protests against the government's plans to revise the military-drafted constitution which was perceived as a scheme to cling to power and prevent Thaksin from facing corruption-related charges.

M. Jakrapob Penkair, who was accused of insulting the king, said he was stepping down to end rumors of a military *coup* which were prompted by the allegations.³⁴

Many believed that the military had a hand in Jakrapob's resignation. It was to ensure that the government would follow a "military-guided democracy" under the name of the King. The Asian Centre for Human Rights Weekly Review also shared a similar conclusion as it pointed out that:

"A military junta remains a junta even when shabbily dressed up as a democracy. And even in the unlikely event that the PPP is allowed to take power, the Military's influence will stifle any attempt at reform as it always has. Its influence will ensure that democracy is once again probed a failure. Thailand will slip, once again toward Military rule."³⁵

Although the reorganization of Samak's cabinet is expected to help defuse the political tension, it also totes up to the mounting uncertainties that are already clouding the future of Thailand's democracy. The weaknesses and flaws of its democratic system open doors of opportunity for the return of military rule. No one can say if the transition and the imminent political change will be peaceful and orderly. Thus, for Thailand's democracy to weather the sporadic political storms, it should allow its established institutions to work accordingly and effectively for the interest of society.

Its future cannot be guaranteed unless democratic structures are institutionalized and the democratic process can be made more relevant to the vast majority of Thais. The legacy of past authoritarian regimes can only be overcome by greater popular participation and community mobilization. Civil society and non-governmental



Crowd swarms around the May 17, 1992 Democracy Monument.

organizations in particular, must ensure that the state does not overstep the confines of its powers.³⁶

Civil society must therefore play a vital and active role in the democratization of the Thai society. In practice, Thai civil society already serves as a bridge of communication between the government and the general public through interactive dialogues. In asserting its role, it has been very active in campaigning for the government to make policy changes and to adopt a more productive approach and strategy to address human rights issues particularly enforced disappearance. These policy changes can be briefly stated in the following:

1. The suspension of the state of emergency and the counter-insurgency campaign in the southern border provinces of Pattani, Yala, and Narathiwat. The military approach to armed conflict has been found to generate more violence and human rights abuses – killings and disappearances.
2. The peace negotiations should be given a chance to find a peaceful and acceptable conflict resolution.
3. Strengthen the functions and powers of the National Human Rights Commission to investigate past and present cases of disappearance and to bring the perpetrators to court.
4. The Thai government should sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance and enact legislative measures to ensure that enforced disappearances are recognized in the penal code as a specific offense in conformity with the international convention.
5. The justice system should be reformed. Department of Special Investigations under the Ministry of Justice must be overhauled from top to bottom to make it credible and effective. The Supreme Court must adopt resolutions that provide better protection to civil and political rights.
6. Enforcement of clear, consistent, and effective guidelines for the police to investigate all forms of disappearances, whether politically motivated or connected to trafficking and other ordinary crimes.
7. The government should respect and provide protection for human rights defenders.

It is now up to the Thai civil society to use the available democratic space, however narrow it may be, to solicit support and involvement of the people –Buddhists and Muslims alike.

For democracy to take root in Thai society, it must be understood by the majority of people as a channel of popular power and collective decision-making. This should be linked to the notion of a moral state. A democratic social understanding must see the society as a potential locus for righteousness.³⁷

Democracy and human rights must therefore be anchored not only on the notion of state responsibility but also as an individual duty and moral obligation which should conform to the doctrine of non-violence contained in every religion – including Buddhism and Islam.

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Arnel Natividad
Entry
First AFAD Poster Making Contest
14 May 2008

DELAYED JUSTICE: FINDING MUNIR'S MURDERERS AND THE INDONESIAN STRUGGLE FOR HUMAN RIGHTS*

By Chang Chiu



Art by: Ben-Hür Bobis

Munir Said Thalib, a prominent Indonesian human rights activist, was mysteriously murdered on a flight from Jakarta to Amsterdam on 6 September 2004. His death opened up many questions about the workings of the Indonesian State Intelligence Agency (*Badan Intelijen Negara* or *BIN*). Nearly four (4) years after Munir's death, although two individuals have been convicted for the crime, many questions remain regarding whether powerful Indonesian figures who have been implicated as possible masterminds in the plot will be brought to justice. An examination of Munir's murder, the subsequent investigation and future progress of the prosecution of those responsible is instructive on the status of the Indonesian human rights community and the commitment of the Indonesian government in meeting its human rights responsibilities.

Munir's Life and Work

Munir Said Thalib, affectionately known simply as 'Munir', is regarded as one of Indonesia's most renowned human rights activists. Munir studied law at Brawijaya University in Malang, East Java Province. He began his human rights career in 1989 as a legal aid officer in the capital of East Java, Surabaya, where he eventually served as the Head of the Labor and Civil Rights department.

One of Munir's early prominent cases involved demanding accountability for the death of Marsinah, a young labor activist, in 1993. Munir's position in this case necessitated confrontation for the first time in his career against the military Armed Forces of Indonesia (*Tentara Nasional Indonesia* or *TNI*), which was then dominant in labor politics and responsible for killing Marsinah. The military command in Surabaya abducted and intimidated Munir in an attempt to punish him for his work. Despite the military's pressure, Marsinah's case was brought to the attention of the United Nations Commission on Human Rights (UNCHR).¹ Munir rose rapidly in the ranks of the human rights field and soon became director of the Semarang Legal Aid Office in Central Java. Later he moved to Jakarta to serve as Chief of Field Operations for the Indonesian Legal Aid Foundation in 1996.

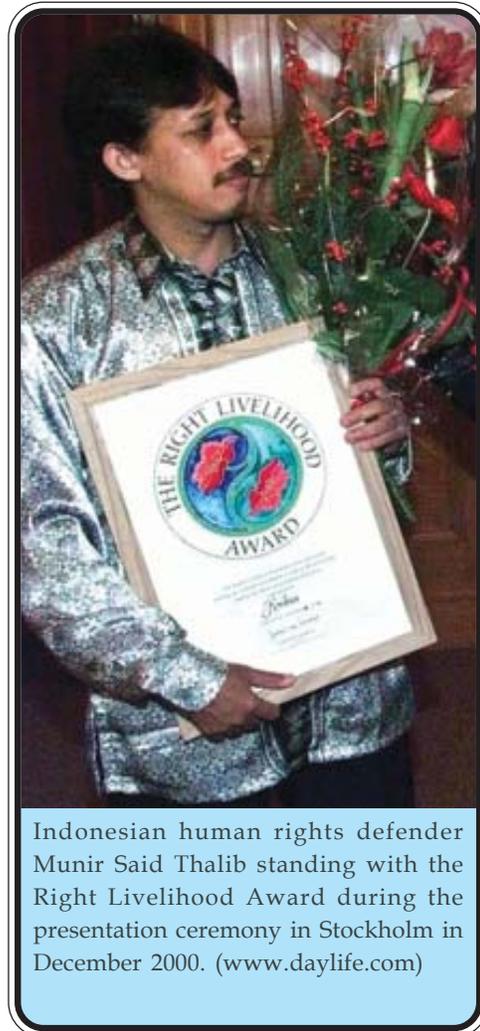
Munir regularly spoke out for justice in the face of intimidation from the government, security forces, and other powerful interest groups. He played an important advocacy role for victims of Tanjung Priok in 1984, Lampung in 1989, forced disappearances against activists in 1998, gross violations against human rights in East Timor in 1999, the conflict in Maluku in 1999, repression in Papua, and violence in Aceh related to military operations.

In particular, the forced disappearances against activists near the end of the Suharto regime in 1998, spurred Munir to found the human rights organization called The Commission for the Disappeared and the Victims of Violence (*KontraS*). In these

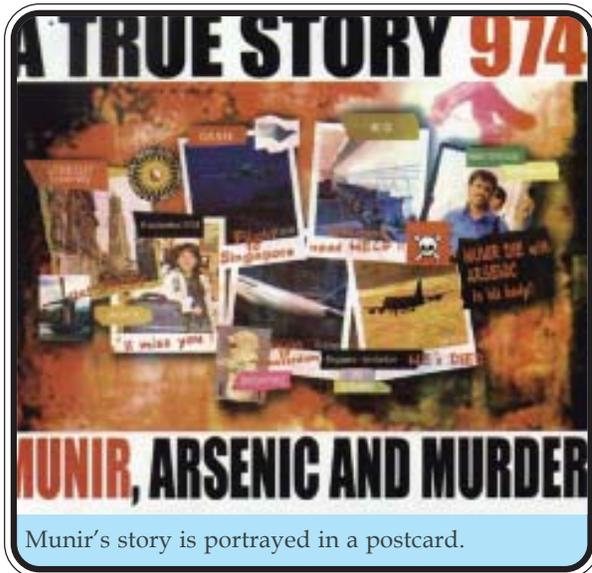
cases of forced disappearances, Munir, together with *KontraS*, investigated a series of systematic abductions of democracy activists by the Army Special Forces (*Kopasus*) that occurred in the run up to the 1998 national elections. Former victims of these abductions who were released through the efforts of Munir and *KontraS* campaigned for the government and military to admit their involvement and to release all remaining detainees. Due to these efforts, Munir and *KontraS* successfully urged the military authorities to suspend a general who had risen to become the Commander of the Army Strategic Reserve. This was the first time in Indonesian history that a military leader had been punished for violating human rights. *KontraS* was undoubtedly instrumental in bringing rights abuses committed by Suharto and others to light. As Indonesia transitioned into the post-Suharto period, Munir worked with *KontraS* to confront the significant structural problems and corruption in the government.

Following the fall of the Suharto regime, Munir was appointed to a state-sponsored commission that investigated human rights abuses in East Timor in September 1999. The commission exposed crimes by the military-sponsored militias in East Timor during the country's efforts for independence. State prosecutors refused to convict any of the military or police personnel named by the commission as having committed human rights abuses.² However, Munir's work on the commission was important for furthering the argument that the military's activities should be detached from political issues.

In the immediate years preceding his death, Munir focused his energies on *Imparsial* - a watchdog human rights group he founded along with sixteen (16) friends in 2002. At *Imparsial*, he actively criticized policies on sensitive political issues, especially those pertaining to national security and defense. Munir also took on responsibilities in representing many human rights victims in cases before the Indonesian courts and campaigned on behalf of many ethnic minorities. In particular, Munir concentrated on legislation intended to regulate the role of the *TNI* and *BIN*. Regionally, Munir served at the time of his death as Chairperson of the Asian Federation Against Involuntary Disappearances, a coalition of Asian human rights non-governmental organizations (NGOs) dedicated to fighting against enforced disappearances.³



Indonesian human rights defender Munir Said Thalib standing with the Right Livelihood Award during the presentation ceremony in Stockholm in December 2000. (www.daylife.com)



For his devotion to human rights, Munir received various accolades at home and abroad. *Ummat*, an Islamic magazine, named him Man of the Year in 1998. *Asiaweek* included him among its Young Leaders for the Millennium in 2000.⁴ Also in 2000, in perhaps his greatest international recognition, Munir won what some refer to as the “alternative Nobel Prize” - the Right Livelihood Award. The award committee cited Munir for “his courage and dedication in fighting for human rights and the civilian control of the military in Indonesia.”⁵

Perhaps more important than all of these accolades is how friends remember Munir. People have said that Munir gave the utmost

consideration to the perspective of victims of human rights violations. He listened to all of their expressions of anger, sadness, and hopes for justice. Fellow activists and clients of Munir recall him as a human rights activist who was available at all times of the day for counseling and freely gave advice for those who needed his help. All of these friends and clients were shocked upon learning of Munir’s murder.

The Murder

For all of his achievements, Munir still believed that he needed to gain more knowledge about the intellectual issues behind human rights. This desire prompted him to apply for and win a scholarship from Utrecht University in the Netherlands to pursue a master’s degree in international relations and human rights.⁶ Munir would leave behind in Indonesia his wife, Suciwati, and two young children, Alif Allende (then age five) and Diva Suuky Larasati (then age one).

On the evening of Monday, 6 September 2004, the 38 year-old Munir went to Soekarno-Hatta airport, accompanied by Suciwati and friends from *Imparsial* and *KontraS*. His friends and family bade him farewell, and Munir boarded Garuda Indonesia (Garuda) Flight 974 (GA 974) alone. The flight was scheduled to depart at 9:55 p.m.

As he boarded the flight, an off-duty Garuda pilot named Pollycarpus Budihari Priyanto who was riding as a passenger struck up a conversation. Pollycarpus offered his business class seat to Munir, who had purchased an economy ticket. After initially

refusing the offer, Munir changed his mind and sat in business class for the first leg of the flight.

GA 974 first required a brief layover in Singapore. During this first leg, Munir ate a meal of orange juice, noodles, and slices of fresh fruit. The flight transited Changi Airport, Singapore on Tuesday at 12:40 a.m. local time for one (1) hour and ten minutes. At 1:50 a.m., the plane continued its journey to Amsterdam.

On the way from Singapore to Amsterdam, Munir switched seats and sat in the economy section. Pollycarpus was no longer on the plane, having disembarked in Singapore. Approximately forty (40) minutes after take-off, Munir was observed heading towards the lavatory. He had become violently ill, suffering from acute diarrhea and bouts of vomiting.

Two hours later, Munir approached a flight attendant and requested to see Dr. Tarmizi, a passenger on the flight that Munir had met while reboarding the flight. Munir told Dr. Tarmizi of his worsening condition since leaving Singapore. The doctor treated Munir, who was placed closer to the doctor for observation. Although the doctor gave Munir diarrhea medication, as well as milk and salt water, his painful symptoms persisted. After some agonizing final hours, Munir was pronounced dead approximately two hours before the plane landed at Amsterdam's Schiphol airport.

In early November 2004, a subsequent autopsy conducted by the Netherlands Forensic Institute (NFI) revealed that Munir had died of a high and lethal dose of arsenic poisoning. Four hundred and sixty five (465) mg. of undigested arsenic was discovered in Munir's stomach, a dose that proved fatal to the slender framed man. Any amount over two hundred (200) mg. is normally considered lethal. The autopsy also identified arsenic in the levels of 3.1 mg/liter in the heart and 4.8 mg/liter in the urine – all extremely high levels of concentration.⁷

Munir's family only learned of his autopsy results when Dutch media sources reported on a related statement from the Dutch Department of Foreign Affairs on 11 November 2004. The Dutch government had already informed the Indonesian government of the autopsy results for some time, but the Indonesian government neglected to make this information available to Munir's family.⁸

In order to receive more detailed information on the exact amounts of arsenic in her husband's body, Suciwati had to make repeated direct requests to the Minister of Foreign Affairs, the Minister of Politics, Law and Security, and the Chief of Police. The day after the news on the autopsy result broke, Suciwati and representatives from several NGOs finally met with the head of the police's Criminal Investigation Unit, Suyito Landung. Mr. Landung shared a letter the Dutch Ambassador had delivered with the NFI report and a copy of the toxicology result. The autopsy report definitively

concluded that Munir's body showed no sign of external damage and that he had died due to arsenic poisoning.

The botched delay in announcing the autopsy results was merely the first of many mistakes made in the investigation of Munir's death. A team was soon sent by Indonesia to the Netherlands in order to obtain and study the original copy of the autopsy result, question witnesses, and attempt to take possession over the available physical evidence.⁹ But due to lack of preparation, the team failed to meet with some Dutch entities relevant to Munir's autopsy. Remarkably, the team almost neglected to obtain all of the authenticated autopsy documents because of a failure to meet the necessary diplomatic requirements.

In one glaring example, the Dutch government initially refused to provide a copy of the autopsy report to the Indonesian team because the Indonesian government did not comply with Dutch legal requirements. Dutch law stipulates that if a deceased individual is not a Dutch citizen, then the deceased's home government must provide the original autopsy documents to the deceased's family. In order for this to happen, the Indonesian government had to first officially request the transfer of the documents from the Dutch government. A shoddily prepared letter from the Indonesian Attorney General requesting the original autopsy documents was not sufficient. Only special negotiation on the part of an Indonesian foreign affairs official rushed to the Netherlands at the last minute allowed for the transfer of a number of the autopsy documents to the Indonesian Embassy.¹⁰

On 29 November 2004, the report of the Netherlands delegation was verbally presented to the public.¹¹ Subsequently, the police provided a copy of the autopsy report to Munir's family, and it was presented to the public a few days later. Information from the NFI autopsy proved that the arsenic had worked rapidly. The Indonesian forensics team that formed part of the Indonesia delegation also agreed that the NFI's autopsy report met Indonesian forensics standards and could be used as legal evidence in Indonesian courts.

The Investigation

Formation of an Independent Investigation Team

An official police investigation had begun shortly after Munir's death and was in process while the autopsy results were being obtained. It initially interviewed 86 witnesses, including the passengers and crew of GA 974. At the conclusion of this preliminary investigation the police still had not yet declared any suspects.¹² Important political figures and members of parliament began to criticize what they perceived as

the slow pace of the investigation and proposed that the police complete its investigation within 100 days.¹³

On another front, as soon as the autopsy results became known, Munir's family and the local human rights community also began to push for an official fact-finding team to work in parallel with the police investigation.¹⁴ The need for such a team arose in part because Munir's murder did not appear to be an ordinary crime. Many feared that leaving the case completely in the hands of the police and conventional legal procedures would mean a repetition of past failures in addressing attacks on human rights defenders. Prior to Munir's murder, although violence towards human rights activists frequently occurred, such acts were never properly investigated or successfully resolved in the courts with the punishment of its perpetrators.¹⁵ Another justification for an independent team was the legitimate belief that even if the police identified those directly responsible for Munir's death, they would not have the political will to reveal the individuals ultimately behind the crime.



In a positive step later marred by indecision, President Yudhoyono met with Suciwati and other human rights activists on 24 November 2004 and requested additional information about a proposed independent investigation team.¹⁶ Soon afterwards, the Indonesian human rights community quickly submitted to the government a proposal on the proposed membership and mandate of such a team.

After the initial delays, public opinion and political pressure moved the Yudhoyono administration to finally agree to the formation of an independent investigation team.¹⁷ On 21 December 2004, NGOs discussed the proposal with the police, the Attorney General's office, the Foreign Ministry, and the Ministry of Law and Human Rights. The meeting produced an agreement on the assignment, authority, and responsibilities of the team.

A Presidential Decision (No. 111/2004) formally approved the independent fact-finding team, *Tim Pencari Fakta*, or the *TPF*, in late December 2004. It convened for the first time on 13 January 2005.¹⁸ The decree originally planned for the *TPF*'s working period to last three months.

Obstacles Confront the *TPF*

Early on, the *TPF* faced significant obstacles in doing its work, one of which was the *TPF*'s constrained mandate. According to the NGOs present at the 21 December meeting, the original agreement with the police accorded the team the authority to provide opinions to police investigators, to question witnesses and experts located within Indonesia and abroad without requiring a prior police request, to suggest a direction of inquiry and investigation to police investigators, and to monitor and evaluate its developments.¹⁹

In the December 2004 presidential decree, however, these powers were watered-down to a much weaker and more vague mandate to "assist the police."²⁰ The decree also omitted some prominent religious and human rights leaders who had already agreed to serve and who could have given the *TPF* necessary political stature to effectively conduct its mission.²¹

The *TPF*'s limited scope and curtailed membership disappointed many observers, and it appeared that the team had been set up to falter. Several proposed members declined to join the *TPF*, describing it as "planned to fail," though most decided to contribute what they could with the limited mandate.²² The *TPF*'s final composition consisted of twelve (12) members, and included human-rights activists, legal and justice department officials, and a police brigadier. The team was chaired by Police Brigadier-General Marsudhi Hanafi and included prominent human rights figures such as Asmara Nababan, Kamala Tjandrakirana, Usman Hamid (commonly known as Usman), Rachland Nashidik, Hendardi, and Munarman.

