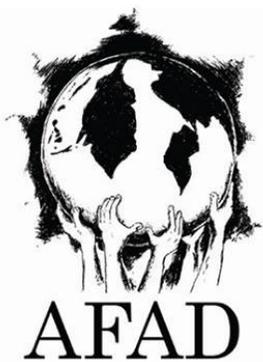
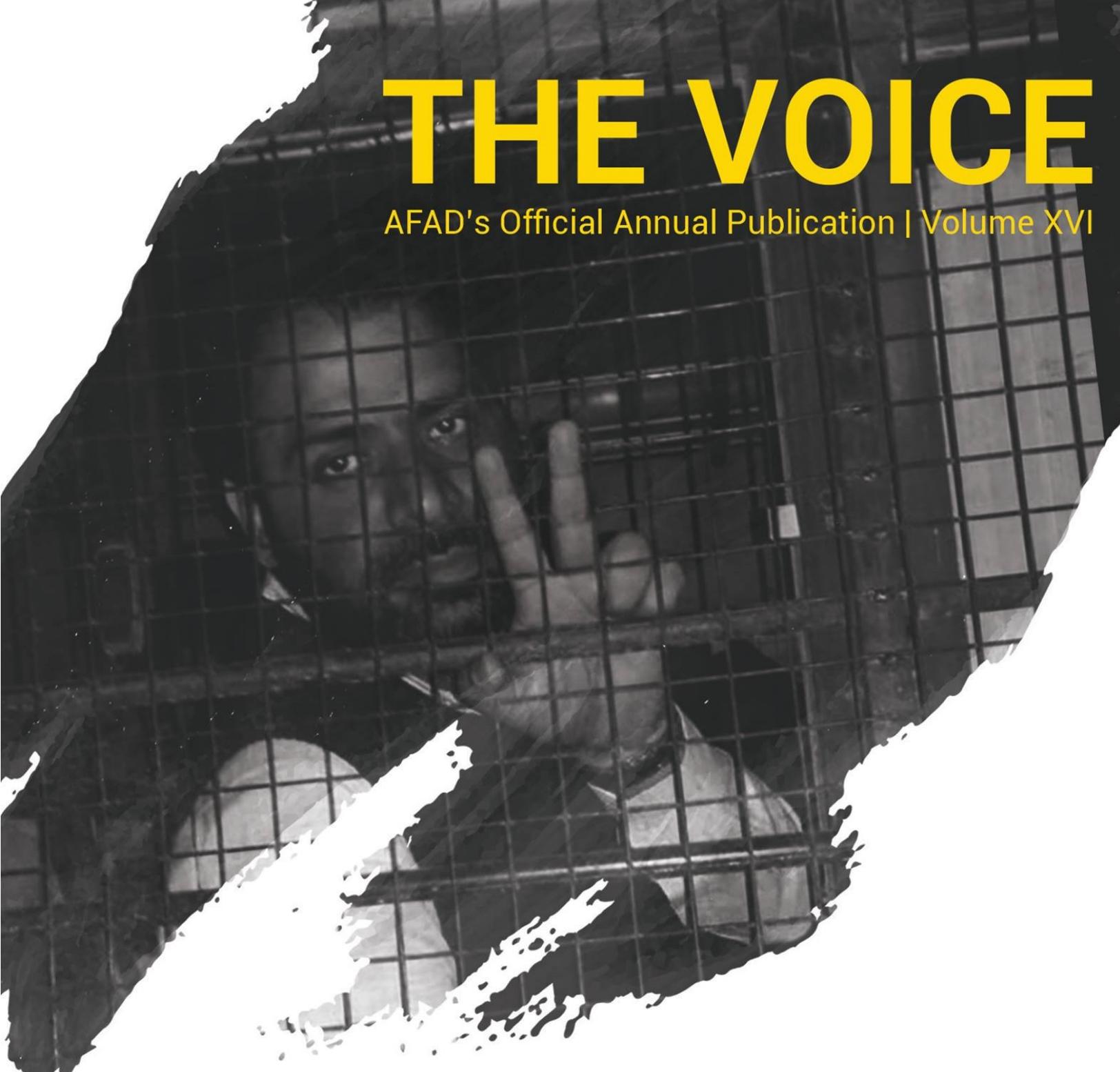