In its original three-month term, the *TPF* reviewed some of the police interrogation records, investigated Garuda management, visited the company responsible for closed-circuit cameras at the airport²³, and reviewed phone records, exit taxes, and money transfers. The team also worked with the Attorney General, the Foreign Ministry, and the Ministry of Law and Human Rights to reach a legal assistance agreement with the Dutch government. This agreement facilitated the exchange of crucial information and evidence relating to the autopsy and the crime scene, including Munir's organs, crime scene investigation results, and witness testimony. Because Dutch law prohibited the transfer of evidence to another country where the death penalty could result, the Yudhoyono government had to guarantee that any individual convicted for Munir's murder would not be sentenced to death.²⁴

Garuda and Polycarpus

The *TPF* mainly focused on Garuda and Polycarpus in its original three-month period. Polycarpus came to the attention of investigators after they discovered that he had called Munir's phone twice the night of the flight to confirm the activist's



travel plans, and then later convinced Munir to take Pollycarpus' seat in business class rather than Munir's assigned seat in the coach section. Pollycarpus' reason for being on the flight was also unclear, which quickly led to questions about the role of senior Garuda officials and any documents they may have provided that authorized his travel.²⁵ The police investigation further discovered that Pollycarpus had met Munir previously in Jakarta and that he had obtained Munir's mobile number several months prior to the flight.²⁶



Suciwati joins AFAD's light moments during one of its rehabilitation sessions.

At the end of March 2005, on the basis of some of the *TPF's* work, the police charged Pollycarpus as a suspect in Munir's murder. Specifically, the police stated that Pollycarpus had given false testimony that indicated he had some involvement in the crime. The actual charges brought by the government were related to premeditated murder and secondary charges of falsifying documents.²⁷

Garuda initially proved uncooperative.²⁸ Despite three weeks' notice, Garuda officials cancelled a reconstruction of the crime planned for 22 January at the last minute, claiming that they were not prepared to provide the plane and crew involved in GA 974.²⁹ The exercise, a standard step in Indonesian police investigations, was postponed a second time on 1 March. *TPF* chair Hanafi told the press that the Garuda officials were quite defensive and appeared to be involved in a cover up.³⁰ The reconstruction was critical for revealing more about how the arsenic might have been applied to the food and drink that Munir consumed the night of 6 September.

The *TPF* did manage to uncover three key documents that had enabled Pollycarpus' presence on the plane and were inconsistent with Garuda's normal procedures. The documents are referred to as the: 11 August assignment letter, the backdated 4 September memo, and the 6 September Notice of Change.

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Rohainil Aini, former vice president of Garuda, is escorted out of court after being tried in separate courtrooms at Central Jakarta District Court on charges of abetting the killing of Munir in 2004. (www.timesonline.co.uk)

• *11 August assignment letter:* This letter, signed by Garuda Managing Director Indra Setiawan, named Pollycarpus as “assisting staff” with the assignment “to recommend solution to problems at Garuda, especially in Aviation and Internal Security.” Significantly, this document was cited in all other documents connected with the trip and provided a basis for Pollycarpus to be at the scene of the crime. The letter was suspicious for a variety of reasons. The letter was signed close to the time that Munir’s plan to go abroad appeared in press reports. In addition, it was

unprecedented for the Managing Director to issue such a letter directly to a pilot. Typically, appropriate subordinates issued such letters.

• *The backdated September 4 memo:* This interoffice memo was signed by Vice-President for Security Ramelgia Anwar and dated 4 September 2004. It cited the 11 August letter and requested that the Chief Pilot allow Pollycarpus to fly as non-active crew from Jakarta to Surabaya, Denpasar, or Singapore. It was later determined that the letter was written on September 15 and was backdated to September 4, a Saturday on which the office was closed. Pollycarpus requested Anwar to write this letter after the Chief Pilot asked Pollycarpus about his expenses for his trip to Singapore.³¹ Existence of this letter and its backdating demonstrated that certain Garuda officials sought to authorize Pollycarpus’ presence on GA 974 after the murder had occurred.

• *6 September Notice of Change:* On the day of his travel, the basis for Pollycarpus’ presence on GA 974 was the signature of Flight Operation Support Officer, Rohainil Aini. This notice changed Pollycarpus’ work schedule and permitted him to take GA 974 and return the following morning. This sort of assignment usually requires the permission of the more senior Chief of Pilots and allowing a lower-level official such as Aini to provide the notice was unprecedented. Details emerged that Pollycarpus had met Aini shortly before Garuda headquarters closed on 6 September in order to receive authorization to fly on GA 974 later that evening. Another suspicious issue was that Pollycarpus’ supposed security assignment was unusual given his lack of qualifications in this field.³²

Setiawan stepped down after the *TPF* urged that he be investigated for his role in providing Pollycarpus with documents. The two other officials tied to the

documents, Aini and Anwar, as well as flight crew with roles in preparing food and drink on GA 974, were summoned by the police for questioning in March. These senior officials were mentioned in the original document forgery charges against Pollycarpus, but only Setiawan and Aini were charged in connection with the case much later in the fall of 2007.

***BIN* Resistance**

In March 2005, the *TPF* received a three-month extension from the Yudhoyono government in order to explore *BIN*'s role in Munir's murder. During the original working period of the *TPF*, mysterious anonymous SMS messages had circulated in Indonesia claiming that Pollycarpus had strong ties to *BIN*.³³ In mid-March 2005, the *TPF* received information from undisclosed sources pointing to suspicions that intelligence officials had been involved in the plan to assassinate Munir. Usman thought that the information was too important to be ignored, but not easily confirmable.³⁴ The *TPF* needed additional time in order to check the accuracy of the information, which would require a thorough investigation of *BIN*.

The primary evidence of a link between Pollycarpus and *BIN* was a series of phone calls, at least 35 according to press accounts, made between both Pollycarpus' home and cellphone and an office phone and cellphone linked to a man named H. Muchdi Purwopranjono (known widely as Muchdi). Many of these calls occurred in the days just before and after Munir's murder, as well as in the days after the police announced an investigation. In addition, these calls were made both before and after Munir's murder. Muchdi was a career soldier who had moved to *BIN* in 2001. Interestingly, one of his last military positions was as head of the *Kopassus* in 1998, a time of intense power struggles and human rights abuses, including the disappearances of numerous pro-democracy activists. As mentioned previously, Munir founded *KontraS* as a response to these disappearances, and his investigations specifically linking the disappearance of several university activists in 1997 to *Kopassus* contributed to Muchdi losing his job soon after. Clearly, Muchdi could harbor a motive for killing Munir, the man primarily responsible for ending his rising military career.³⁵ Muchdi



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disavowed all knowledge of Polycarpus and claimed his cell phone had been used by someone else.³⁶

Polycarpus' travels to conflict areas provided a further indication of possible *BIN* links. Travel documents provided to the *TPF* reportedly showed that Polycarpus flew to Aceh for a week just as martial law was declared in March 2003. While in Aceh, Polycarpus traveled with a *BIN* agent named Bambang Irwan.³⁷ Several journalists also recalled seeing him in North Aceh at the time. Polycarpus had previously stated that he was in East Timor at the time of the referendum and the mass expulsion that followed, and he is also known to have spent time in Papua. His lawyers confirmed his presence in these conflict areas, but contend that in each case he was doing humanitarian work.³⁸

A chief obstacle to the *TPF*'s investigation of *BIN* was the lack of a working mechanism or agreement to ensure access to *BIN* officials and documents. While police officials stated that they also intended to interview *BIN* officials, and the head of the *BIN* publicly stated that his agency was ready to cooperate with the investigation, this cooperation did not materialize during the *TPF*'s mandate.³⁹

These delays arose even though an official agreement had been negotiated after much effort between *BIN*, the Yudhoyono government, and the *TPF* on 2 May 2005. In the protocol, *BIN* agreed to cooperate with the *TPF* in compiling information and documents, and to grant the *TPF* access to conduct document research and compile information relevant to Munir's death. Both sides had pledged mutual respect for the other party's work and authority, as well as for the law.⁴⁰

While the May 2 protocol resulted in interviews with lower-ranking intelligence officials, it never produced the results the *TPF* hoped for. One member of the *TPF* stated that not a single document had been given to the *TPF* by *BIN*.⁴¹ There are strong indications that the head of *BIN* specifically ordered his staff not to show or give any documents to the *TPF*.⁴²

Over the course of time, *BIN* delayed multiple meetings between its officials and the *TPF*.⁴³ In many cases, past and present *BIN* officials did not entirely reject meetings outright, but appeared to use delaying tactics to avoid providing information to the *TPF*. Muchdi, Hendropriyono, and Irwan each negotiated appearances before the *TPF* and then skipped appointments due to missed planes, unexpected travel, or other excuses. The intelligence officials stonewalled the investigation until the *TPF*'s mandate expired on 23 June 2005.⁴⁴

The inner workings of *BIN* made it essential to question current and former senior officials such as Muchdi and Hendropriyono. The *BIN* strategy of compartmentalization meant that "non-organic" agents – those recruited from outside



the agency – were known only to their handlers. At that stage of the *TPF* investigation, it was believed that no formal assignment letter or other paperwork documented the activities of *BIN* agents, who may have been registered by their code names or not at all. It was the responsibility of deputies, such as Muchdi, to monitor their activities. Polycarpus may have been such an agent, as the head of *BIN* had previously denied any documentation appointing him as a *BIN* agent. (During a later stage of the police investigation, after the *TPF* had ceased its activities, the police discovered a computer file with the names and telephone numbers of people serving within the intelligence network. This file included information about Polycarpus'.)⁴⁵



On June 14, the *TPF* disclosed that they had uncovered documents revealing three credible scenarios to kill Munir, including one by assassinating him in a car. Two other methods both involved poisoning. (A fourth plot had involved using 'black magic', a tactic based upon traditional Indonesian beliefs.) The poisoning plot prior to GA 974 allegedly failed. On the day his food was to be poisoned at *KontraS*, Munir did not go to work.⁴⁶ The *TPF* did not include these documents in its final report because they were already in the possession of President Yudhoyono. Also, *BIN's* refusal to cooperate made it difficult to interpret or confirm their authenticity.⁴⁷

BIN officials denied that Munir was ever targeted for attack, but acknowledged that he was a target of "indirect" *BIN* pressure. They noted that on several occasions senior human rights figures were asked to tell Munir to be less vocal, but that he had failed to tone down his criticism of the government.⁴⁸ The *TPF* found that Munir had angered *BIN* officials through his work on democratization and human rights, including his criticism of a draft intelligence bill that would expand the agency's power.⁴⁹ Munir had also helped to bring a lawsuit against President Megawati Sukarnoputri for appointing Hendropriyono to head *BIN* in 2001 despite his human rights record.⁵⁰

Police Failures

The *TPF* was designed to work in conjunction with the official police investigation. However, doubts about the capacity or will of the police to solve the case proved well-founded. The police made little initial headway in the early months in building the case against Polycarpus, let alone the alleged masterminds of the plot.

Although the police had taken some early action by conducting interviews, the transcripts from these interviews were often brief and insubstantial. Sometimes, the police did not give the transcripts to the *TPF*. For example, the *TPF* received less than 20 of the 100 witness interview transcripts. However the police did show some improvement due to the *TPF*'s efforts. After the *TPF* found links to Garuda and *BIN*, police interviewed officials from both institutions.

The *TPF* concluded that the police were unwilling to fully investigate and recommended an audit of the police investigation team. This conclusion was based on several weaknesses in the police team's work:

- Poor technical capacity on aviation, aviation security, and forensic analysis;
- Inadequate independence from the police bureaucracy, leading to slow decision-making;
- Poor coordination with other ministries and agencies as seen in the delays in securing a mutual legal assistance agreement with the Dutch government;
- Failure to share information; and
- Failure to follow up on the *TPF* recommendations to the police team, such as in-depth investigation of Garuda officials, and an investigation of Polycarpus's activities in Singapore.⁵¹

Continuing Threats, a Media Battle and Legal Attacks

Immediately after Munir's death there were threats made against Munir's family. On 9 September 2004, Munir's mother received an anonymous letter that said "Congratulations on the death of Munir, I hope he is not beaten by the spirits of the nation's heroes who died defending the country."⁵² In November 2004, Suciwati received a package containing a decaying, mutilated chicken carcass in the mail with a note that read "Be careful!!!! Do not connect the [Indonesian Army] to the death of Munir. Do you want to end up like this?!"

On 4 May, Suciwati received threats warning that she would be kidnapped and blinded if she continued to "pry into Munir's death." The two (2) handwritten letters were postmarked 27 April, several weeks after Suciwati traveled to Geneva to

help focus attention on her husband's case at the annual meeting of the United Nations Commission on Human Rights.

Reports also indicated that police investigators twice told a journalist for an Indonesian language daily newspaper not to pursue the Munir case because the plot involved a very powerful individual.⁵³ The *TPF* also found that even members of the police investigation received pressure and intimidation, including by anonymous phone and SMS messages.⁵⁴

Those implicated in the case responded aggressively through the media, attacking the *TPF* and its findings.⁵⁵ In June 2005, the very first issue of *Ekspos*, an investigative magazine linked to supporters of the Suharto regime, was devoted entirely to the case, just as the *TPF* was wrapping up its work. The cover featured Muchdi, with a quote that Munir was not a terrorist or a separatist, and, by implication, not a concern for *BIN*. Denials by Muchdi, Hendropriyono, and Pollycarpus were repeated throughout the magazine, as well as graphics, interviews, and charts disputing findings of the *TPF* and the NFI autopsy. Articles in the magazine suggested that Munir might have been killed by foreign agents hoping to hurt Indonesia's reputation, or even by rivals within the NGO community.⁵⁶

Lawsuits were also made against two *TPF* members. In 2004, *BIN* Chief Hendropriyono filed libel suits against two NGO activists after being accused of targeting human rights defenders instead of terrorists.⁵⁷ While Hendropriyono dropped those suits later that year, in May 2005 he took the tactic a step further, filing a complaint with the police accusing *TPF* members Nashidik and Usman of criminal defamation. Nashidik and Usman were also directors of the two NGOs founded by Munir, *Imparsial* and *KontraS*. The complaint accused them of violating the criminal code by damaging Hendropriyono's reputation by speaking to the press about his lack of cooperation and strategy of avoiding meetings with the *TPF* by traveling abroad.⁵⁸

In stark contrast to the work on Munir's case, the police took quick action on the complaint. They questioned journalists, named the two men as suspects, and in August 2005, summoned Usman to come in for questioning. Notably, Usman was brought in under his capacity as the "Secretary of the Fact-Finding Team."⁵⁹ Although



Munir's widow, Suciwati tries to pass a bouquet as some security officers stand guard, during a demonstration outside the National Intelligence Agency (*BIN*) office in Jakarta. (Photo from Getty Images by AFP taken from www.daylife.com)

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the case was never formally brought, these tactics were obviously used to intimidate investigators and discredit the findings of the *TPF*.



Human right activists hold a poster of Munir, during a demonstration outside National Intelligence Agency (*BIN*) office in Jakarta. (Photo from Getty Images by AFP/Getty Images)

TPF Conclusions

On 23 June 2006, the last day of the *TPF*'s working period, the police finally held a secret reconstruction of events from the night of 6 September – something that *TPF* had requested from the very beginning.⁶⁰ The reconstruction was held without the knowledge of *TPF* or the public, despite a prior promise that the *TPF* would be involved. According to the police, the reconstruction was held in secret in order to maintain the integrity of the re-enactment.⁶¹

On that very same day the *TPF* submitted its final report to the government. While the *TPF* made

important contributions in uncovering complicity at Garuda and in the Indonesian intelligence community, it faced a number of obstacles that ultimately impeded its ability to give a full account of the crime. Obstacles included the narrow mandate and altered membership of the *TPF*, obstruction by Garuda officials and *BIN* officials, police failure to follow up, a lack of support from the executive branch, and other efforts to interfere with the investigation. Although the *TPF*'s efforts allowed them to demonstrate multiple contacts between Polycarpus and *BIN*, they were never able to prove that he was a *BIN* agent or was acting on their orders.

Despite the many obstacles it had faced throughout its tenure, including not having been present at the reconstruction, the *TPF* reached a number of significant conclusions. Even though the report has never been released by the government, its findings were widely reported in the local and international press. They included:

- Suspicion that the crime involved certain parties from Garuda and *BIN* circles;
- Munir's death was linked to his work on democracy and human rights, including criticism of *BIN*;
- The delays in solving the crime were caused by a failure of will by police investigators; and
- The mandate of the *TPF* was not adequate to the task.

Notably, the *TPF* excluded the military from any blame in the murder. The *TPF* disbanded with the issuance of its report, and its recommendation to create a successor body with a stronger mandate was never acted upon. However, two *TPF* members were later assigned to integral roles. One was assigned to head the police investigation team. Another was assigned to lead the prosecution of Pollycarpus.

Position of Susilo Bambang Yudhoyono (SBY)

Observers from the Indonesian President on down have acknowledged that Munir's murder is a test case for how much Indonesia has changed in recent years. More specifically, the test for President Yudhoyono's administration was whether he would adhere to his pledge to run an open and accountable administration dedicated to law enforcement. Would the pursuit of the truth result in full accountability for those who abused their power?⁶²

But the lengthy and drawn-out period in which Munir's case has progressed from investigation to trial has brought into question the government's promise to handle the case seriously. To be sure, President Yudhoyono should be credited for facilitating and attending meetings with the *TPF* and *BIN* officials. These signs of support were welcome and helped advance the investigation. However, the failure of the *TPF* to obtain access to key *BIN* officials and documents, as well as the lack of charges to date against *BIN* officials, indicate that the President's authority, or his willingness to enforce his authority, has been limited. During the past four years, his presidential commitments have not been consistently supported by senior police officials and investigators or *BIN*.

The Yudhoyono government also failed to provide funding to the *TPF* as provided for in the Presidential Decree. The *TPF* submitted budget requests, but never received funds. Consequently, a lack of funding inhibited some of the *TPF* investigative activities, including travel for team members to Singapore, the Netherlands, East Timor, Aceh, and Papua.⁶³ The *TPF*'s inability to travel left them unable to fully investigate Pollycarpus' relationship to *BIN* or to trace Munir's final hours, which may have delayed the emergence of key facts.

Court Decisions

The Pollycarpus Trials

The first trial court to hear the case against Pollycarpus, the Central Jakarta District Court, determined guilt and sentenced Pollycarpus to fourteen (14) years in prison in December 2005. The appellate Jakarta High Court confirmed this ruling in

2006. Both of these courts agreed with the prosecution's argument that Pollycarpus had poisoned a glass of orange juice served to Munir during GA 974.⁶⁴

This conviction was possible even though the prosecution's case was deeply flawed. The primary charge against Pollycarpus was that, either alone or with two other airline crew members, he carried out, ordered, or joined in the intentional and premeditated killing of another person. If convicted he would face up to life in prison.⁶⁵ The indictment alleged that after offering Munir his own seat in business class, Pollycarpus went to the galley while welcome drinks were being prepared. He ensured that arsenic was placed in the orange juice because he knew Munir would not choose an alcoholic drink. Once he was sure that Munir drank the juice, Pollycarpus returned to first class and then to the cockpit to chat with the pilot.⁶⁶

Where the prosecution's case faced significant difficulty was on the question of motive, on which *TPF's* findings and suspicions about *B/IN* would have been useful. Pollycarpus' phone calls to a *B/IN* number and a cellphone in Muchdi's possession were never mentioned in the indictment, even though they were well-documented in the *TPF* report. Usman pointed out that there was no mention of *B/IN* in the indictment, and that all of the blame had been transferred to Pollycarpus. All of the facts suggested more than one person had been involved.⁶⁷

The indictment's failure to mention *B/IN* raised questions about the willingness to prosecute intelligence officials in the future. Although this failure did not imperil the first trial and the subsequent appellate court affirmation of the verdict, it likely played a factor in causing the Supreme Court to later nullify the verdict. Without the connection to *B/IN*, Pollycarpus' motive and other elements of the crime were not clear or consistent.⁶⁸

What the prosecution did claim with regards to Pollycarpus' motive required a stretch of the imagination. The prosecution claimed that Pollycarpus had carried out activities to support the Indonesian government against any separatist efforts since 1999. As such, Munir's activities were seen by Pollycarpus as posing a danger to the Indonesian government, and he felt the need to stop Munir.⁶⁹ The problem with this prosecutorial reasoning is that it insulated high-ranking officers and institutions from accountability and ignored the evidence showing links to more senior officials.

The second, more minor charge brought against Pollycarpus was that alone or with Garuda officials he carried out, ordered, or joined in the intentional creation of fake or falsified letters, and that such letters caused a loss to another party.⁷⁰ While these documents were an important part of the case against Pollycarpus, and against Garuda officials in a subsequent trial, the key concern should not have been simply the act of forgery but the more significant fact that the falsified letters were part of a complex murder plot.



The problems in the initial trial led the Supreme Court to overturn Pollycarpus' murder conviction in October 2006. The Supreme Court reasoned that there was not enough evidence upon which to convict Pollycarpus of murder, but upheld the conviction of document forgery and sentenced him to two years in jail.⁷¹

After this deflating decision by the Supreme Court, the Attorney General's Office filed a case review that aimed to overturn Pollycarpus' acquittal. More than a year later, on 25 January 2008, the Supreme Court overturned its own verdict and convicted Pollycarpus once again of the premeditated murder of Munir. The court sentenced Pollycarpus to twenty (20) years in prison, a heavier sentence than the two original lower court rulings. New evidence and use of many of the *TPF's* findings made this new verdict possible.⁷² Specifically, the prosecution introduced new testimony that placed Pollycarpus with Munir at a café in Changi Airport. It was proven that Pollycarpus brought two drinks to the table where Munir was sitting. The court believed this provided Pollycarpus the opportunity to poison Munir. Pollycarpus is currently appealing his conviction.⁷³

The Garuda Trials⁷⁴

Setiawan and Aini stood in two separate trials in the Central Jakarta District Court for the murder of Munir. Prosecutors charged Setiawan for allowing the murder take place and sought an 18-month sentence. Aini was charged with falsifying the documents that permitted Pollycarpus to fly with Munir. Prior to the court's verdict, Setiawan spent approximately ten (10) months in jail, and Rohainil nine (9) months.⁷⁵

In February 2008, the district court acquitted Aini from all charges related to Munir's murder. The presiding judge, Makassau, reasoned that Aini was merely acting in accordance with her job description, which required her to follow a superior's orders. The defense had argued that signing a letter based on false pretenses or without the proper authority was not necessarily a crime. As mentioned before, Pollycarpus had received his assignment letter from Aini after falsely claiming that he was acting upon orders from Anwar. Pollycarpus had also lied to Aini about gaining permission to board the flight from the head pilot of GA 974, Karmel Sembiring.⁷⁶



Setiawan, however, was sentenced to one year in prison for assisting Pollycarpus in carrying out Munir's assassination. But the sentence came across as a light penalty, as the court allowed Setiawan's ten-month detention prior to the verdict to count as time served. Prosecutors had requested the addition of six more months to Setiawan's sentence, but the court denied this request.⁷⁷ Setiawan was released on 14 April 2008.⁷⁸

The light sentence may have been due to the fact the judges took pity on Setiawan's situation. The presiding judge, Heru Pramono, expressed his sentiment that Setiawan had been a victim of the conspiracy that resulted in Munir's death, and not just an abettor of Pollycarpus. In his view, Setiawan's crime constituted of not clarifying with *BIN* the validity of the assignment letter requesting access to GA 974 that was given to Setiawan by Pollycarpus. The judges reasoned that the letter, which was signed by former *BIN* deputy director M. As'ad, should have alerted Setiawan to the possibility that *BIN* would be using access to the flight for evil intelligence purposes.⁷⁹ Furthermore, the court reasoned that Setiawan should have consulted the chief pilot regarding Pollycarpus' assignment as extra crew.⁸⁰ Witnesses testified that the presence of Pollycarpus on GA 974 was not in accordance with Garuda's usual procedures. Pollycarpus used the letter eventually signed by Setiawan to convince Aini to issue the note of transfer that permitted him to board GA 974.⁸¹

Future Prospects for Justice

The substantially different explanations offered by the prosecution of how Munir's death happened in the first Pollycarpus trial and the second Pollycarpus trial serve as a potent example of the unprofessional manner in which the respective authorities collected evidence, derived a motive, and indicted suspects. Likewise, the judicial reasoning of the courts that heard the Munir cases demonstrates inconsistent and undeveloped judgments, and highlights the need for improvement in the Indonesian judicial system. In hindsight, it is remarkable that any convictions have been possible.

The prosecutors, police, and courts will receive another chance to improve upon the ineptness of the past four years. On 19 June 2008, Muchdi was finally arrested as a suspect in Munir's murder.⁸² Officially, Muchdi is charged with pre-meditated murder and criminal complicity.⁸³ The prospects for a satisfactory resolution clearly depend on shedding more light on *BIN*'s role in Munir's death. In all of the trials that have taken place thus far facts emerged that pointed to *BIN*'s involvement in Munir's murder. Backing up the *TPF*'s preliminary findings, it appears that, in addition to Muchdi, three other former and current high-ranking *BIN* officers (Hendropriyono, As'ad, and Manunggal Maladi) may have masterminded the plot.⁸⁴

According to a *BIN* agent's written statement read in one of the prior trials, Muchdi gave Pollycarpus Rp 10 million on 14 June 2004, and another Rp 3 or Rp 4 million after that, for an unknown purpose.⁸⁵ In another trial, *BIN* official Budi Santoso issued a statement revealing that As'ad had ordered Setiawan to assign Pollycarpus as a security officer on GA 974. The police later discovered a draft of this letter on a computer during a search of the *BIN* offices for support operations, Muchdi's former department. Despite this evidence, and evidence of the numerous phone calls between Muchdi and Pollycarpus that emerged in November 2004, it has taken much too long for Muchdi to be named as a suspect.⁸⁶

Although other implicated *BIN* officials besides Muchdi have yet to be named as suspects, this may change in the near future. As Muchdi has, in the past, served as a loyal subordinate to higher profile figures, it is likely that he may have acted on instructions from a more powerful individual. It is far fetched that the then-head of *BIN*, Hendropriyono, who had a reputation for being obsessive about controlling his agency, did not know that Muchdi was planning Munir's assassination.⁸⁷ The upcoming Muchdi trial may provide the vehicle through which other *BIN* figures are indicted. In fact, Muchdi's defense counsel recently publicly demanded that other *BIN* figures be examined along with Muchdi.⁸⁸

Still, the entrenched power of *BIN* and its allies in Indonesia should not be underestimated. Any convictions of Muchdi and his *BIN* associates should not be expected to come about easily, as seen in Pollycarpus' trials. Additionally, former military figures such as Muchdi have generally enjoyed impunity in the past for human rights abuses.⁸⁹ Those who have patiently waited for full and complete justice for Munir may need to wait a while longer.

From a broader perspective, Munir's death could help to bring about important institutional reforms in Indonesia, especially in the intelligence sector. Any positive changes in this arena would be a victory that could further expand Munir's contribution to a more democratic Indonesia, even after his passing. One goal in this area should be to reform the intelligence agencies in order to make these secretive bodies accountable. Another goal



should be to prevent future arbitrary killings such as the murder of Munir. Certain parliamentary members see these goals as reachable precisely because of the political discourse that has emerged in the aftermath of Munir's killing. Notably, one proposed bill seeks to place agencies such as BIN under the oversight of the legislature, instead of solely under the president's authority. A separate government bill also under consideration has been criticized for merely making legal the current practices and authority of the intelligence agencies. A truly comprehensive bill would deliberate the connected issues of oversight of intelligence agencies, state secrecy, and freedom of information.⁹⁰

If a bill is not approved in 2008, it will be difficult for any reform to occur in 2009, as national parliamentary and presidential elections will likely deadlock any movement in the legislature.⁹¹ Despite this, the upcoming trial on *BIN's* involvement in Munir's assassination could generate publicity that can create the necessary catalyst for intelligence sector reform.

It is ironic that, despite Indonesia's impressive gains in democratization, the state intelligence agencies have thus far remained untouched by reform. If Munir's death instigates reform in this critical area, then at least some good will come from his sacrifice.⁹²

Support from the International Community

International pressure has played a significant role in ensuring that the investigation and legal processes of Munir's case continue to move forward. Such pressure has come from both foreign governments and international human rights NGOs who have maintained a close eye on the lack of progress in Munir's case.

In the immediate news of Munir's death, numerous international human rights NGOs conveyed their expressions of sympathy, as well as insistence for a full investigation. Human Rights Watch deputy program director Joe Saunders eulogized him in a press release stating, "Munir was in a class by himself, he had an electric intelligence and an encyclopedic memory. In meetings, he was able to draw on a kaleidoscope of detailed fact and sharp analytical insight to present a clear image of what needed to be done."

In an open letter to President Yudhoyono, the International Federation for Human Rights concluded early on that Munir's death was a political assassination, reminding the president of Munir's leading role in investigating human rights violations committed by the *TNI* and cases of disappeared activists during the Suharto regime.⁹³ A similar statement was made by a prominent group of human rights activists in November 2004 in Jakarta who were made up of fellow recipients of The Right Livelihood Award. In expressing their deepest condolences, these activists warned the Indonesian



government that they would make sure the world remained informed about the progress made on the case.⁹⁴ Expressions of support followed from the same group in 2005.

Many prominent groups invited Suciwati to attend their annual conferences. In 2005, Suciwati attended an annual Human Rights Defenders Policy Forum, held by The Carter Center and Human Rights First, in Atlanta, Georgia. At this conference, former U.S. President Jimmy Carter expressed his sympathy and his support for the efforts to resolve Munir's case. In a joint press release, Human Rights First and The Carter Center criticized the role of *B/IN* and the lack of progress in reforming the intelligence sector.

Foreign governments have also played an important role in maintaining pressure on the Yudhoyono government. Concerned foreign governments have ensured that questions about the progress on Munir's case are included on the agenda in government-to-government meetings, passed resolutions encouraging an independent investigation, and linked foreign assistance to Indonesia to the proper resolution of Munir's case. For example:

- In July 2005, a delegation from the European Parliament visited Indonesia and asked the Indonesian parliament about developments in Munir's case;⁹⁵
- In October 2005, 68 members of the U.S. House of Representatives sent a letter to President Yudhoyono urging him to take action on the case;⁹⁶
- In July 2007, the UN High Commissioner for Human Rights, Louise Arbour, and the UN Secretary-General's Special Representative on Human Rights, Hina Jalani, expressed concern about the lack of progress on Munir's case;⁹⁷
- In December 2007, the U.S. Congress passed a law agreeing to delay approval of \$2.7 million out of a total of \$15.7 million in direct military aid for Indonesia, until Secretary of State Condoleezza Rice reported to Congress that Indonesia had made progress on a number of human rights issues, including formulation of a deadline for completing the criminal investigation into Munir's killing;⁹⁸ and
- In March 2008, the European Parliament issued a declaration calling for a thorough investigation of the murder. The declaration, signed by 412 members of the European Union Parliament, "calls on the Indonesian authorities to take all necessary actions to ensure those responsible for the murder at all levels are brought to trial and justice is delivered as quickly as possible".⁹⁹

Together, the concern from individuals, NGOs, and foreign governments shows a global awareness of the need to not only solve the mysterious circumstances surrounding Munir's death, but to also keep a close eye on human rights violations occurring in Indonesia. This type of international attention will be necessary during

Muchdi's trial in order to maintain a transparent and fair judicial process.

Munir's Lasting Impact on the Human Rights Community

The figures responsible for Munir's assassination likely intended his death to have a chilling effect on future human rights activism in Indonesia. Although the victim in this saga was only one man, the target of the crime was the wider human rights community. Munir's death was designed to terrorize activists into silence and withdrawal, as has been the case throughout Indonesian history.¹⁰⁰

The impact has not been what the masterminds behind the assassination intended. The Indonesian human rights community has utilized Munir's death as a rallying cry, not only for justice for Munir and his family, but also to demand that the government immediately protect all human rights defenders.¹⁰¹ Munir's murder also served as a focal point to make progress on the social and economic goals for which he had long advocated. Corruption, an important topic that Munir focused on in his last years, was perhaps the critical issue of the 2004 presidential election that took place shortly after his death. Since 2004, numerous government officials who have stumbled in their public duties due to corruption have been investigated, forced to resign, and subjected to criminal punishment.

The two human rights NGOs that Munir helped to establish, *KontraS* and *Imparsial*, remain healthy and vibrant in their activities. The Indonesian Legal Aid Foundation, where Munir first became involved in human rights, continues to assist needy Indonesians in their own personal pursuits of justice.

Perhaps even more importantly, the broader Indonesian populace now generally supports the healthy and beneficial role that human rights play in a democracy. The media now quickly and widely reports on human rights violations for mass public consumption. Although the government may not always address human rights as its first priority, public opinion and outrage over injustices ensures that the government must address the most flagrant violations. Indonesia can thank Munir for his selfless contribution to all of these progress – this is his legacy.

Notes:

- ¹ Mugiyanto. (2004, October). "Munir: Struggling for Human Rights Until Death". The Voice, 4 (2), 9.
- ² Rich Bowden. (2004 December 24). "An Activist's Life, Indonesia - Who Killed Munir?" Retrieved from www.worldpress.org
- ³ Mugiyanto. (2004, October). "Munir: Struggling for Human Rights Until Death". The Voice, 4 (2), 9.
- ⁴ Nur Mursidi. (2008, January 26). Jakarta Post.
- ⁵ The Right Livelihood Award. Retrieved from website at <http://www.rightlivelihood.org>
- ⁶ BBC News. (2006, October 4). "Munir murder conviction quashed."
- ⁷ Nur Mursidi. (2008, January 26). Jakarta Post.
- ⁸ An interpellation session between the Dutch Parliament and the Dutch government revealed that the Indonesian government had already known about the cause of Munir's death before it surfaced in the media. Specifically, the Dutch Government verbally informed the Indonesian government about the autopsy result on 28 October 2004.
- ⁹ The team was composed of three police officials, three forensic experts, one official from the Foreign Affairs Department, and one family representative.
- ¹⁰ "Indonesian Team Hampered by Netherlands Requirements." (2004, November 21). Indopos.
- ¹¹ See the Report on the Trip to Netherlands given at press conference on 29 November 2004.
- ¹² "State is Responsible for Munir's Case." (2004, November 28). Republika; "Polri Evaluated Results of Witnesses' Examinations in Munir's Case." (2004, December 7). Retrieved from www.detik.com
- ¹³ "SBY Is Asked to Resolve the Case of Munir's Death." (2005, January 4). Retrieved from www.mediaindo.co.id; "DPR Targets Munir's Case to Finish in Three Months." (2005, January 5). Retrieved from www.mediaindo.co.id; "DPR Urges Polri to Set Time Limit to Investigate Munir's Case." (2005, January 18). Tempoempo.
- ¹⁴ See Joint Press Release in KontraS, 12 November 2004, on behalf of Suciwati, Todung Mulya Lubis, Rachland Nashidik and Usman Hamid.
- ¹⁵ Usman Hamid, 19 November 2004 press conference.
- ¹⁶ "President Asks for Basic Concept of Munir Investigation Team." (2004, November 2004). Kompas.
- ¹⁷ "Human Rights Activists Demand President to Form Independent Investigation Team on Munir," Kompas, 3 December 2004; "Mallarangeng: Independent Team Not Appropriate Yet," Indopos, 9 December 2004; "SBY Reneges on Promise to Munir's Widow," Jakarta Post, 9 December 2004; "Investigation Team for Munir's Case Cancelled," Koran Tempo, 8 December 2004.
- ¹⁸ "Susilo Gives Christmas 'Gifts' to Papua, Munir's Family," Jakarta Post, 24 December 2004.
- ¹⁹ "KontraS: Tim Investigasi Munir Kurang Sempurna," Kompas CyberMedia, 24 December 2004; "Diharapkan Mampu Tembus 'Tembok'," Kompas, 22 December 2004.
- ²⁰ In fairness, the decree also calls on all government agencies to provide help to the team as needed. The decree stated, "In carrying out its task, the team is to obtain all assistance needed from all agencies of the central or local government and other parties as needed."
- ²¹ These individuals included Syafii Ma'arif, Sinta Nuriyah Abdurrahman Wahid, and Todung Mulya Lubis. "Syafii Ready to Join Team Munir," Koran Tempo, 26 November 2004.
- ²² To replace the three who declined, I Putu Kasa, Smita Notosusanto and Bambang Widjojanto, a later decree named Domu P. Sihite, Tini Haddad, and Amiruddin Al Rahab. After the team finished its work in June, Sihite later joined the prosecution team in the trial of Pollycarpus; "Munir's Assassination Must Be Resolved Thoroughly," Kompas, 31 December 2004.
- ²³ A review of the CCTV operators uncovered that as of September 2004, Soekarno-Hatta airport only had two cameras that monitored 600 points within the airport. These two cameras used old video technology that could not automatically record incidents in the airport. Unfortunately, Munir's presence at the airport was not captured by the cameras "TPF Munir Asked Polri to Examine 2 Airport CCTV Operators," www.detik.com, 15 February 2005.

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- ²⁴ "Dutch Opposition Submit Motion about Munir," Suara Pembaruan, 2 December 2004; "Polri Will Crosscheck Munir's Documents from the Netherlands," www.detik.com, 1 April 2005.
- ²⁵ Human Rights First White Paper, p. 3.
- ²⁶ "Polly Examined by Police, Answers Allegation Related to Intelligence," Indopos, Thursday, 2 December 2004.
- ²⁷ "Polycarpus Still Hides Executors of Munir's Murder," www.detik.com, 21 March 2005.
- ²⁸ See Human Rights First, "Indonesian Airline Not Cooperating with Investigation of Activist's Death," Media Alert, 3 March 2005.
- ²⁹ "Pre-reconstruction in Munir's Case Postponed Until March," Tempo, 23 February 2005.
- ³⁰ "Team questions Garuda's commitment in Munir probe," Jakarta Post, 1 March 2005.
- ³¹ Human Rights First White Paper, p.11.
- ³² Surat Dakwaan, No. Reg Perkara PDM-1305/JKT.PST/07/2005, 27 July 2005, p. 7; "TPF: Three Garuda Officials Conspired to Poison Munir," www.detik.com, 3 March 2005.
- ³³ "Polri Headquarters: No Evidence Yet on BIN Officials' Involvement in Munir's Case," www.detik.com, 1 February 2005; "SMS Circulating about Polycarpus Recruited by BIN as a main Intelligence Agent," www.detik.com, 1 February 2005.
- ³⁴ "TPF Munir Asked to Check Information on BIN Members' Involvement," www.detik.com, 17 March 2005.
- ³⁵ "Django goes to jail" Tempo, 24-30 June 2008.
- ³⁶ "Munir Bukan Target Operasi BIN," Ekspos, June 2005, Edition 01/1, p. 11.
- ³⁷ "Polri Periksa Eks Perwira Kopassus Pekan Ini Soal Munir," www.detik.com, May 30, 2005.
- ³⁸ KontraS, "Monitoring Persidangan Pembunuhan Munir IV," undated.
- ³⁹ "Chief of Police: No Problems Examining Intelligence on Munir's Case," www.detik.com, 24 March 2005; "Police Won't Hesitate to Examine BIN," www.kompascyber.com, 24 March 2005.
- ⁴⁰ "TPF, BIN Teken Kerja Sama Ungkap Kasus Munir," Media Indonesia, 3 May 2005.
- ⁴¹ Human Rights First interview with TPF member Asmara Nababan, 16 August 2005.
- ⁴² "Kepala BIN Larang Buka Akses untuk TPF Munir," www.detik.com, 15 June 2005.
- ⁴³ "Munir TPF Sends Second Invitation to Chief of BIN," www.detik.com, 31 March 2005; "Munir TPF Again Schedules Meeting With Chief of BIN," Media Indonesia, 2 April 2005.
- ⁴⁴ Hendropriyono was invited to appear on three occasions, Muchdi four times, and Irawan twice, all without results. See for example, "Muchdi PR Tak Penuhi Panggilan TPF Munir," www.detik.com, 2 June 2005; "Hendro Belum Nongol, Pengacaranya Tiba di Kantor TPF," www.detik.com, 6 June 2005. Hendropriyono also invited the TPF to come to him on June 15, and held a press conference when they did not "Hendro Kecewa Berat TPF Tidak Hadiri Undangannya," www.detik.com, 15 June 2005. The three were eventually questioned by police investigators, though the interviews and results were closely guarded.
- ⁴⁵ "Tracking down Pak Michael," Tempo, 17-23 June 2008.
- ⁴⁶ Eva C. Komandjaja and Tiarna Siboro, "The Plot Thickens: Documents Reveal Four Plans to Kill Munir," Jakarta Post, 15 June 2005; "Team Finds Conspiracy behind Indonesian Rights Activist's Death," Deutsche Presse-Agentur, 14 June 2005.
- ⁴⁷ Human Rights First interview, 6 September 2005.
- ⁴⁸ Human Rights First interview with Asmara Nababan, 16 August 2005.
- ⁴⁹ Ibid.
- ⁵⁰ Hendropriyono was intelligence chief from 2001 to 2004, after a long career in the military. As a colonel, his role in a 1989 massacre of villagers earned him the nickname "the Butcher of Lampung." Munir represented the victims in this 1989 massacre. As Minister for Transmigration and Resettlement Hendropriyono is thought to have played a key role in funding and organizing both the East Timorese militias and the forced population transfer into West Timor after the 1999 referendum. Munir also served on a government sponsored commission that had heavily criticized Hendropriyono's actions in East Timor; see also "Polly, BIN Officials Had Contact," Media Indonesia, 19 May 2005.
- ⁵¹ Human Rights First interview with TPF member Asmara Nababan, 16 August 16, 2005.
- ⁵² "Istri Munir: Bisa Jadi Pelaku Teror Ini Benar TNI," www.detik.com, 21 November 2005.
- ⁵³ Personal communication to Human Rights First, [name withheld upon request], 6 September 2005.
- ⁵⁴ Personal communication, [name withheld upon request], 30 August 2005.
- ⁵⁵ "Hendropriyono trying to divert attention away from Munir case", www.detik.com 1 June 2005.