# THE VOICE

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# Editorial

## Editor-in-Chief

Since time immemorial, people have been struggling for their rights and the rights of their family members or fellow citizens. In the modern era, those fighting for the rights of others are called human rights defenders. It has never been easy to struggle for human rights in the discourse of Member States of the UN. Human rights defenders have always been persecuted and even in this modern world, it has never been the priority of States to make efforts to protect these voices of dissent or the voices for human rights. Long after the evolution of International Humanitarian Law, the framework for the protection of human rights defenders found resonance in the discourse of Member States of the UN, when in 1984 the UN began the elaboration of the Declaration on Human Rights Defenders. In 1998, on the occasion of the 50<sup>th</sup> anniversary of the adoption of the Universal Declaration of Human Rights (UDHR), after 14 long years of lobbying and campaigning by international human rights organizations, the UN General Assembly adopted the text of the 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,' which is commonly referred to as the Declaration on Human Rights Defenders.

The Asian Federation Against Involuntary Disappearances (AFAD) and its member organizations in various Asian countries have experienced threats; attacks; and restrictions on their right to travel, to assemble and organize themselves as associations of the families of the disappeared, and to campaign against the phenomenon of enforced disappearances.

Our second Chairperson, Munir Said from Indonesia – the founder of KontraS – was assassinated by poisoning while he was on board a flight from Jakarta to Amsterdam. Aasia Jeelani, a researcher at the Association of Parents of Disappeared Persons in Jammu and Kashmir, was killed in a bomb attack. Brito Fernando, chairperson of the Families of the Disappeared (FOD) in Sri Lanka, was intimidated several times in the past. Adilur Rahman Khan, the Secretary of Odhikar in Bangladesh, was arrested, and his office was sealed. Parvez Imroz, one of the co-founders of APDP, was attacked in 1996

and 2008. He was prevented from receiving a passport from 2004 to 2016. Amina Masood Janjua, the Chairperson of the Defence of Human Rights (DHR) in Pakistan, also a wife of a disappeared, has been threatened several times and was even beaten up by the police. As the APDP Coordinator and the Chairperson of AFAD, I was also arrested and detained recently for 76 days. Apart from all the above-mentioned specific incidents, there have been many instances where family members of the disappeared associated with our member organizations were threatened or attacked to dissuade them from pursuing their cases. Generally, families of the disappeared have not been categorized as human rights defenders themselves. However, AFAD and its partners, such as FEDEFAM and others, which are organizations of family members of the disappeared, have been lobbying consistently to ensure that from the UN to our governments, the family members of the disappeared are treated as human rights defenders.

Therefore, during the drafting and negotiation process of the text of the UN Convention for the Protection of All Persons from Enforced Disappearance, as many State representatives questioned the importance of the Article 24, Paragraph 7 - which recognizes the right to create associations of families to look for the disappeared - Mary Aileen D. Bacalso, the Secretary General of AFAD, made an intervention. She shared the story of the assassination of Munir, who was supposed to be present in that session, and mentioned that he was killed because of his work to find the disappeared. After her intervention, everyone in the room was silent and never questioned anymore the importance of such an article.

As the attacks and intimidations against human rights defenders and the families of the disappeared continue unabated, AFAD believes that a lot more work needs to be done to create an environment where States are made accountable for ensuring a safe space for human rights defenders to carry out their work unhindered.

## Under Fire: The Arrest and Detention of Khurram Parvez

by Ivanka Custodio

A little past midnight of 16 September 2016, Khurram Parvez was in his parents' house, where he lives together with his wife, Sameena Mir, and his 6-year old son, Ahmed, when a party of police officers came for him.