- ⁵⁶ Majalah Investigasi Ekspos, June 2005.
- ⁵⁷ See Human Rights First, "Head of Indonesian Intelligence Agency Targets Human Rights Advocates," Defender Alert, 13 October 2004. http://www.humanrightsfirst.org/defenders/hrd_indonesia/alert021605_hendardi.htm.
- ⁵⁸ Specifically, Sections 310, 311 and 355 of the Criminal Code. Human Rights First White Paper, p. 8.
- ⁵⁹ Surat Panggilan No. Pol. S. Pgl/10966/VIII/2005/Dit Reskrimum. Dated August 9 and signed by Jakarta Director of General Criminal Investigations (Reskrimum Polda Metro Jaya), Tomsu Tohir.
- ⁶⁰ "Reconstruction of Munir Case Held in Soekarno Hatta Airport," www.detik.com, 23 June 2005.
- ⁶¹ "Reconstruction of Munir Case Was Done Secretly," www.detik.com, 23 June 2005.
- ⁶² See Human Rights First, Reformasi and Resistance, May 2005; "The Uncertainty of the Independent Investigation Team," *Koran Tempos*, 27 November 2004. See also, "Munir's Case Should Be Investigated Thoroughly," *Kompas*, 26 November 2004.
- ⁶³ Human Rights First interview with TPF member Asmara Nababan, 16 August 2005.
- ⁶⁴ "Munir Murder Conviction Quashed", BBC News Online, 4 October 2006.
- ⁶⁵ As mentioned previously, as part of a mutual legal assistance agreement the Indonesian and Dutch governments concluded to facilitate the transmission of autopsy and other investigation results, the Indonesian government agreed not to seek the death penalty.
- ⁶⁶ Surat Dakwaan, No. Reg Perkara PDM-1305/JKT.PST/07/2005, 27 July 2005.
- ⁶⁷ Human Rights First interview with Usman Hamid, 16 August 2005.
- ⁶⁸ "Opinion: Exercise in Futility?", *Tempo* 9-15 August 2005.
- ⁶⁹ This argument by prosecutors is a traditional one used in Indonesian trials. Members of the special forces Kopassus, linked to the kidnapping of Jakarta activists and to the killing of Papuan leader Theys Eluay, claimed that they were not following orders, but rather simply saw the activists as a threat and took action on their own as an act of patriotism. Surat Dakwaan, No. Reg Perkara PDM-1305/JKT.PST/07/2005, 27 July 2005.
- ⁷⁰ Surat Nomor: IS/1177/04.
- ⁷¹ "Munir Murder Conviction Quashed", BBC News Online, 4 October 2006.
- ⁷² "Ex-pilot gets 20 years for Munir murder", *Jakarta Post*, 26 January 2008.
- ⁷³ "Django goes to jail" *Tempo*, 24-30 June 2008.
- ⁷⁴ This section only covers the criminal trials involving Garuda and Munir's death. A civil case was brought by Suciwati against Garuda for damages. In May 2007, a civil court found Garuda negligent for failure to take adequate action in preventing Munir's death. The court awarded \$73,800 in damages to Suciwati, who appealed for a more severe punishment and an apology. Human Rights Watch World Report 2008, p. 285.
- ⁷⁵ "Court acquits ex-Garuda secretary in Munir trial", *Jakarta Post*, 13 February 2008.
- ⁷⁶ *Ibid.*
- ⁷⁷ *Ibid.*
- ⁷⁸ "Ex-Garuda Boss Freed From Jail", *MWC News*, 14 April 2008.
- ⁷⁹ The letter had advised Garuda to "assign Polycarpus as part of the corporation security unit in order to improve the company's safety."
- ⁸⁰ "Ex-Garuda boss gets a year over Munir murder", *Jakarta Post*, 12 February 2008.
- ⁸¹ "Court hears new twist in Munir murder case", *Jakarta Post*, 8 November 2007.
- ⁸² "Former intelligence official detained for Munir's murder", *Jakarta Post*, 19 June 2008.
- ⁸³ "Django goes to jail" *Tempo*, 24-30 June 2008.
- ⁸⁴ This revelation emerged in court on Aug. 22 when prosecutors played a recorded phone conversation between Polycarpus and Setiawan. "Pressure mounts to speed up Munir probe", *Jakarta Post*, 8 September 2007.
- ⁸⁵ "Court acquits ex-Garuda secretary in Munir trial", *Jakarta Post*, 13 February 2008.
- ⁸⁶ "Munir case: An intelligence agent sings", *Tempo*, 8-14 January 2008; "Police to name new suspects in Munir murder case by June", *Indonesia Have a News*, 7 February 2008, available at <http://indonesiahaveanews.blogspot.com/2008/02/police-to-name-new-suspects-in-munir.html>
- ⁸⁷ Kevin O'Rourke, *Reformasi Weekly Review*, 20 June 2008.
- ⁸⁸ "Muchdi lawyer demands that four spies be examined in Munir case," *Jakarta Post*, 24 June 2008.
- ⁸⁹ Kevin O'Rourke, *Reformasi Weekly Review*, 20 June 2008.
- ⁹⁰ Aboeprijadi Santoso, "Opinion", *Jakarta Post*, 7 September 2007 (Santoso).

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“The author of this article owes an immense debt to the white paper on Munir’s death, “After One Year: A White Paper on the Investigation and Prosecution in the Munir Murder Case,” released by Human Rights First on 7 September 2005 (Human Rights First White Paper). Substantial portions of the Human Rights First White Paper have been integrated into this article, in particular, the sections The Investigation, Position of the Yudhoyono Government, and the Court Cases.





Emil Alarcon
Entry
First AFAD Poster Making Contest
14 May 2008

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A Decade of Journey
Towards A World Without *Desaparecidos*

By Mary Aileen Diez - Bacalso



A Decade of Journey Towards A World Without *Desaparecidos*

By Mary Aileen D. Bacalso

Enforced disappearances were, in the past, not associated with the world's largest and most populated continent of Asia in contrast to Latin America whose years of dictatorship and whose victims' families have brought to justice the perpetrators of this most heinous of crimes. While some Asian countries were already notorious for their bad human rights record, the Asian continent, in general, was not blacklisted for its huge number of cases of enforced disappearances.

Developments in recent years, however, show Asia as the continent which submitted the most number of cases to the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID). This reality prompted the UNWGEID to hold its 75th session in May 2005 in Bangkok, Thailand. This decision was a serious response of the UNWGEID to the alarming phenomenon in Asia. Significant to note is that the partial list of cases from the nine Asian countries mentioned in "Reclaiming Stolen Lives" would have consumed over four hundred pages of the book and this prompted us to put them into statistical graphs to provide a bird's eye view of the situation. The long list of individual cases is saved on a compact disk (CD).

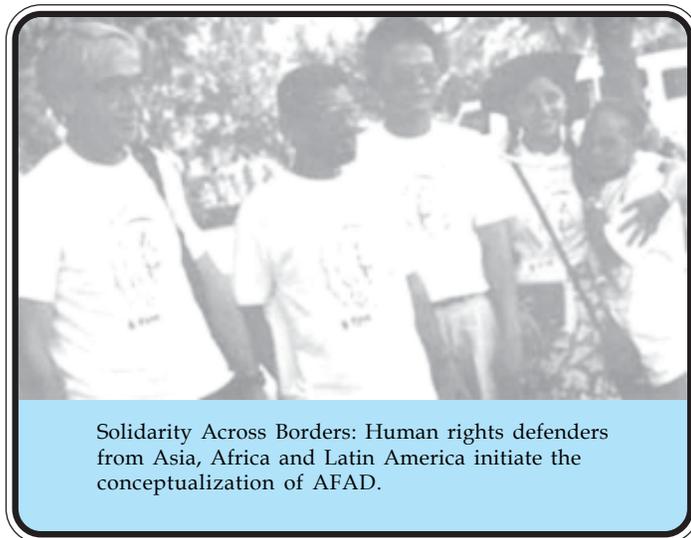
Prior to the birth of the Asian Federation Against Involuntary Disappearances (AFAD), organizations working directly on the issue were already established to respond, to varying degrees, to the phenomenon of enforced disappearances. But they were not yet federated to strongly respond to the problem. A close linkage with organizations of families of the disappeared from Latin America, Africa and Europe was not yet forged. With Asia's diversity in culture, religion, language, in many respects, the varying responses of human rights organizations and families of the disappeared were also diverse. Apart from such diversity was the lack of cohesiveness in action as there was no unified regional response to the situation.

The imperative of a stronger impact and the inspiration of the Latin American Federation of Associations of Relatives of Disappeared-Detainees (*FEDEFAM*) prompted the AFAD core group members, e.g. the Families of Victims of Involuntary Disappearance (FIND) in the Philippines, the Association of Parents of Disappeared Persons (APDP) in Kashmir, India and the Organization of Parents and Family Members of the Disappeared (OPFMD) to conceive and give birth to their Federation.



A Glimpse of AFAD's Beginnings....

During the commemoration of the 1997 International Week of the Disappeared (IWD) by the Families of Victims of Involuntary Disappearance (FIND), representatives of organizations of families of the disappeared from Sri Lanka, Cambodia, South Africa, Argentina and El Salvador sowed the seeds of international cooperation by conceptualizing the then unnamed Asian group envisioned to be linked with the *FEDEFAM*, whose struggle against impunity is internationally acclaimed. In November of the same year, two FIND representatives, this writer included as her capacity as then FIND's Co-Chairperson, attended the Fourteenth Congress of *FEDEFAM* held in Mexico. Such participation, which opened opportunities for integration with the *abuelas, madres, hermanos* of the disappeared of Latin America, started the close cooperation between *FEDEFAM* and what would later be named the Asian Federation Against Involuntary Disappearances (AFAD). All these were facilitated by the late Rev. Fr. Jon de Cortina, S.J., former director of the *Asociación Pro Búsqueda de Niñas y Niños*



Solidarity Across Borders: Human rights defenders from Asia, Africa and Latin America initiate the conceptualization of AFAD.

Desaparecidos (Association for the Search of Disappeared Children) in El Salvador. He attended the series of events in the Philippines to commemorate the 1997 IWD which culminated with the still vague concept of an Asian group to be linked with *FEDEFAM*.

A year later, on 4 June 1998, AFAD saw the light of day. This day was the beginning of its long journey towards a world without *desaparecidos*. As a beautiful fruit of the earlier implanted seeds of international cooperation, Ms. Ynette Bautista, former *FEDEFAM* Chairperson and her husband, Federico Kircher of the Nydia Erikka Bautista Foundation graced the founding of AFAD. The organization, Fenix of Croatia also expressed their solidarity through their presence. The Philippine human rights organizations also blessed the occasion and committed to give their utmost support.

The seeds sown by three core organizations sprouted and grew and turned into a mature federation of eight member-organizations from India, Indonesia, Pakistan, Nepal,

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Philippines and Thailand. AFAD had other member-organizations from the Philippines, China and Sri Lanka in the past, but for one reason or another, they left the Federation. On varying levels, however, AFAD continues to work with them in the common struggle against impunity.

Significant to mention is AFAD's active participation in all sessions of the then UN Working Group to Elaborate a Draft Legally Binding Normative Instrument for the Protection of All Persons from Enforced Disappearances. AFAD's very presence debunked the myth that enforced disappearance is solely a Latin American problem. It presented before the UN member-states the need for an international treaty to respond to the global magnitude of enforced disappearance, giving concrete regional experiences to support its positions on varying provisions of the draft. The late French Ambassador His Excellency Bernard Kessedjian, in a message he wrote in *Healing Wounds, Mending Scars* stated:

" I paid tribute to the families of victims and their associations, such as AFAD, which tirelessly remind the world of the disaster that constitutes the disappearance of a loved one..."

At present, AFAD actively takes part as a Steering Committee member of the International Coalition Against Enforced Disappearances (ICAED) which is lobbying for the immediate entry into force of the United Nations Convention for the Protection of All Persons from Enforced Disappearance.



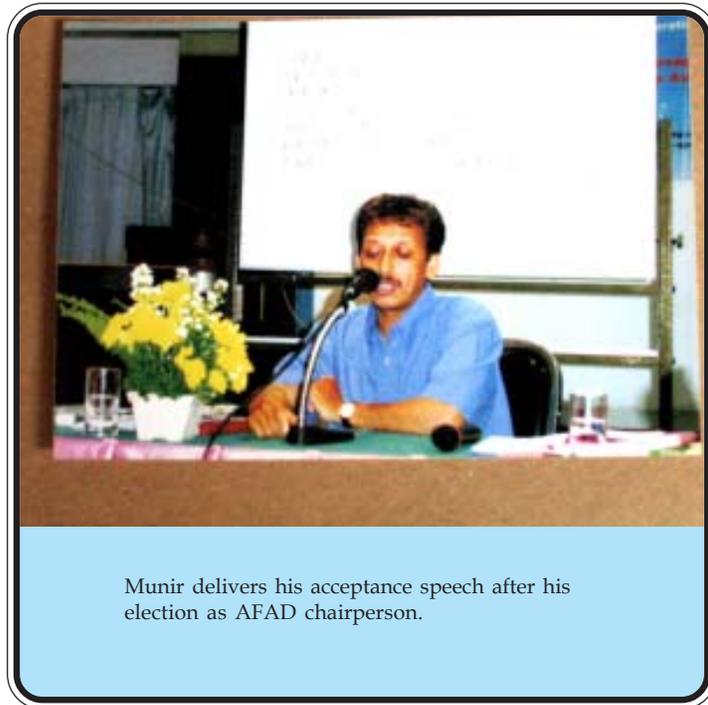
Asian-Latin American Unity: Marta Vasquez, former FEDEFAM President and AFAD delegates sitting at the famous Serpents' bar of the Palais des Nations after a rigorous lobbying with the United Nations member-states.

After convening three regional congresses in Manila, Bangkok and Kathmandu respectively, AFAD recently commemorated its decade anniversary on 4 June 2008. Participated in by all member-organizations, the commemoration was a venue to celebrate small and big victories in attaining the goal of institutionalizing the right of all persons not to be subjected to enforced disappearances.

Lest we forget, as we glimpse at the Federation's ebb and flow, it is important to remember two pillars who, in their courageous human rights advocacy, earned for them the ire of the powers-that-be, causing them to lose their lives. Munir,



AFAD's second chairperson, elected during AFAD's Second Congress held in Bangkok, Thailand in August 2003 was murdered by arsenic poisoning on a Garuda flight from Jakarta to Amsterdam via Singapore. He served his first year as AFAD's chairperson until the time of his death leaving AFAD without a chairperson until its Third Congress two years later. Earlier in the same year, AFAD was also shocked by the death of a woman human rights defender from the Association of Parents of Disappeared Persons (APDP) in Kashmir who was killed by a landmine



Munir delivers his acceptance speech after his election as AFAD chairperson.

in an election monitoring duty in the north of the area. Striking heavy blows, these violent deaths have rather served to strengthen the Federation in responding to storms that may come along the way. Very recently, on 30 July 2008, AFAD Council member, Parvez Imroz' house in Srinagar was blasted by a grenade by four armed men alleged to be members of the Indian Police. It is the latest in the series of attacks against this internationally awarded human rights defender in war-torn Kashmir.

What lies ahead for AFAD human rights defenders as they continue to tread the thorny path to truth, justice, reparation, redress and the reconstruction of the historical memory of the disappeared? This is a question so relevant especially that the world will commemorate the tenth anniversary of the Universal Declaration of Human Rights Defenders on 10 December 2008.

The situations from different countries written in this book attest to the reality that the a world without *desaparecidos* is very far from reality. Many things cry out to be done... As the old adage goes, "Seize the day.... Seize the hour..."

As a note, this article is not intended to make an account of the history of the Federation. A detailed history of the Federation's first seven (7) years can be found in the article, entitled *The Genesis and Growth of AFAD*, published in AFAD's book, *Healing Wounds, Mending Scars*.

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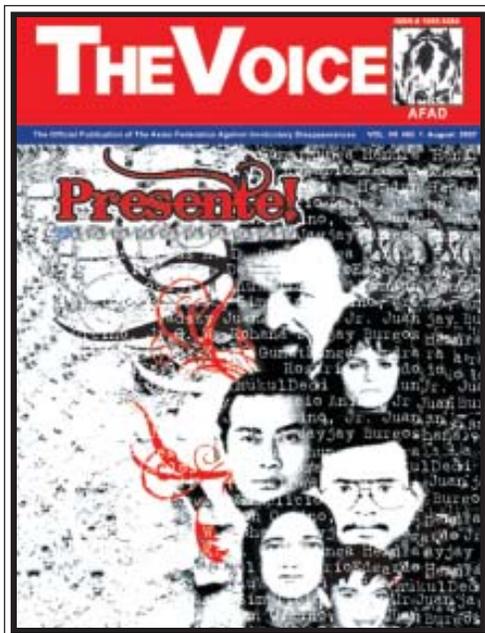
This article rather attempts to capture, in a nutshell, the highlights of AFAD's modest response to the phenomenon of enforced disappearances in the Asian region during its ten (10) years of existence as a federation. Such response serves as its invaluable contribution to the eradication of enforced disappearances from the face of the earth.

Exposing the Grim Reality of Enforced Disappearances in Asia

Contributing to the general awareness of enforced disappearances, AFAD, through its efforts to expose the phenomenon in the Asian continent, by its very existence, is a strong message to the international community that enforced disappearance is an Asian reality. It is in this regard that AFAD's presence at the United Nations had shattered the myth that enforced disappearance is a phenomenon of the past and solely belongs to Latin America.

The Federation has conducted public events projecting the devastation the crime has brought to society from the perspective of the families. Unmasking the evil of the phenomenon of enforced disappearances in Asia through testimonies of surfaced *desaparecidos* who are the surviving witnesses to this malady, AFAD member-organizations educate people of the crime's magnitude and of the value of prevention and non-repetition. The stories of the families of the victims prick the public's social conscience and move them into action to link arms with them in fighting for the resolution of past cases and preventing their recurrence. Through many creative ways, the surfaced *desaparecidos* and

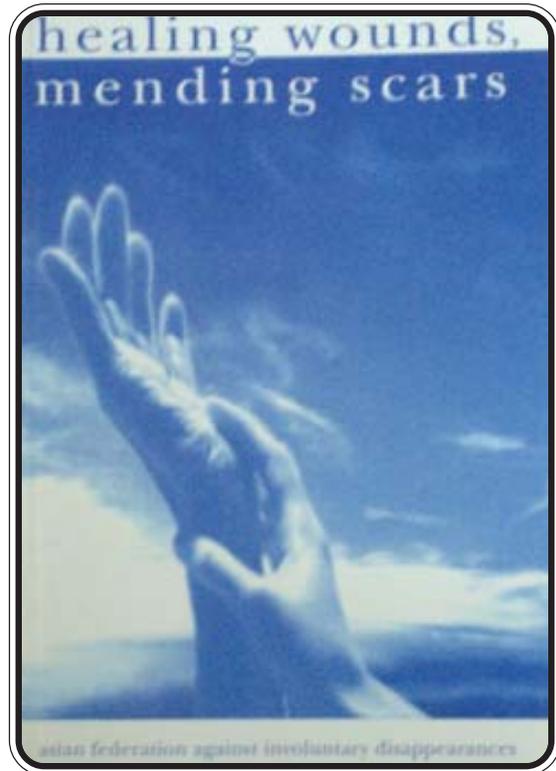
families of the disappeared who are in the most effective position to voice out their issue to a wider audience, narrate their stories and in the process, reveal the evil deeds of the perpetrators and their masterminds.



Championing the voice of the victims, AFAD has published major reading materials through its books and magazines. *Between Memory and Impunity*, the book that chronicles the First Asian and Latin American Lawyers' Conference held in December 2000 in Jakarta, Indonesia speaks of the noble intention of the Federation to prepare the ground for eventual court actions to convict and prosecute perpetrators and indemnify the victims' families. Its second book, *Healing Wounds, Mending Scars* is a compendium



of reflections of disappearances in countries of Asia where AFAD member-organizations are based and the consequent true-to-life testimonies of families of the disappeared as they opened their hearts and put into writing their pains, anxieties, hopes and struggles of men and women whose dearly beloved family members were made to disappear in the name of the state. *The Voice*, AFAD's official publication which, so far, has come out in eight (8) volumes, gives the public some updates on enforced disappearances in countries where AFAD operates. In the Federation's serious campaign for the entry into force of the UN Convention for the Protection of All Persons from Enforced Disappearance, it has produced three (3) editions of the Primer on the UN Convention for the Protection of All Persons from Enforced Disappearance.



From time to time, AFAD issues statements and urgent action appeals. Issuing statements on matters of urgent concern and on the occasion of traditionally commemorated activities is the Federation's form of expressing its positions on urgent issues of concern. Other informational materials which the Federation has produced include a video presentation entitled *Healing Wounds, Mending Scars*, which clearly portrays the characters behind the book version, telling their narratives of pain yet posturing strength of character and firmness of commitment to go on with the fight no matter the cost. On the occasion of AFAD's tenth anniversary, the Federation produced a music video of its theme song, *Desaparecidos*, depicting the pain of the families and their courageous struggle to transcend the pain and transform themselves into human rights defenders.

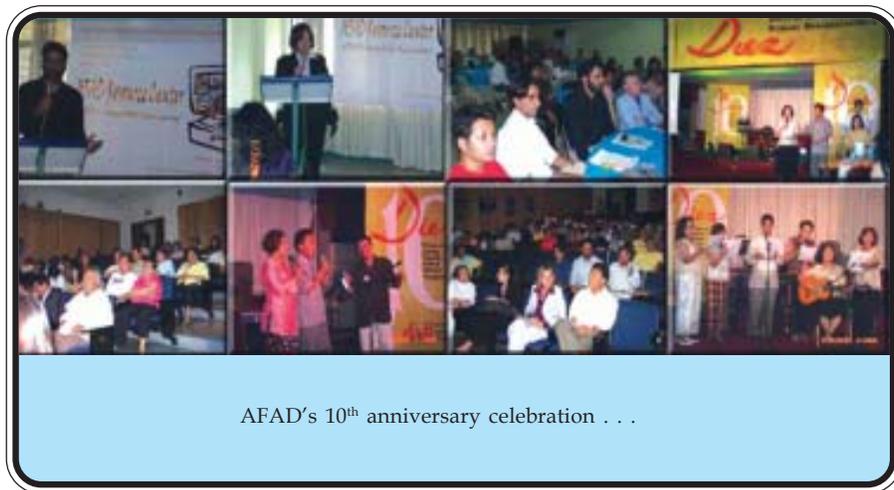
Activities such as seminars, fora, symposia, presentations on the issue of enforced disappearances in various venues, concerts, and film festivals are all forms of information dissemination enacted at the regional and national levels which, if carried out intensively and extensively, will contribute to a greater awareness and involvement of civil society in the struggle against enforced disappearances. During the last decade, AFAD conducted two (2) concerts during the commemoration of the International Day of the Disappeared in 2005 and 2007 respectively. The first concert, entitled *Seeking* and the second, entitled

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Presente were venues to sing songs of freedom, of life, of love dedicated to the *desaparecidos*.

AFAD member-organizations never fail to lovingly honor the memory of the *desaparecidos* during traditional events. AFAD member-organizations have held synchronized events on these occasions every year. To mention significant examples, the 2007 commemoration of the International Day of the Disappeared, for instance, saw *KontraS* and *IKOHI* commemorating a week-long event in the capital city of Jakarta to drumbeat the campaign for the Convention's signature and ratification by the Indonesian government. The rest of AFAD's member-organizations developed a press conference in Nepal, families' conference in Kashmir and tree planting in Thailand's Thamassat University. All these were highlighted by the concert held in Manila, entitled *Presente*. The title, *Presente*, posited the *desaparecidos'* moral and spiritual presence despite their physical absence.

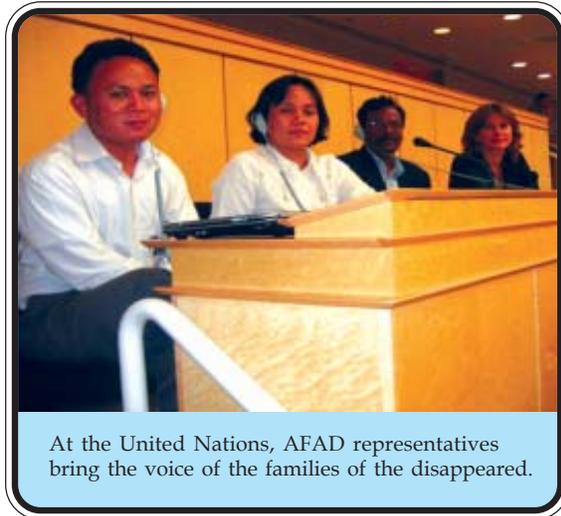
The latest of these events was AFAD's commemoration of its tenth anniversary which was celebrated in various ways for several days in Manila and days later, in AFAD member-organizations' respective countries. Not only were these events venues to celebrate small and big victories, but also to convey a message to the public that in the midst of this



scourge of disappearances, AFAD is there struggling steadfastly to say NO to impunity. The tenth anniversary was also a moment to pause and ponder on AFAD's own shortcomings and failures, the recognition of which would facilitate rectification, a process which AFAD must humbly undertake in its determination to attain its goal.

In times of great adversities, AFAD courageously stood at the forefront. When families of the disappeared in Kashmir staged a hunger strike in 2003 April, AFAD member-organizations in Indonesia and Sri Lanka and the Tiananmen Square Members' Support Group in Hong Kong bravely picketed in front of the Indian embassy in their respective countries – a series of events which forced the Indian government, through its Chief Minister Mufti Muhammad Sayeed to admit 3,734 cases of enforced disappearances in stark contrast to its earlier admission of only 64 cases.

When AFAD's strength was put to a test through the murder of its Chairperson, Munir, the Federation wrote letters of protest to national and international authorities and stood in front of the Indonesian embassies in Jakarta, Manila and Colombo at the time when the Indonesian government chaired the then United Nations Commission on Human Rights. Its loud cry of protest against the heinous murder fell on deaf ears and was coldly ignored. Exhausting all avenues, AFAD, accompanied by its Latin American, African and European counterparts, knocked at the Foreign Office of The Netherlands to question why the autopsy report was not given to Munir's family immediately after its release.



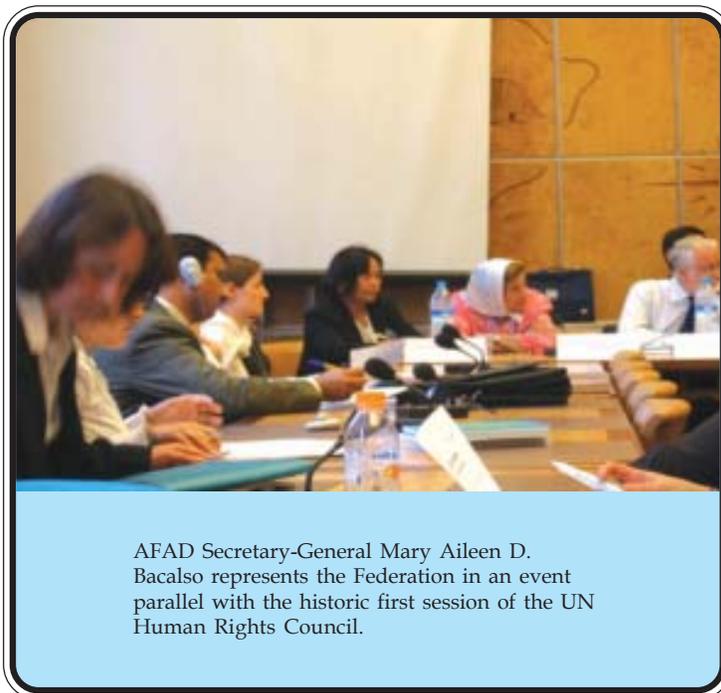
Always, in exposing the grim reality of enforced disappearance, pictures of *desaparecidos* are powerful images that tell the world of the stolen lives behind the cold statistics of enforced disappearances. These are our very weapons in exposing the lies and hypocrisies of the perpetrators of darkness.

Contributing to the Adoption of the United Nations Convention for the Protection of All Persons from Enforced Disappearance

Individual AFAD member-organizations, with varying levels of frequency and depending on the richness of their documentation, took initiatives in reporting cases of enforced disappearances and general allegations to the UNWGEID. As a Federation, especially during annual sessions of the former UN Commission on Human Rights, AFAD Council Members always took the opportunity to meet at least the former chairperson and the secretariat of the UNWGEID from 2001-2004. When it was reconstituted in 2005, the

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UNWGEID convened its 75th session in Bangkok, Thailand. The whole Federation was present. It collectively, as a Federation and individually, as member-organizations, met with the UNWGEID to present cases and general allegations. Coinciding with AFAD's meeting with the UNWGEID was a fax message from Jakarta which forwarded a letter from the a certain Zulficar, defender of the New Order, threatening to kill Mugiyanto, current AFAD Chairperson, Usman Hamid, *KontraS* Director and two others. This was a timely occasion to report the matter to the UNWGEID. AFAD wrote a letter to the UNWGEID which immediately acted upon it by writing to the Indonesian government expressing its concern on the case of Munir and on the consequent risks to the lives of those who were threatened because of their involvement in the case.



Submission of information to the UNWGEID has helped in projecting the phenomenon of enforced disappearances in Asia. Thus, in the annual report of the UNWGEID, the reports of AFAD members were also reflected. The material is certainly a credible source to convince UN member-states of the reality of enforced disappearances in Asia.

The former United Nations Commission on Human Rights resolved to create the Inter-Sessional Working Group to Elaborate

a Draft Legally-Binding Normative Instrument for the Protection of All Persons from Enforced Disappearance. Thus, The UN Inter-Sessional Working Group to Elaborate a Draft Legally-Binding Normative Instrument for the Protection of All Persons from Enforced or Involuntary Disappearances held its sessions for three (3) years from 2003-2005.

These sessions were attended by UN CHR members, interested non-UN CHR member-states, inter-governmental organizations, NGOs in consultative status with the UN ECOSOC and independent experts.



It was during these sessions that AFAD, in cooperation with *FEDEFAM*, *We Remember-Belarus*, *AFAPREDESA* and other organizations of the families voiced the perspective of the families of the disappeared. AFAD joined the voices of other families' organizations worldwide in convincing UN member-states why an international treaty with an independent monitoring body is necessary in view of the still unknown fate of many victims and the on-going sufferings of their families. Its very presence and its presentations of concrete cases broke the myth that enforced disappearance is a phenomenon of the past and solely a Latin American issue. There are gaps in the existing mechanisms in protecting people from enforced disappearances as evidenced in the huge number of cases from more than 90 countries. The UN Declaration on the Protection of All Persons from Enforced Disappearances adopted by the UN General Assembly on 18 December 1992 and the existence of the UNWGEID have failed to curb this heinous crime.

The new provision on the right of families of the disappeared to form associations was finally approved after difficult arguments and counter-arguments by UN member-states. AFAD's intervention citing the case of Munir as a concrete example of a person consequently murdered because of his work against disappearances had, according to the Italian delegation, convinced governments to include this important provision. It is significant to note that in this UN drafting body's session of January 2004, Munir was one of the two AFAD representatives who participated in the drafting and negotiation process.

Never wasting time, AFAD conducted lobbying activities with national, regional and international authorities. It knocked on the doors of foreign offices in a number of Asian countries and even spoke to some heads of states, e.g. Sri Lanka, Philippines and Indonesia. It directly lobbied representatives of Permanent Missions of the UN in Geneva in between sessions of the drafting body. It joined strategy meetings of organizations of families of the disappeared and international NGOs *vis-à-vis* positions on matters such as amnesty laws, national security, form of instrument, the monitoring committee for implementation and the like. The Federation also joined the lobbying tour to eight (8) European countries with the intention of convincing the latter to take a position in favor of an international treaty with an independent monitoring body rather than a new protocol to the International Covenant for Civil and Political Rights (ICCPR). Such a tour to these countries proved to be effective, since during the second to the last session of the UN drafting body in 2005, most of the concerned UN member-states visited during the tour shifted their position and voted in favor of a treaty with an independent monitoring body.

Indeed, AFAD contributed in its own modest way, to the Convention's adoption. As the late His Excellency Bernard Kessedjian, in his message to AFAD stated:

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" In the negotiation group of the Commission on Human Rights drafting a new international convention for the protection of all persons against enforced disappearances, they have told their suffering and claimed the right to know the truth, their right to justice, their right to reparation..."

Empowering the Very Source of Its Strength

In recognition of the fact that the phenomenon of enforced disappearances affects the mental, emotional and psychosocial situation of the families, AFAD took the initiative of establishing a psychosocial rehabilitation program. With empowerment as its goal, the program is aimed to rehabilitate the families from the trauma of the loss of their loved ones.



Group photo of the First Sharing of Experiences of Asian Families of the Disappeared.

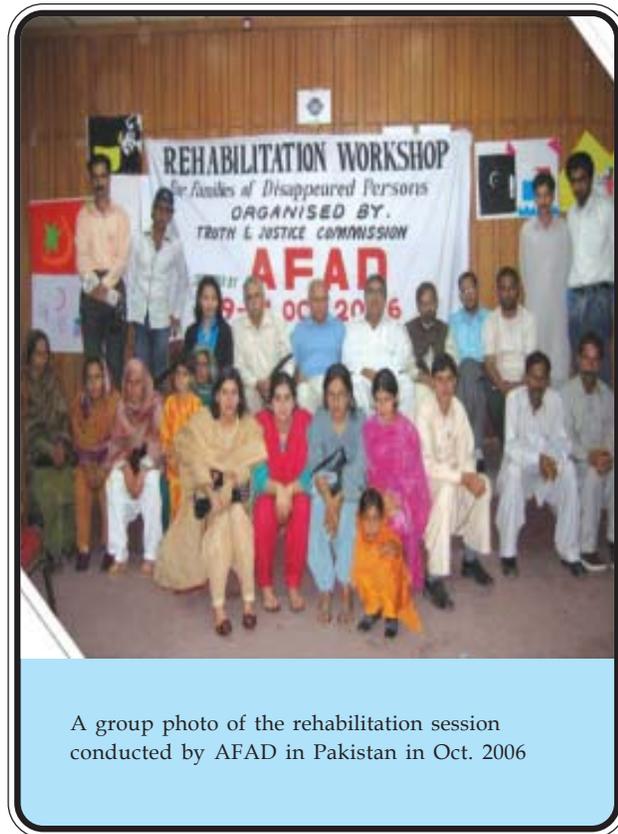
Its success can eventually be measured by the eventual participation of more families of the disappeared in the work against impunity.

Healing Wounds, Mending Scars was the theme of AFAD's First Sharing of Experiences of Asian Families of the Disappeared held in Jakarta, Indonesia in December 2004. The participants were forty (40) family members from seven (7) Asian countries. A representative each from *FEDEFAM* and *AFAPREDESA* expressed solidarity through their participation, making it an international event. Two (2)

representatives from *HOM* Linking Solidarity of The Netherlands attended as observers. Bringing with them diverse cultures, speaking different languages and coming from different social and political contexts, the participants found no difficulty in sharing their same experiences of pain and their common dreams of finding their loved ones and of their unified goal of realizing a world without *desaparecidos*. Culminating with a common resolve to connect to each other despite geographical distance, the families of the disappeared tearfully parted ways yet closely bonded in heart and spirit in their vow to remember each

other's stories and in their conviction never to forget their loved ones through their continued participation in the fight against impunity.

This beautiful regional event was multiplied a hundredfold, nay a thousandfold through the echo activities at the national level in countries where AFAD members operate. In so doing, more families of the victims had relished the joy of togetherness in sharing their stories and had realized that that after all; they are not alone in the struggle. In so doing, they have come to discover their intrinsic and extrinsic strengths that serve as their tools in coping up with the hardships of daily life. They were also able to appreciate their respective organizations' support as well as the support of AFAD for whom they expressed some levels of belongingness. Equally important is that these echo programs were venues for them to evaluate what they could share as individual members of their local organizations which necessarily results in the strengthening of AFAD.

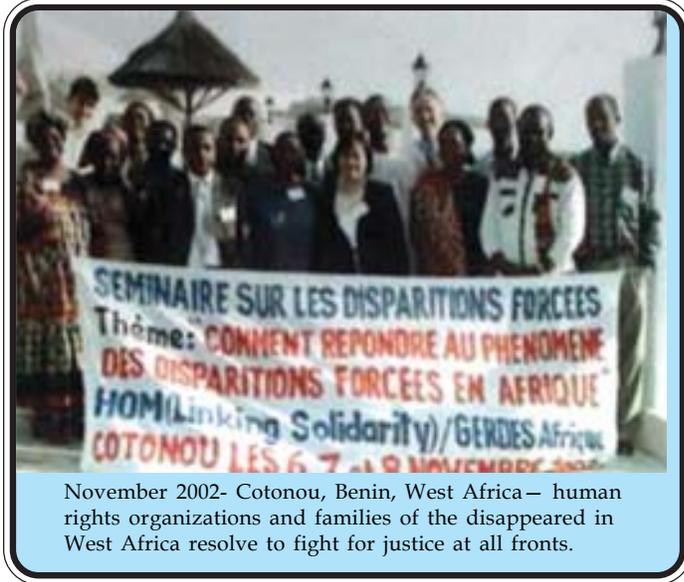


A group photo of the rehabilitation session conducted by AFAD in Pakistan in Oct. 2006

The next level of rehabilitation, entitled *From Victims to Healers* was later enacted in the same countries, including Nepal whose families of the disappeared, through Advocacy Forum, had joined AFAD. The program was aimed to build the capacity of potential families of the victims to become healers for their co-victims. There are family members who, being in the best position to know the feelings and sentiments of their co-victims, are themselves potential healers. With professional guidance, they can develop healing capacities, thus, giving them the necessary self-confidence to bolster their morale and aid them in the process of empowerment.

Three (3) years of implementation necessitated a summing-up to evaluate the gains and to identify shortcomings and failures thus, raising to a higher level the present stage of rehabilitation. Thus, in 2007 December, AFAD summed up the psycho-social rehabilitation experience in an activity dubbed as *Sharpening our Healing Capacities Towards Empowerment*.

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November 2002- Cotonou, Benin, West Africa— human rights organizations and families of the disappeared in West Africa resolve to fight for justice at all fronts.

With the analysis and recommendations as a major consideration in the next stage of the program, AFAD is laying a foundation towards carrying out the next level, i.e. Cycle of Healing.

Complementing the psycho-social aspect of AFAD's direct assistance program to the families is the educational assistance to the children of the disappeared and medical assistance to their sick and elderly parents. This form of support, however minimal, is much-awaited

and therefore, deeply appreciated by the families. This is an intervention to at least, partially respond to the economic dislocation brought about by the disappearance of the families' breadwinners. Given the number of programs and the huge number of beneficiaries, what is called for is the need for local resources to augment the limited resources of the Federation. These much-needed local resources would go a long way towards multiplying a thousandfold what the present beneficiaries are receiving from the program by reaching out to equally needy families of the victims.

If psycho-social rehabilitation responds to the needs of the heart and the soul, educational and medical assistance responds to the needs of the minds and bodies of the children and the elderly. To respond to the holistic needs of the victims, conscientization is necessary for better understanding of their own personal situation in the context of the greater social and political milieu in which the families are situated. Then and only then will they profoundly understand the context of the disappearance of their loved ones. Such understanding will further facilitate them in continuing with their journey towards a world without *desaparecidos*.

Linking Arms with Families of the Disappeared from Various Points of the Globe

Mentioned at the beginning of this article is the established linkage with *FEDEFAM*. There have been several exchanges of experiences between *FEDEFAM* and AFAD through their participation in each others' activities.