Khurram had just returned home from Delhi where two days before he was supposed to leave for Geneva, Switzerland to attend the UN Human Rights Council's 33<sup>rd</sup> Session as part of the delegation of the Asian Federation Against Involuntary Disappearances (AFAD), of which he is the current chairperson, and the Jammu and Kashmir Coalition of Civil Society (JKCCS).

At the airport, he was barred from boarding the plane, while two of his companions were allowed to proceed to their flight. The authorities neither provided a reason for preventing Khurram from travelling, nor did they show him any written record of the ban.

On the night they came for him, the police whisked him away to the Kothibagh Police Station, without warrant or explanation for the arrest. Khurram was neither allowed access to legal counsel at the time of his arrest, nor was he produced before the detaining authority as required by the Constitution.

What followed was a sequence of attacks by the Indian government that includes false accusations, a re-arrest, and numerous delaying tactics aimed at stifling the voice of one of the most prominent human rights defenders in Kashmir. Then, after 76 days of preventive detention, the government had, for the moment, finally run out of excuses and buckled under widespread calls for Khurram to be released and reunited with his family.

### NEW WAVE OF VIOLENCE IN KASHMIR

Khurram's arrest occurred against the backdrop of intensified military violence in the region—the deadliest since the spate of violence of 2010.

This wave of violence began with a ripple in July, when Burhan Wani, commander of the militant group Hizbul Mujahideen that is fighting for *azadi* (freedom), was extrajudicially killed by the Indian military. Wani's death seemed to have unleashed the indignation of the Kashmiris; indignation that has always been bubbling beneath the surface of a people who for more than five decades have lived with their backs against the wall, being subject to one of the deadliest militarizations in the world.

Indeed, Jammu and Kashmir is the most militarized region in the world, where an estimated 700,000 armed forces have been deployed. Kashmiris have, in the past 26 years, faced widespread and systematic attacks by Indian forces, including 70,000 extra-judicial killings, 8,000 enforced disappearances, 7,000 mass graves, and numerous cases of torture and sexual violence.

Wani's execution was all it took for the indignation to boil over. Thousands of Kashmiris, mostly young people who have lived their whole lives subject to human rights violations, took to the streets to protest his killing.

The Indian military and police used a mix of lethal and non-lethal weapons to quell the protesters' throbbing rage and defiance. They used live ammunition, tear gas and pellet guns. At the wake of the dispersal, 32 people were killed. Also left in the aftermath of this brutal dispersal was a mass of injured and blinded Kashmiris

who were hit by sharp lead pellets. Even mere bystanders were not spared from the police's indiscriminate firing of pellet guns.

Apart from the fatalities and the injuries, more people have been arrested. Since July, about 9,000 have been jailed, with more than 400 under preventive detention under the archaic, draconian law called Public Safety Act.

The Public Safety Act has been criticized by Amnesty International and defined as a "lawless law," because it allows the arrest and imprisonment of a person without trial for up to two years on mere suspicion that s/he may disrupt law and order, or may act in a manner that is prejudicial to the security of the state. This legislation has been largely used to suppress Kashmiris.

Now, detention centers are overflowing with minors and political activists. In Kupwara Sub-jail alone, there are about 105 prisoners squeezed into a prison meant for 50-60 persons.

## **FREEDOM ARRESTED**

On the first day he was detained in the Kothibagh Police Station, police officers claimed that Khurram had been heard inciting a group of Kashmiris to pelt stones at a government building in Srinagar. Two police officers were said to have witnessed this fiery speech from Khurram. He was later informed that he was being detained under Sections 107 and 151 of the Criminal Procedure Code, which provide for preventive and administrative detention for "breach of peace and design to commit cognizable offence."