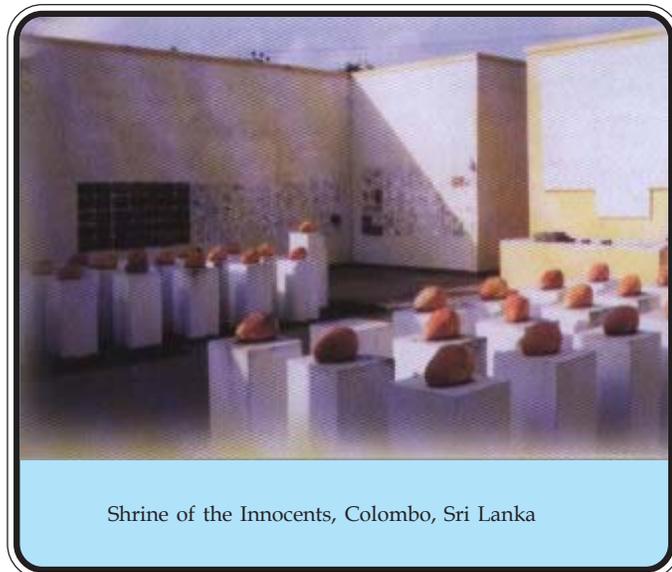
Since its Fourteenth Congress, AFAD consistently participated in all the succeeding congresses in various parts of Latin America. The same is true with *FEDEFAM* whose representatives joined all three (3) congresses that AFAD had convened. In other major activities of AFAD, such as the Asian-Latin American Lawyers' Conference held in Jakarta, Indonesia in 2000 December, the participation of lawyers from Chile, Argentina and El Salvador was facilitated by *FEDEFAM*. During the Participatory Capacity Building Evaluation in the Philippines in August 2005, *FEDEFAM*, through its Adviser, Mr. Patricio Rice, actively participated. In the summing-up of AFAD's Psychosocial Rehabilitation Program, Gimena Gomez, in charge of *FEDEFAM*'s international work, accompanied the Asian co-families of the disappeared in evaluating their program.

Asian and Latin American cooperation has been extended to other organizations working on enforced disappearances in other continents. AFAD cooperates closely with We Remember-Belarus and individual African organizations in joint lobbying activities at the United Nations. Organizations such as We Remember-Belarus, *AFAPREDESA*, *Khulumani* Support Group and the Centre for the Study of Violence and Reconciliation work with AFAD especially in conducting internationally-commemorated activities.

This level of international cooperation achieved so far is the concrete realization of the dream to establish an international movement against enforced disappearances which, the participants of the 1997 International Week of the Disappeared commemoration dreamed and worked for. Its most significant achievement as an international movement is the adoption of the United Nations Convention for the Protection of All Persons from Enforced Disappearance.

Reconstructing the Historical Memory of the *Desaparecidos*

In some countries where AFAD has member-organizations, there have been memorials to honor the *desaparecidos*. The building of these monuments in some other countries have been encouraged by AFAD as part of the reconstruction of the victims' historical memory – an evidence of the perpetrators' cruelty; a reminder of the victims' heroism,



Shrine of the Innocents, Colombo, Sri Lanka

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especially those *desaparecidos* who were made to disappear in the context of their participation in the struggle for social transformation and a constant call for non-repetition.

These memorials are built in Sri Lanka, the Philippines and Thailand. In Kashmir, a foundation stone was laid on 18 July 2001, but was stolen by the Indian Police two (2) hours after the groundbreaking ceremony. Another foundation stone was laid, but the long-dreamed monument has not yet been built due to security reasons.

Moreover, in honor of Munir and Asia Jeelani, AFAD initiated the establishment of its Resource Center which is located in the Federation's physical center in Manila. The center collects reading and audio-visual materials on enforced disappearances from Asia and the rest of the world. It also has a collection of *memorabilias* of the *desaparecidos* from Asia. Furthermore, it serves as a source of information for AFAD's other endeavors, especially concerning campaign, public information and lobbying. AFAD, on the occasion of its tenth anniversary, launched its Web Online Public Access Catalog which is consciously made available for researchers worldwide.

The books and other materials that AFAD has produced are the product of its efforts to chronicle cases, stories, and analyses of situations of enforced disappearances in Asia. Documentation work, however, needs much improvement. A program so basic, documentation work will aid the implementation of the other programs of AFAD by ensuring their correctness, relevance and viability. Outputs in documentation are basic in reliving and reconstructing the *desaparecidos'* historical memory.

Unearthing the Skeletons Inside the Closet

In 2000, after AFAD conducted its Founding Congress, it co-sponsored with FIND training on forensic anthropology. The training included forensic theories and actual practice in exhumation in Bicol and Negros Occidental, Philippines. It was an integral part of the search for the truth. The said training was facilitated by the Argentine Forensic Anthropology Team.

A decade later, especially when mass graves have recently been discovered in Kashmir, AFAD is contemplating holding another forensic training both for local forensic people and for human rights advocates. AFAD has still to achieve breakthroughs in this regard. If realized, the second training will surely lay the groundwork in coming up with concrete victories in the near future.



Many things cry out to be done as the journey goes on...

Having completed a decade of struggle for a world without *desaparecidos*, the time is ripe for AFAD to achieve a qualitative leap by looking into its internal dynamics, improving its leadership capacity and strengthening the member-organizations which are the very sources of the Federation's strength.

Learning from the lessons of the past and inspired by the *desaparecidos* and their families, AFAD needs to attain more victories in all aspects of its endeavors... The experiences of its sisters and brothers in other continents will continue to enrich its own capacity to conquer the barriers of truth; overpower the enemies of justice and savor the vindication of redress and reparation, thus immortalizing the *desaparecidos'* memory.

The mission to reclaim stolen lives and to realize the much cherished dream for a world without *desaparecidos* must continually be carried out. The journey goes on...



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By Marta Ocampo de Vasquez

Buenos Aires, 25 de abril de 2008

Asian Federation Against Involuntary Disappearances

Since the time we met one another in our struggle for the defense of human rights in your continent...

Since Loyola Guzman informed the Latin American Federation during your early stages, I heard her speak of colleagues from the Philippines who were also searching for their detained and disappeared family members, and gradually, I was becoming aware of the terrible reality that also existed in Asia, in many of your countries and also in Africa.

How sad is this reality!

When *FEDEFAM* was founded, we believed that this terrible crime of enforced disappearance existed solely in Latin America, above all, in dictatorial regimes. We terribly suffered, we believed that our struggle especially among those directly affected, would achieve peace in our countries. We understood that we had to combat impunity which, from America, will spread to the rest of the world and to attack the terrorism of the State which has committed more atrocious crimes and to transform the families into one voice raised denouncing this reality.

We understood that we had to unite with you and all people — sisters and brothers — in order to share our experiences and our achievements. Thus, from then on, we have been together with you in your struggle and we have seen with



great satisfaction the emergence of AFAD, and how it has worked before those international organizations, denouncing all the violations that occur in Asia, following the journey which *FEDEFAM* has gone through. It has been ten years since AFAD was born and it has grown in this enormous task which we have to accomplish and always defend .

Memory, Truth and Justice

We will never desist in our protest and never have we resorted to violence or revenge. This is the spirit that guides our federations.

We have been together before the United Nations in searching for international laws that defend our human rights and the full application of justice in each affected country, and the creation of legal mechanisms that prevent, sanction and impede the perpetration of this crime against humanity.

Because of the situation where, we, the families lack protection, because of the enforced disappearance of our loved ones , the conviction grew among us for the need to seek an appropriate international instrument.

After years of vicissitudes, steps and countersteps to achieve the Convention against Enforced Disappearances, the Intersessional Working Group to Elaborate a Draft Legally Binding Normative Instrument for the Protection of All Persons from Enforced Disappearance started its work at the United Nations in Geneva, presided by Ambassador Bernard Kessedjian, with the assistance of representatives of the member-states before the Commission on Human Rights and observer countries. This time it was participated in by various NGOs with consultative status before the United Nations, such as *FEDEFAM* and AFAD.

During these three years when the study sessions were conducted and discussions of important reports and contributions of all those who attended were held in order to improve the project of the international Convention, there were tense moments, but the representatives of the families demonstrated their unity and we all agreed with the decisions. I thought this influenced the final decision, which had been long awaited!

On Thursday, 22 September 2005, on the eve of the final session, the Ambassador of France, Bernard Kessedjian, announced solemnly the tacit approval of the Project: "International Convention for the Protection of All Persons from Enforced

RECLAIMING STOLEN LIVES

Disappearance,” or sealing the completion of the task of this Working Group accompanied with a loud applause and great joy among all those present, especially the families.

This Convention will fill the gap that still exists in the international protection of human rights.

On 27 June 2006, the Human Rights Council of the United Nations in Geneva unanimously approved the Convention and on the 20th of December, it was finally approved by the General Assembly of the United Nations in New York before the Economic and Social Council. (ECOSOC).

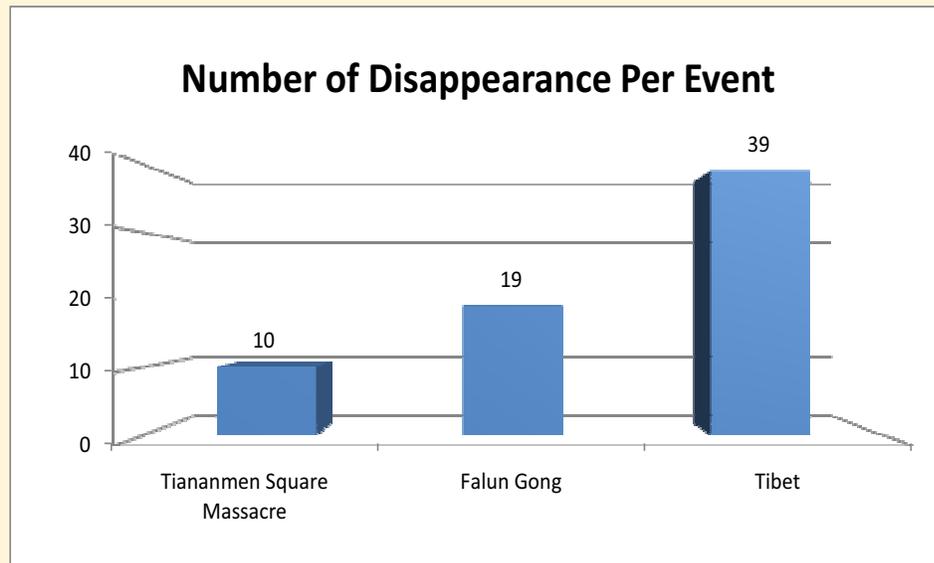
On 6 February 2007, in Paris, at the Ministry of Foreign Affairs in Paris, the Convention was recognized by 57 countries. Now, let us work and hope for the ratification by 20 more countries in order that this Convention will become really effective. The task of all the families now is to achieve the ratification by these 20 states. Let us continue to work together in this struggle — always for Memory, Truth and Justice.



STATISTICS ON ENFORCED DISAPPEARANCE IN ASIA

I. CHINA

A. Graphical Presentation of Documented Cases of Enforced Disappearance in China



B. Tabulation of Cases

Event	Number of Documented Cases of Enforced Disappearance
Tiananmen Massacre	10
Falun Gong	19
Tibet	39
Total	68

Sources:

Tiananmen Mothers

Falun Gong Human Rights Working Group

Tibet Centre for Human Rights and Democracy: Annual Report of 1996-1999

RECLAIMING STOLEN LIVES

C. Tabulation of the Number of Disappearance during 1989 June Fourth Tiananmen Square Massacre

The 1989 Tiananmen Massacre	Male	Female
Total	9	1

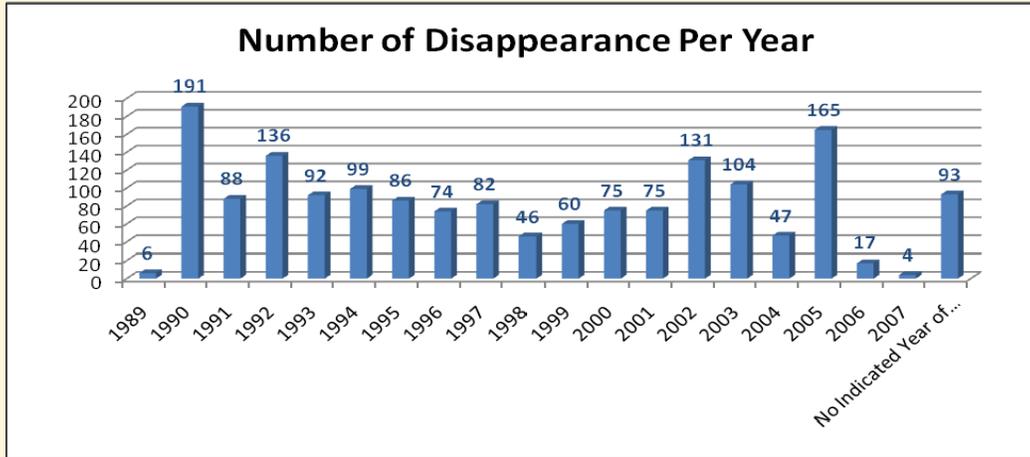
Profile of the Disappeared Person	Economic status	Home Location	Place of Disappearance
Worker	7	Beijing Municipality	Beijing
Student	2	Hebie Province/Beijing	Beijing
Unknown	1		Beijing

Gathered and Compiled by the Tiananmen Mothers



II. JAMMU AND KASHMIR

A. Graphical Presentation of Documented Cases of Enforced Disappearance in Jammu and Kashmir



B. Tabulation of Cases

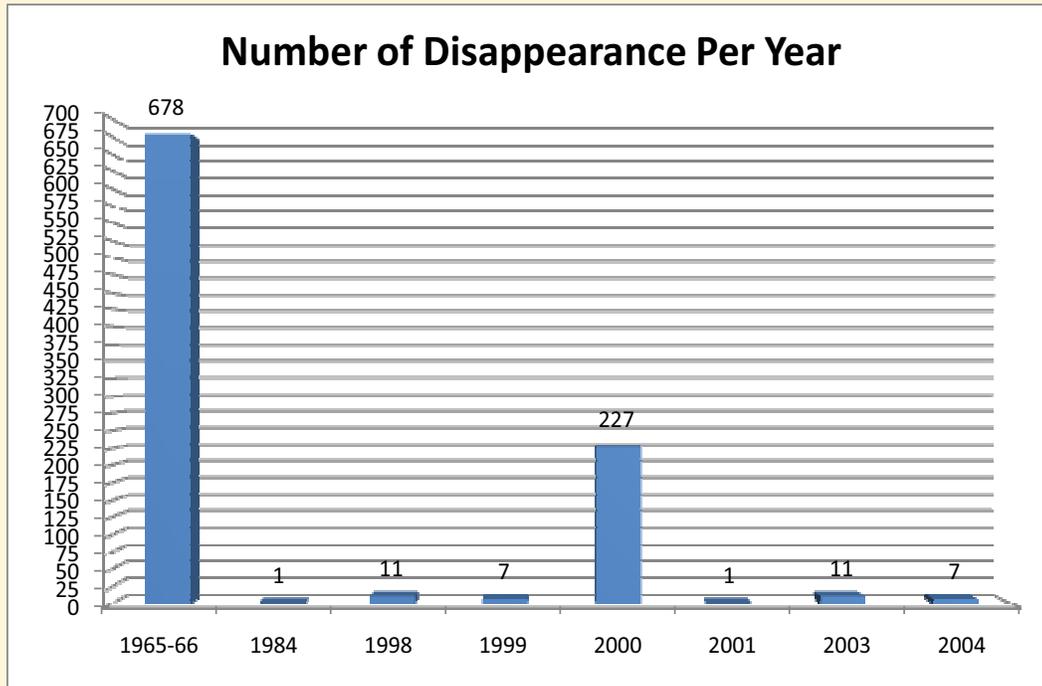
Year	Number of Documented Cases of Enforced Disappearance
1989	6
1990	191
1991	88
1992	136
1993	92
1994	99
1995	86
1996	74
1997	82
1998	46
1999	60
2000	75
2001	75
2002	131
2003	104
2004	47
2005	165
2006	17
2007	4
No Indicated Year of Disappearance	93
Total	1671

Source: Association of Parents of Disappeared Persons (APDP)

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III. INDONESIA

A. Graphical Presentation of Documented Cases of Enforced Disappearance in Indonesia



Based on the documentation of *IKOHI/KontraS* (1965-2004)

B. Tabulation of Cases

Year	Number of Documented Cases of Enforced Disappearance
1965-66	678
1984	1
1998	11
1999	7
2000	227
2001	1
2003	11
2004	7
Total	943



C. Tabulation of Documented Cases of Enforced Disappearance in Indonesia from 1965 -2004

No	Period	Victims	Location	Reason
1	1965 - 1966	109	Pemalang, District. Central Java	Accused as member of Communist Party
2	1965	10	Sukorejo Village, Sidoarjo, East Java	Land problem
3	1966	11	Penataran Village, Blitar, East Java	Land problem
4	19 June 1983	1	Sepawon Village, Kediri, East Java	Land problem
5	14 July 1984	6	Harjokuncaran, Malang, East Java	Land problem
6	12-Sep-84	10	Tanjung Priok, Jakarta	Religious activities
7	7 February 1989	218	Talang Sari, Lampung	Religious activities
8	1989 - 1998	350	Aceh (DOM)	Military Operation Region
9	27 July 1996	16	DKI Jakarta	Political activities
10	1997 - 1998	14	DKI Jakarta	Political activities
11	May 1998	5	DKI Jakarta	May riot 1998
12	1999	191	Aceh (Post Military Operation Region/MOR)	Military Operation Region
13	2000	4	Papua	
14	2000	88	Aceh (Post MOR)	Military Operation
15	2001	2	Ambon	Emergency Situation
16	2001	106	Aceh (Post MOR)	Target of Military Operation
17	November-01	1	Papua	Target of Military Operation
18	June-2002	2	Ambon	Social conflict
19	August-2002	7	Poso, South Sulawesi	Social conflict
20	January- October 2002	139	Aceh (Post MOR)	Target of Military Operation
21	January - December 2003	48	Across Indonesia	Unknown
22	January- December 2004	161	Across Indonesia	Unknown
	TOTAL	1499		

D. Tabulation of Number of Victims per Province from 1999-2000

Enforced Disappearance												
Periode Pasca DOM (Mei 1999 - Maret 2000)												
	A Utara	A Barat	A Timur	A Tengah	A Selatan	A Pidie	A Besar	A Jeumpa	Sabang	Luar Aceh	Total	
<i>Berdasarkan Penyebab</i>												
Sweeping	9	5	1	8	1	3	5	0	0	4	36	
Penyisiran	0	3	0	0	0	3	0	1	0	0	7	
Culik dirumah /tempat kerja	6	1	0	4	0	3	1	2	1	0	18	
Tdk Jelas /*	51	15	20	1	3	26	2	3	2	10	133	
<i>Berdasarkan Usia</i>												
<20	4	1	7	0	0	7	1	0	0	0	20	
21 - 25	9	3	3	0	1	1	0	1	1	0	19	
26 - 30	14	6	3	0	0	1	0	1	0	5	30	
31 - 35	7	1	0	0	0	5	0	1	0	1	15	
36 - 40	5	1	0	0	0	6	0	1	0	1	14	
41 - 45	5	2	1	3	0	3	1	0	0	1	16	
46 - 50	7	0	1	0	1	1	1	1	0	0	12	
>51	1	1	0	2	0	2	0	0	0	0	6	
Tdk Ada	14	9	6	8	2	9	5	1	2	6	62	
<i>Berdasarkan Pelaku</i>												
Aparat Keamanan	15	7	5	10	0	9	5	0	1	3	55	
Polisi	1	0	2	0	0	1	0	0	0	0	4	
Brimob	2	0	0	0	0	3	0	3	0	0	8	
Kodim	0	4	0	1	0	0	0	0	0	0	5	
Org Tak dikenal	48	13	14	2	4	22	3	3	2	11	122	
<i>Berdasarkan Status</i>												
Militer	5	3	2	0	3	6	1	0	0	0	20	
PNS	0	0	0	0	0	1	0	0	0	0	1	
Sipil	61	21	19	13	1	28	7	6	3	14	173	

* tak jelas, kebanyakan diculik dalam perjalanan

E. Tabulation of Number of Victims Per Month and Per Province from 1999-2000

<i>Bulan</i>	<i>Jumlah</i>
<i>Mei</i>	1
<i>Jun</i>	1
<i>Jul</i>	10
<i>Agt</i>	35
<i>Sep</i>	17
<i>Okt</i>	8
<i>Nov</i>	23
<i>Des</i>	9
<i>Jan</i>	35
<i>Feb</i>	34
<i>Mar</i>	18
<i>Unknown</i>	3
<i>Jumlah</i>	194

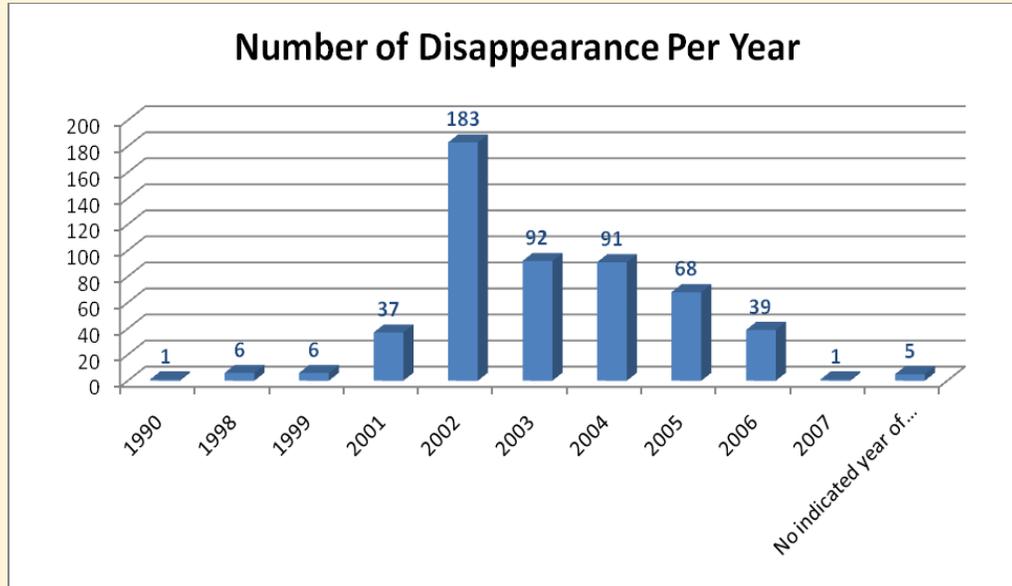
Berdasarkan Jumlah Kasus

<i>Lokasi</i>	<i>Jumlah Kasus</i>
<i>A. Utara</i>	66
<i>A. Barat</i>	24
<i>A. Timur</i>	21
<i>A. Tengah</i>	13
<i>A. Selatan</i>	4
<i>A. Pidie</i>	35
<i>A. Besar</i>	8
<i>A. Jeumpa</i>	6
<i>Sabang</i>	3
<i>Luar Aceh</i>	14
<i>Total</i>	194

RECLAIMING STOLEN LIVES

IV. NEPAL

A. Graphical Presentation of Documented Cases of Enforced Disappearance in Nepal



B. Tabulation of Cases

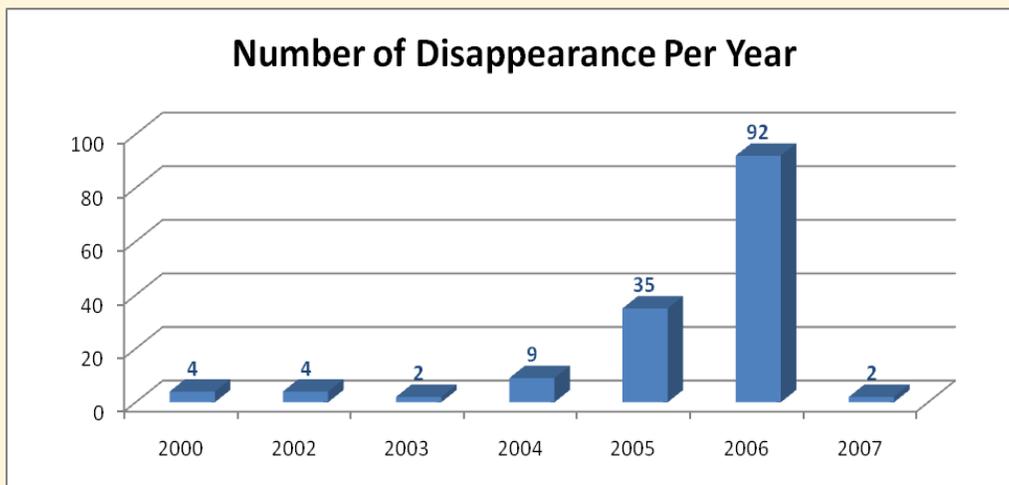
Year	Number of Documented Cases of Enforced Disappearance
1990	1
1998	6
1999	6
2001	37
2002	183
2003	92
2004	91
2005	68
2006	39
2007	1
No indicated year of Disappearance	5
Total	529

Source: Advocacy Forum



V. PAKISTAN

A. Graphical Presentation of Reported Cases of Enforced Disappearance in Pakistan



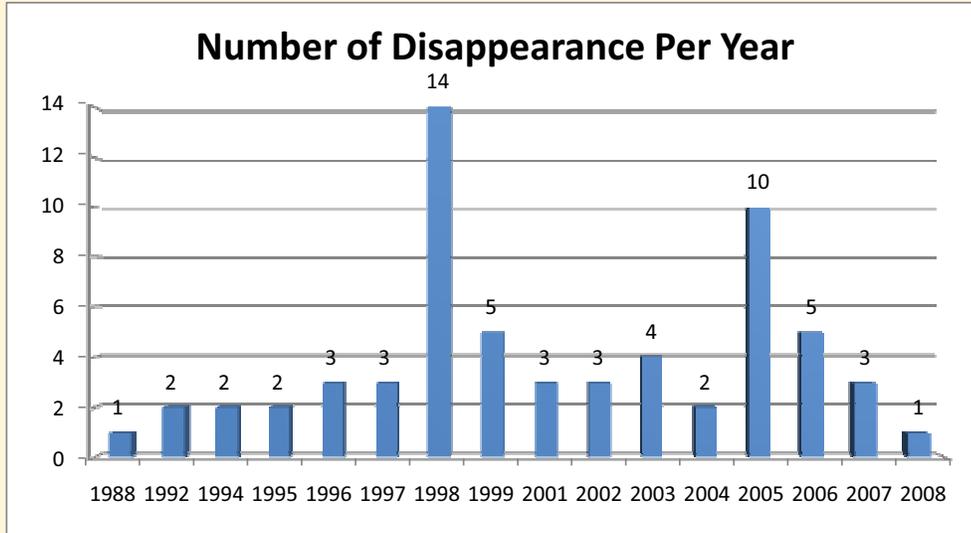
B. Tabulation of Cases

Year	Number of Reported Cases of Enforced Disappearance
2000	4
2002	4
2003	2
2004	9
2005	35
2006	92
2007	2
Total	148

Source: Human Rights Commission of Pakistan, August 2007 Report

RECLAIMING STOLEN LIVES

C. Graphical Presentation of Documented Cases of Enforced Disappearance



D. Tabulation of Cases

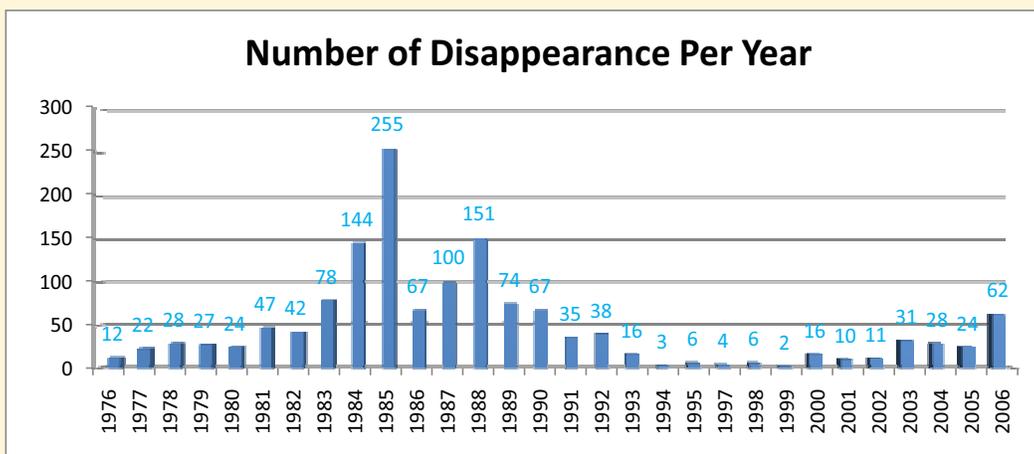
Year	Number of Documented Cases of Enforced Disappearance
1988	1
1992	2
1994	2
1995	2
1996	3
1997	3
1998	14
1999	5
2001	3
2002	3
2003	4
2004	2
2005	10
2006	5
2007	3
2008	1
Total	62

Source: Truth and Justice Commission (TJC)



VI. PHILIPPINES

A. Graphical Presentation of Documented Cases of Enforced Disappearance in the Philippines



Based on the documentation of Families of Victims of Involuntary Disappearance (FIND) from 1976 -2006

B. Tabulation of Cases

Year	Number of Documented Cases of Enforced Disappearance
1976	12
1977	22
1978	28
1979	27
1980	24
1981	47
1982	42
1983	78
1984	144
1985	255
1986	67
1987	100
1988	151
1989	74
1990	67
1991	35
1992	38
1993	16

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1994	3
1995	6
1997	4
1998	6
1999	2
2000	16
2001	10
2002	11
2003	31
2004	28
2005	24
2006	62
Total	1,430

C. Tabulation of Number of Victims according to Gender and Political Involvement

Victims of Enforced Disappearance under the Arroyo Government			
Annual Totals: January 21, 2001 to June 30, 2008			
<i>Data gathered by Karapatan</i>			
Year	Total	Organized	Women
2001	7	1	2
2002	9	3	2
2003	11	2	1
2004	26	10	5
2005	28	6	0
2006	78	26	16
2007	33	13	4
2008 (half year)	1	1	0
Total	193	62	30

D. Tabulation of Number of Victims according to Gender Per Region

Victims of Enforced Disappearance under GMA's Presidency		
January 21, 2001 to June 30, 2008		
<i>Data gathered by Karapatan</i>		
Region	ED	Women
CAR	1	0



Cagayan Valley	4	0
Ilocos	1	0
Central Luzon	62	7
Southern Tagalog	28	4
Bicol	12	3
NCR	6	0
Eastern Visayas	24	4
Central Visayas	2	0
Western Visayas	6	2
Northern Mindanao	1	1
Caraga	11	1
Socskargen	4	2
Western Mindanao	10	2
Southern Mindanao	13	1
ARMM	8	3
Total	193	30

E. Tabulation of Number of Victims Per Sector

Victims of Enforced Disappearance under GMA's Presidency (by sector & special group) January 21, 2001 to June 30, 2008 <i>Data gathered by Karapatan</i>	
Sector/Special Group	ED
Peasant	116
Moro	9
Indigenous People	7
Worker	16
Children	4
Urban Poor	7
Church	1
Youth and Students	10
Fisherfolk	3
HR Worker	1
Gov't Employee	1
Entrepreneur	7
Others	6
Unclassified	5
Total	193

RECLAIMING STOLEN LIVES

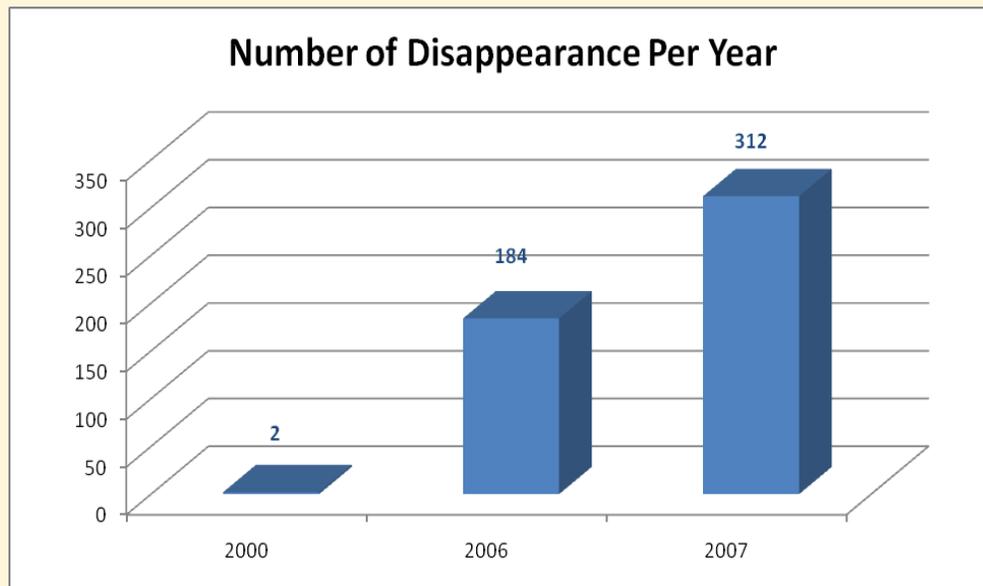
F. Tabulation of Number of Victims according to Sectoral/Political Organization

Victims of Enforced Disappearance under GMA's Presidency (by sectoral & multi-sectoral organization)	
January 21, 2001 to June 30, 2008	
<i>Data gathered by Karapatan</i>	
Organizations	ED
Bayan	
KMP	11
KMU	3
Anakbayan	3
Pamalakaya	2
Kadamay	0
LFS	1
Courage	0
PCPR	0
SCMP	0
Kalikasan	0
Piston	1
Secretariat	1
Karapatan	
Selda	2
Kasimbayan	0
Chapters	1
Other Organizations	3
Partylist	
Bayan Muna	13
Anakpawis	8
Gabriela Women's Party	0
Kabataan	0
Suara Bangsa Moro	2
Anak ng Bayan	1
NDFP Consultants/Staff	10
Total	62



VII. SRI LANKA

A. Graphical Presentation of Documented Cases of Enforced Disappearance in Sri Lanka



B. Tabulation of Cases

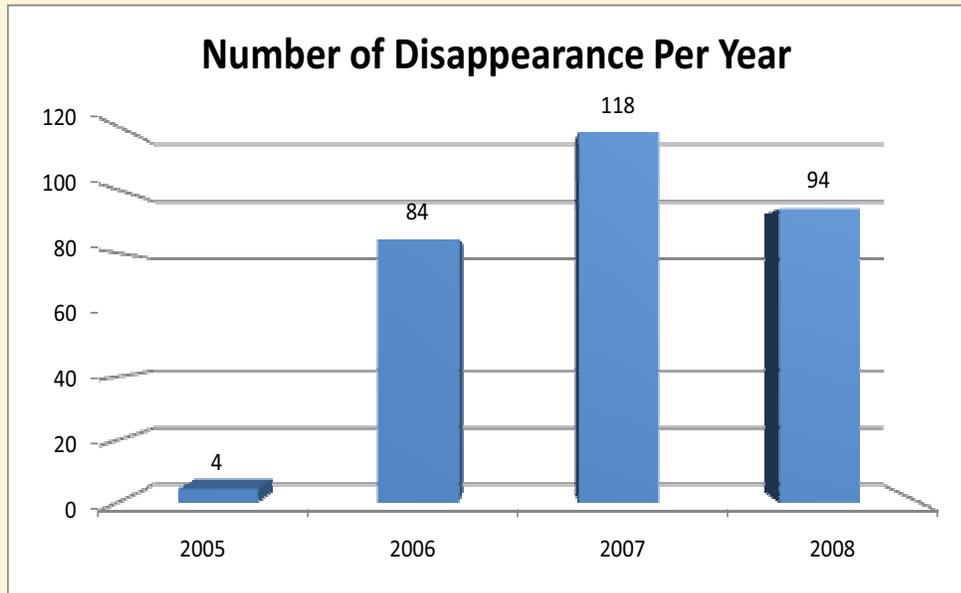
Year	Number of Documented Cases of Enforced Disappearance
2000	2
2006	184
2007	312
Total	498

Source:

The following 498 cases in the table below were provided to Human Rights Watch by Sri Lankan human rights groups. The majority of these cases have been reported to the Sri Lankan Human Rights Commission, the Sri Lanka Monitoring Mission, or local police. Wherever possible, Human Rights Watch sought to verify that the information is up to date.

RECLAIMING STOLEN LIVES

C. Graphical Presentation of Reported Cases of Involuntary Disappearances in Sri Lanka



D. Tabulation of Cases

Year	Number of Reported Cases of Enforced Disappearance
2005	4
2006	84
2007	118
2008	94
Total	300

Source:

Civil Monitoring Commission Monitoring Involuntary Disappearances, Abductions, Extra Judicial Killings, Extortions and Arbitrary Arrests and Detention in SRI LANKA



E. Statistics on Enforced Disappearances in Sri Lanka

No.	Province	District	Number of Disappeared Persons during UNP regime (1992-1997)
1	Western	Colombo	1117
		Gampaha	1408
		Kaluthara	1132
2	Southern	Mathara	4660
		Galle	1393
		Hambantota	3313
3	Saragamu	Rathnapura	1361
		Kegalla	1350
4	Central	Kandy	4080
		Mathale	997
		Nuaraeliya	468
5	North West	Kurunegala	3161
		Puttalam	574
6	North Central	Anuradapura	2146
		Polonnaruwa	1258
7	Uva	Badulla	1512
		Monaragala	2779
Sub-total			32709

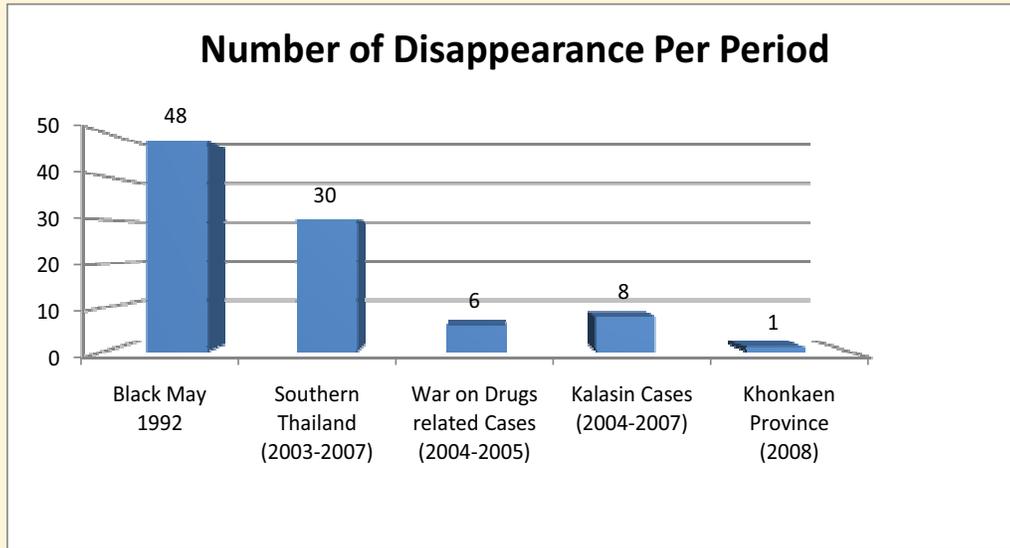
No	Province	District	Number of Disappeared Persons during War Against LTTE (1992-2001)
1	Northern	Jeffna	618
		Wavniya	479
		Mannar	322
		Kilinochchi	506
		Mulathi	511
2	Eastern	Ampara	1320
		Trimcomalee	464
		Batticalo	391
Sub-total			4602

Source: Organization of Parents and Family Members of the Disappeared (OPFMD)

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VIII. THAILAND

A. Graphical Presentation of Documented Cases of Enforced Disappearance in Thailand



Based on the documentation of Working Group on Justice for Peace

B. Tabulation of Cases

Period	Number of Documented Cases of Enforced Disappearance
Black May 1992	48
Southern Thailand (2003-2007)	30
War on Drugs related Cases (2004-2005)	6
Kalasin Cases (2004-2007)	8
Khonkaen Province (2008)	1
Black May 1992	48
Southern Thailand (2003-2007)	30
Total	93



Source	Ministry of interior	Hotline Center	Total
Dead	44		44
Disappeared	38	255	293
Disabled	11		11
Seriously Injured	47		47
Wounded	505		505
Total No of victims **including 32 mediamen			932

C. Tabulation of Number of Victims In Black May 1992

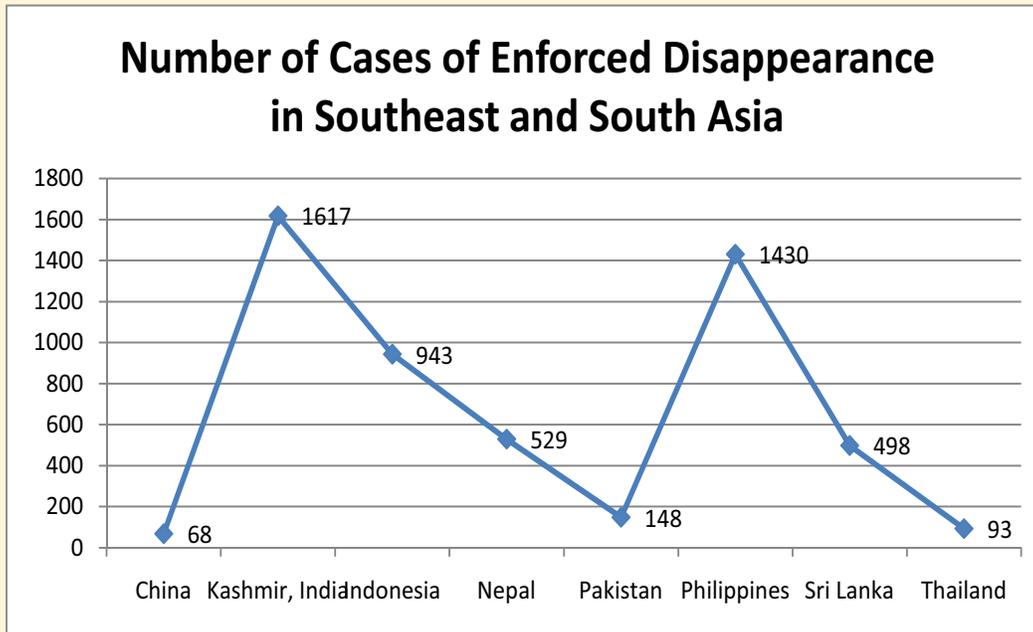
*Locations of the reported cases of disappearance covered mainly the area of the Royal Plaza and Ratchadamnoen Avenue.