That charge is unfounded. Khurram has been actively advocating for democratic spaces because he believes that that would discourage Kashmiris from resorting to violent resistance.<sup>1</sup> In fact, Khurram was awarded the Reebok International Human Rights Award in 2006, an award given to activists fighting for human rights through non-violent means. His work as program coordinator in the Association of Disappeared Persons (APDP) and JKCCS focuses on documenting cases of enforced disappearances, mass graves and other gross human rights violations in the region, and campaigning against them .

At a time when hundreds of people were being blinded, Khurram's eyes were wide open to the attacks against the Kashmiri civilian population. He was very vocal in denouncing these attacks.

On September 20, the Principal Districts and Sessions Judge in Srinagar quashed the charges against Khurram, and ordered his release from jail. Instead of following the Court order, the police brought him to the Kothi Bagh police station. The following day, his legal team was informed that they were detaining him under the Public Safety Act, and the police shipped him off to Kotwalbal Jail in Jammu, about 300 kilometers from Srinagar.

Khurram's legal counsel worked tirelessly for his release. They submitted a petition to the High Court of Jammu and Kashmir challenging the PSA charge. Having no evidence to implicate Khurram, and in an obvious attempt to stretch the detention period, the Indian authorities on three occasions did not file objections against the petition submitted by Khurram's legal counsel.

<sup>1</sup>From "We Are Trying to Re-Define Resistance" by Khurram Parvez. URL: <http://isreview.org/issue/80/we-are-trying-redefine-resistance>

Finally, on November 30, Khurram Parvez was released from police custody. The High Court declared that the grounds for his detention were “vague, irrelevant, ambiguous and non-existent and also lack in material particulars.”<sup>2</sup>

## OUTPOURING OF SOLIDARITY

From the moment Khurram was denied the right to travel, until his release, there were numerous expressions of solidarity from various human rights organizations all over the world.

At the 33<sup>rd</sup> Human Rights Council Session, AFAD and JKCCS delegations met with various Special Procedures, diplomats and international organizations to report what happened to Khurram and to solicit solidarity in condemning the travel ban.

During his arrest and detention, there was a steady flow of support which called for Khurram's release. Members of the International Coalition Against Enforced Disappearances (ICAED), of which AFAD is focal point, sent letters to the Indian embassies and consulates, had face to face meetings with embassies and the International Committee of the Red Cross and used established and alternative media to make the campaign visible worldwide. Three members of *Madres de Plaza de Mayo-Linea Fundadora*, an organization of mothers of disappeared youth in Argentina known for holding up photos of their children at protests, this time held up Khurram's photo while demanding for his immediate release.

AFAD members utilized various means and avenues to call for his release, including protests outside Indian

embassies in countries like Pakistan, the Philippines, and Indonesia. Similarly, these organizations launched campaigns in the social media.



Member of the *Madres de Plaza de Mayo-Linea Fundadora* joins the solidarity campaign to call for Khurram's release.

Most notable of the support received by Khurram is a joint statement<sup>3</sup> issued by five UN Special Procedures: the UN Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst; the Chair-Rapporteur of the UN Working Group on Arbitrary Detention, Setondji Adjovi; the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai; and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye.

<sup>2</sup>Decision of the High Court of Jammu and Kashmir, by Hon. Justice Muzaffar Hussain Aftar, dated November 25, 2016.

<sup>3</sup>See more at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20697&LangID=E#sthash.HacZmWrl.dpuf>

Various intellectuals which include Noam Chomsky and Arundhati Roy also issued an open letter to the Indian government. Lawyers' Rights Watch Canada, Human Rights Watch and the International Commission of Jurists also released a joint statement addressed to Mehbooba Mufti Sayeed, Chief Minister of Jammu & Kashmir.

Similarly, human rights defenders from across Asia who attended the 7<sup>th</sup> Asian Human Rights Defenders' Forum jointly issued a letter to the J&K High Court, asking them to quash the PSA charge and release Khurram.