Source:

Working Group on Justice for Peace (WGJP)
Relatives Committee of the May 1992 Heroes

GRAPHICAL SUMMARY OF CASES OF ENFORCED DISAPPEARANCES

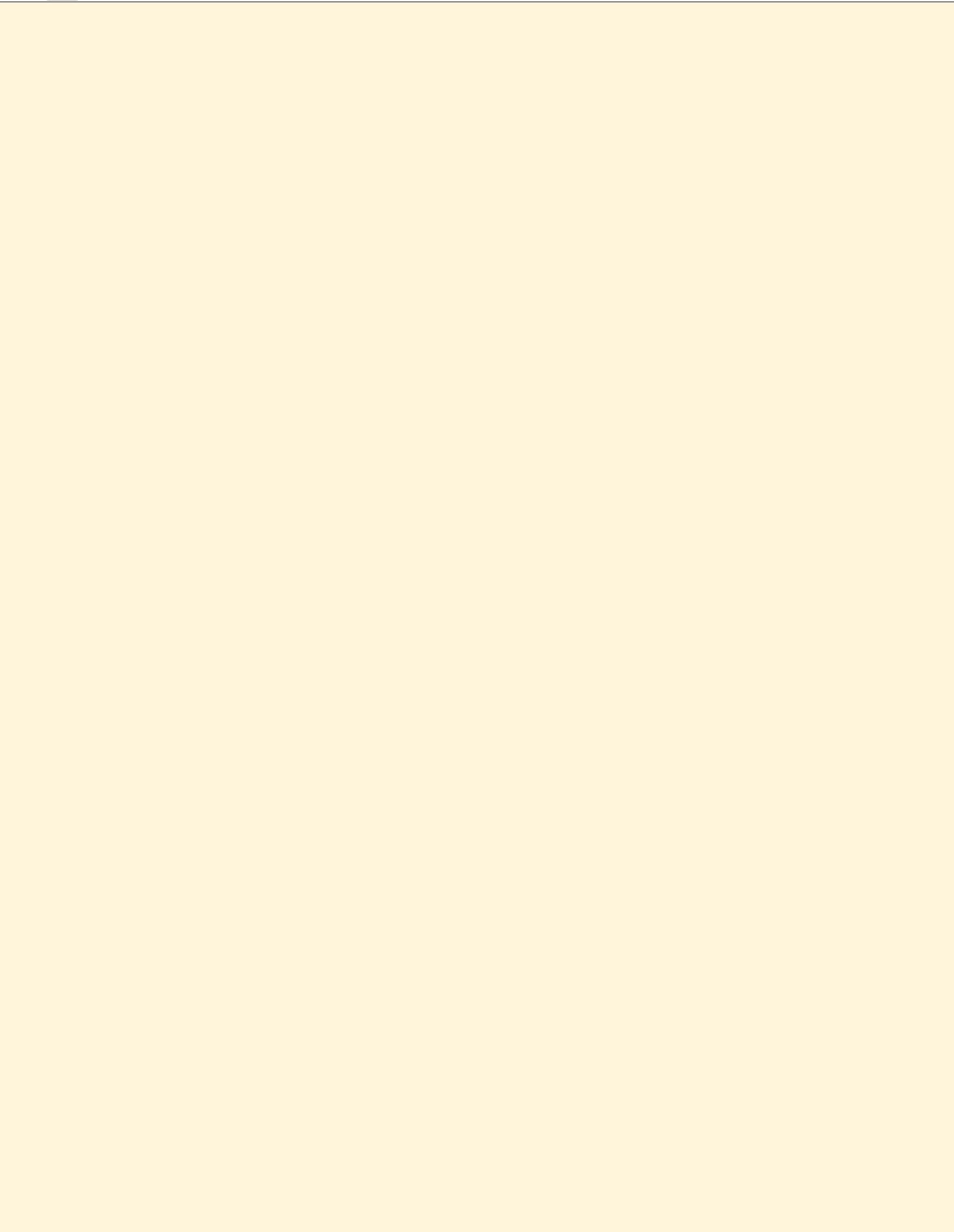
A. Graphical Presentation of Cases of Enforced Disappearances in Southeast and South Asia



B. Tabulation of Cases of Enforced Disappearance in Southeast and South Asia

Country	Number of Cases of Enforced Disappearance
China	68
Kashmir, India	1617
Indonesia	943
Nepal	529
Pakistan	148
Philippines	1430
Sri Lanka	498
Thailand	93





EPILOGUE

This second book on the phenomenon of enforced disappearances in Asia published by the Asian Federation Against Involuntary Disappearances (AFAD) is an exceptional effort to show the world that this atrocious crime is a global phenomenon. No continent or region of the world escapes it. This book intends to show the reader the horrific picture of this situation in Asian countries.

Asia is a region that has been, and still is, severely affected by enforced disappearances. Such is the case of Indonesia where the phenomenon started in the mid-sixties and continued into the late nineties. The Philippines is another example where disappearances occurred in significant numbers. One of the chapters on the Philippines in this book indicates a total of 1,988 reported cases, out of which 1,098 persons are still missing. The book also refers to enforced disappearances in China, India, Nepal, Pakistan, Thailand and Sri Lanka.

One constant element present in the book is the fact that the known or reported cases are insignificant in comparison with the actual numbers of disappearances. The phenomenon of under-reporting of enforced disappearances has been highlighted by the Working Group on Enforced or Involuntary Disappearances in its annual reports. The situation applies to every region of the world but particularly in those countries where the families of the disappeared are not organized or supported by non-governmental organizations with the capability to report the cases domestically and internationally.

This book also deals with the problem of impunity, truth, justice and reparation. Although the book refers to certain efforts like the establishment of truth commissions, e.g. Indonesia, unfortunately, impunity in the region can be considered the rule. Few countries in the world are making true efforts to honor the rights to truth, justice and reparation. Argentina and Morocco are two good examples. The rare examples prove that decent practices render good results, even if incomplete. They also prove that, where there is political will, results can be obtained. Those examples should be taken into consideration by all countries of the world, including, of course, those in the Asian region.

The book also highlights the problem of threats and reprisals against the members of the families of the disappeared, their lawyers or defendants, witnesses, etc. This situation is, unfortunately also present in every region of the world. Human rights defenders and witnesses are killed or even disappeared,

such as the case, for example of the Indonesian human rights activist Munir or of the Thai lawyer Somchai Neelaphajit.

The most distressing situation pictured in this book is, of course, the current situation in Sri Lanka. The Working Group on Enforced or Involuntary Disappearances recently issued a press release (11 June 2008) where it deplored the recent wave of disappearances in Sri Lanka and indicated that the Government of Sri Lanka must stamp out a recent wave of disappearances.

This book, therefore is another example of the tireless struggle or quest of the families of the disappeared gathered in AFAD to end disappearances in Asia (and of course, around the world, since AFAD is also an active supporter of *FEDEFAM* and other associations of family members of the disappeared in other parts of the world).

AFAD and its member-organizations were, undoubtedly, the main driving force in order for the international community to finally adopt the United Nations Convention for the Protection of All Persons From Enforced Disappearance. This is particularly important for the Asian region. Unlike the American continent, which, within the context of the Organization of American States (OAS) has an Inter-American Convention on Enforced Disappearance to which most of the Latin America countries are parties, Asia lacks such a regional international instrument. The new adoption of the UN Convention should be a sign of hope. However, notwithstanding the extremely speedy process for its adoption, as of this date only five countries have ratified it (Argentina, Albania, Honduras, Mexico and France). No Asian country has yet ratified this Convention. It is of utmost importance that as many countries of the world ratify it in order for the Convention to enter into force and also to make it enjoy universal recognition. As has been mentioned, Asia does not have a regional treaty on disappearances and therefore, this Convention is the only window of opportunity available for the Asian population to be internationally protected by a binding international instrument aimed to protect all persons from enforced disappearances.

The second book of AFAD on this subject contained a message from H.E. Ambassador Bernard Kessedjian, who regrettably passed away on 19 December 2007. I had the honor to participate in one of the sessions held in Room XII of *Palais des Nations* in Geneva where the UN Convention For the Protection of All Persons from Enforced Disappearance was being drafted by the "Intersessional Open Ended Working Group to Draft a Legally Binding Normative Instrument for the Protection of all Persons from Enforced Disappearances." Ambassador Kessedjian chaired the working group and magnificently conducted the relevant discussions. Had it not been for Ambassador Kessedjian's

commitment and diplomatic skills, this Convention would still be in draft form and under discussion.

However, realistically we have to admit that it may take some time for the Convention to enter into force. Regrettably, some countries may decide not to ratify it which is why the existence and permanence of the Working Group on Enforced or Involuntary Disappearances of the United Nations Human Rights Council is so important. In addition to its core mandate which consists in serving as a channel of communication between governments and members of the families of the disappeared, the Working Group is also mandated to monitor the implementation by countries of the 1992 Declaration on the Protection of all Persons From Enforced Disappearances. This declaration is not a binding instrument *strictu sensu*, but still should be respected by the international community, as a reflection of a series of principles that are customary international law, and in some cases even peremptory norms of international law (*jus cogens*). The Working Group should therefore continue applying its mandate and consider the general allegations that may be presented to it with respect to obstacles found in the implementation of the declaration. This way, the Working Group may inform the concerned governments of such allegations and request information about the measures that can reasonably be taken in order to overcome the circumstances that may be preventing the adequate implementation of the Declaration.

The Working Group was founded to serve as a channel of communication for the families of the disappeared with the governments of countries where enforced disappearances occurred or continue to occur. Therefore, it is my personal conviction that the most important, if not the only reason for the Working Group to exist, is to serve the families of the disappeared.

I would like to thank AFAD, and particularly its Secretary-General Mary Aileen D. Bacalso, for having invited me to participate in this project and enabled me to address this humble message to you. I would finally wish to express my deepest admiration for your work and my very best wishes for the future.

HON. SANTIAGO CORCUERA

Chairperson

United Nations Working Group on Enforced or Involuntary Disappearances
Mexico City, 8 August 2008



DESAPARECIDOS

Words and Music by
Ria Osorio

The first system of the musical score is in 4/4 time and features a key signature of three flats (B-flat major or D-flat minor). It consists of three staves: a vocal line, a piano right-hand line, and a piano left-hand line. The vocal line begins with a whole rest, followed by a series of eighth notes. The piano accompaniment starts with a D-flat chord in the left hand and a melodic line in the right hand. The system concludes with repeat signs in both the vocal and piano parts.

The second system continues the musical score. The vocal line features a triplet of eighth notes followed by a quarter note, with lyrics: "Here — yet not here no - where — yet ev - ry - where —". The piano accompaniment includes chords labeled Cmi, Bb, A^b/C, and B^b/D. The system ends with repeat signs.

The third system continues the musical score. The vocal line has lyrics: "A - sia's — be - lo - ved — di - sap - peared —". The piano accompaniment includes chords labeled A^b/C, B^b/D, and Cmi. The system concludes with repeat signs.

Dark skies — a - bove Se - pa - ra - ted from those you love — De -

Cmi B \flat A \flat /C B \flat /D

This system contains the first two measures of the song. The vocal line is in a treble clef with a key signature of two flats and a 3/4 time signature. The piano accompaniment is in a grand staff. The lyrics are: "Dark skies — a - bove Se - pa - ra - ted from those you love — De -". The piano part includes the following chords: Cmi, B \flat , A \flat /C, and B \flat /D.

prived of home — and things that you — hold dear We'll

A \flat /C B \flat /D

This system contains the next two measures. The vocal line continues with the lyrics: "prived of home — and things that you — hold dear We'll". The piano accompaniment includes the following chords: A \flat /C and B \flat /D.

keep fight - ing on — till we find — the truth —

C D \flat Cmi D \flat

This system contains the final two measures. The vocal line concludes with the lyrics: "keep fight - ing on — till we find — the truth —". The piano accompaniment includes the following chords: C, D \flat , Cmi, and D \flat .

Till we find — just - ice De - sa - pa - re - ci - dos —

Chords: A^b/C, B^bmi⁷, D^b, E^b_{sus}

The first system of the musical score is in 2/4 time and B-flat major. It features a vocal line with lyrics and a piano accompaniment. The piano part includes chords A^b/C, B^bmi⁷, D^b, and E^b_{sus}.

— We'll keep fight - ing on — to

Chords: E^b, Cmi, D^b

The second system continues the piece, showing a change in time signature from 2/4 to 4/4. The piano accompaniment includes chords E^b, Cmi, and D^b.

ho - nor — your mem' - ry To com - fort — your fam' - ly And

Chords: Cmi, D^b, A^b/C, B^bmi⁷

The third system continues in 4/4 time. The piano accompaniment includes chords Cmi, D^b, A^b/C, and B^bmi⁷.

we will be — with you Once a -

The first system of the musical score consists of three staves. The top staff is a vocal line in treble clef, with lyrics underneath. The middle and bottom staves are piano accompaniment, with the middle staff in treble clef and the bottom staff in bass clef. The key signature has three flats (B-flat, E-flat, A-flat), and the time signature is 2/4. The music is divided into two measures by a vertical bar line. The first measure is in 2/4 time, and the second measure is in 4/4 time.

gain

The second system of the musical score consists of three staves. The top staff is a vocal line in treble clef, with the lyric "gain" underneath. The middle and bottom staves are piano accompaniment, with the middle staff in treble clef and the bottom staff in bass clef. The key signature has three flats, and the time signature is 2/4. The music is divided into two measures by a vertical bar line. The first measure is in 2/4 time, and the second measure is in 4/4 time. The bottom staff has a chord labeled "D^b" above it.

D^b(add9)

The third system of the musical score consists of three staves. The top staff is a vocal line in treble clef, which is empty. The middle and bottom staves are piano accompaniment, with the middle staff in treble clef and the bottom staff in bass clef. The key signature has three flats, and the time signature is 2/4. The music is divided into two measures by a vertical bar line. The first measure is in 2/4 time, and the second measure is in 4/4 time. The bottom staff has a chord labeled "D^b(add9)" above it.

About the Writers:

Mugiyanto

The present Chairperson of AFAD, Mugiyanto, is the founding Chairperson of *IKOHI*. He himself has been a victim of involuntary disappearance when he was kept in secret detention, during which he was physically and psychologically tortured by the *Kopassus* immediately after the fall of Suharto in 1998. Three months later, he was released.

Mary Aileen D. Bacalso

Mary Aileen Diez-Bacalso is currently the Secretary-General of AFAD. Her most outstanding contribution to the fight against impunity was her active participation in the three-year drafting and negotiation process of the UN Convention for the Protection of All Persons from Enforced Disappearance. She is presently taking her graduate studies in Philippine Studies major in Foreign Relations in the University of the Philippines and is a recipient of the Angara Scholarship Program.

Rosa Bella M. Quindoza

Rosa Bella Quindoza is a freelance writer for non-government organizations in the Philippines. She is presently finishing her graduate studies in Communication Research and is also enrolled in elective courses in Asian Communication, Arts and Philosophy in the University of the Philippines-Diliman.

Erlinda Timbreza-Valerio

Erlinda Timbreza-Valerio or Daisy as she has come to be known in the human rights community in the Philippines lost her husband Nilo Valerio, a *desaparecido* during the Marcos dictatorship. The couple has two sons, Albert and Gerry, who were barely three and four years old when their father disappeared in 1985. With writing as her favorite art and self-healing, she has five solo books, three of which - *We are your People* (1990), *The Story I Will Tell My Children* (1992) and *Pilgrims* (1995) are under her pen name, Dahlia Castillejos.

Kopila Adhikari

A lawyer by profession, Kopila Adhikari leads the human rights documentation unit of Advocacy Forum, one of Nepal's leading non-governmental organizations which has joined AFAD. She represents her organization at the AFAD Council.

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Dhiraj Kumar Pokhrel

A human rights advocate, Dhiraj Khumar Pokhrel works as focal person of Advocacy Forum for AFAD.

Emilia P. Aquino

Emilia Aquino is a dentist by profession with a long engagement in the provision of direct health services to victims of human rights violations such as political detainees, victims of demolitions in urban-poor communities and workers on strike. She has worked as an education officer and has given trainings on health and human rights to health professionals and students. Emilia previously worked in the Department of Health's foreign-assisted Women's Health and Safe Motherhood Program focusing on training in reproductive health to public health doctors and nurses.

Francis Q. Isaac

Francis Isaac is taking up his MA in Political Science at the University of the Philippines-Diliman. He is presently doing a research work on rural development. His favorite authors include Louis Althusser, Leon Trotsky and JRR Tolkien.

Darwin B. Mendiola

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

Chang Chui

Chang Chiu is a Jakarta-based, American advisor and writer on political, economic, and human rights issues. An attorney by training, Chang graduated from the University of Virginia School of Law and received a masters in international relations from the Johns Hopkins School of Advanced International Studies. He finished his AB Politics and East Asian Studies, Magna Cum Laude in Princeton, New Jersey. He can be reached at chang.chiu@gmail.com.



Santiago Corcuera

A lawyer who specializes in International Law for Human Rights, Santiago Corcuera is the current Chairperson of the United Nations Working Group on Enforced or Involuntary Disappearances, the third Mexican to take the mandate upon his shoulders.

Other members of the Book Committee:

Edward M. Gerlock, Editor

Edward M. Gerlock is the Advocacy Officer of the Coalition of Services of the Elderly (COSE) and has been working with older people for 19 years. He arrived in the Philippines in 1962, is married to a Filipina, Mercedes Verzosa, and has two children.

Edsil V. Bacalso, Layout Artist

Edsil Bacalso is the Program Officer of the Institute for Political and Electoral Reforms (IPER). Himself a victim of enforced disappearance during the late eighties, he experienced psychological and physical torture from the hands of his captors. He was released when his co-disappeared escaped after three months in secret detention.

Maria Cristina T. Nabaunag, Proofreader and Indexer

Before her appointment as the head of the Acquisitions Section of the Rizal Library, Ateneo de Manila University, Tina was an indexer for the Computerized Index to Philippine Periodical Articles (CIPPA). As part of the Indexing Pool, her exposure to current events highlighted in multi-disciplinary journals, magazines, and other serial publications made her even keener on the cause of human rights groups and social transformation in general. A librarian by profession, she topped the Licensure Examination for Librarians in 2006.

Candy May T. Nabaunag, Researcher

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

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