***"This outpouring of solidarity sent a very clear message that the world would not stand by as the Indian government unjustly detains a person whose only "fault" is to perform his moral obligation of condemning human rights violations being committed against the Kashmiri people."***

This outpouring of solidarity sent a very clear message: that the world would not stand by as the Indian government unjustly detains a person whose only "fault" is to perform his moral obligation of condemning human rights violations being committed against the Kashmiri people.

## **THE STRUGGLE CONTINUES**

Khurram's arrest is part of the systematic attempt of the Indian government to repress the people of Kashmir who have long been struggling for their voices to be

heard. What is under fire is not just Khurram, but the people of Kashmir whose demands are legitimate and cannot be silenced. The dossier on Khurram's arrest released by JKCCS puts it succinctly:

*"The arrest of Parvez, is a silencing not just of his voice, but has a chilling effect on all those who speak for the voiceless in Kashmir, jeopardizing the work and space he has carefully crafted over years against the forces of fear and repression. As only one among thousands of forgotten victims of the Indian state's brutal repression of Kashmiri people, the struggle for his release is a part of the larger struggle for rights of the people of Jammu and Kashmir."*

Friends and family of Khurram still fear that his release is not the end of the harassment against him, but it would take more than an unjust arrest to silence Khurram Parvez and the thousands who support the struggle of the people of Kashmir. It would take more than the barrage of pellets, or the thousands of extrajudicial killings and enforced disappearances in the region. It would take the granting of human rights and freedom of the Kashmiris. And the Indian government must know it.

## Overview of the Political Situation and of the State of Enforced Disappearances in AFAD Countries in 2016

by Sara La Rocca

The political situation, as well as the situation of enforced disappearances that characterizes the countries which are part of AFAD is presented below to give the reader a complete although brief overview of the challenges faced by AFAD and its member organizations in their struggle for truth and justice.

### **BANGLADESH:**

In 2016, the human rights situation in Bangladesh has further deteriorated due to a lack of democratic space and dysfunctional institutions. The rights to freedom of opinion and expression; freedom of peaceful assembly, and of association are repeatedly violated; human rights defenders face constant persecution under the present authoritarian regime. Incidents of gross human rights violations including enforced disappearances, extrajudicial killings, torture and shooting of the opposition and civil society activists have become a regular practice.

Even though the commission of enforced disappearances has reached a full-blown scale, the government continues denying that such crimes occur in Bangladesh. Furthermore, the use of unlawful detention and short-term disappearance has become its tactic of choice to deal with anyone deemed to be a threat, including human rights defenders and political opponents of the present government.

The judiciary has also become politicized and weaker due to a lack of transparency, accountability and to the widespread corruption. The criminal system, in particular, constantly avoids holding members of law-enforcement agencies accountable for their actions, breaching the principle of equality before the law.

### **KASHMIR:**

Throughout the year, a denial of civil and political rights, absence of mechanisms of justice, heightened militarization and surveillance continued to dominate lives of ordinary Kashmiris. Incidents of harassment and sexualized violence against women were also reported during the year, while unlawful arrests and illegal detentions have become a daily routine.

Police forces have also been reportedly using with increased frequency pellet guns, resulting in protesters being severely wounded or blinded. Moreover, no investigations have been conducted on the more than 7000 unmarked and mass graves.

Dissidents and anyone with an opposing view have been jailed by using the notorious Public Safety Act (PSA), a draconian law that allows for detention without trial up to 2 years. This is the same law that has been used in September this year to arrest and detain AFAD's Chairperson, Khurram Parvez.

Khurram Parvez has been initially barred from traveling to Geneva on September 14 and later arrested on the 16<sup>th</sup>. After two and a half months in detention under the PSA, Khurram was finally released following a decision of the High Court on November 30<sup>th</sup>.

Although cases of enforced disappearances are decreasing in number, State actors continue to make use of it as the need arises. As such, in 2016 the general situation of human rights in J&K has been tremendously deteriorating.

## **INDONESIA:**

The election of Joko Widodo to the Presidency in 2014 had been welcomed by human rights organizations and civil society with great hopes and expectations, given the human rights-friendly agenda he had advertised during his election campaign.

Two years later, these hopes have faded away. Many have been disappointed by the State's plan to resolve past cases through reconciliation alone, without any legal process and without revealing the truth. Indeed, this plan has been seen as a political compromise at the cost of the rights of the victims; by claiming a 'lack of evidence' in respect of gross human rights violations, the reconciliation process is simplified to the point that there is no sign of any State's accountability.

In addition, this plan to solve past cases starting with the 1965 Tragedy has led to a new government propaganda on "the rise of communism," which brought many intolerant religious groups – backed by security forces – to become more aggressive.

## **NEPAL:**

The political situation in Nepal in 2016 has seen some important changes. The former Prime Minister of Nepal, Mr. Khadga Prasad Oli, resigned from his post following the filing of a 'no-confidence' motion against him by the Maoist and the major opposition party in the Nepali Congress. As a result, in August, Mr. Puspa Kamal Dahala ('Prachanda'), a former rebel, was elected to the post by the Parliament.

This political change reinforced the general fear that conflict-era cases pending in courts against the Maoist cadres would be withdrawn and that the Truth and Reconciliation Commission Act would be reviewed in favor of the Maoists, with wide space of amnesty provisions.

Some positive developments should, however, be acknowledged. First of all, the new Attorney General expedited the consultations with the concerned stakeholders on the revision of the Truth and Reconciliation Commission Act, as well as on the possibility to criminalize the acts of torture and disappearance. Moreover, the government tabled a torture bill in the Parliament, after two years. However, conflict victims, the human rights community and civil society leaders continue to ask for an amendment of the TRC Act which is in line with the verdicts of the Supreme Court and transitional justice standards.

Since their establishment, 60,000 cases were filed at TRC whereas 3,000 cases at Commission of Investigation on Enforced Disappeared Persons, which both extended the deadline set for registering complaints for an additional one month. Victims and their families, however, continue to face security concerns as they keep receiving threats and intimidations after filing their cases with the Commissions.

As far as the Col. Lama Case is concerned, in September 2016 the trial concluded in the UK, where the Court decided not to pursue the charge against Lama in relation to his involvement in inflicting torture to Janak Raut. Following the Court's decision, both Advocacy Forum (AF) and the Conflict Victims Society for Justice (CVSJ) received threats and intimidations.

## **PAKISTAN:**

Since the adoption of the Protection of Pakistan Act in 2014, the whole constitutional system was amended in order to give sweeping powers to all the armed forces of the country. As a result, the disappearances continue to be perpetrated in the country, given also the complete impunity enjoyed by perpetrators of this crime. In 2016, the Supreme Court of Pakistan held the first hearing after two years of silence. Moreover, new death

penalties are awarded and those who had been suspended in the past are now being restored. The number of documented cases of enforced disappearance is also one of the highest in the region. Through 2016, DHR Pakistan, AFAD's member organization in the country, has sent 100 new cases to the UN WGEID and helped families of victims to file complaint at national level. A new wave of enforced disappearances is affecting Pakistan, targeting in particular bloggers, journalists and activists in order to silence them. Some of them are later found dead or released from custody; however, the fate and whereabouts of many victims remain unknown.

## PHILIPPINES

2016 was a year of political change in the Philippines, as new presidential elections were held in May. Former mayor of Davao City, Rodrigo Duterte, overwhelmingly won the elections.

As promised during his electoral campaign, Duterte started a 'war on drugs' in order to eradicate this problem from the Filipino society 'within six months'. This war cost more than 7,000 people the lives, a part of which are allegedly victims of killings from vigilantes groups.<sup>1</sup>

Also worrisome is the fact that next to the mounting cases of extra-judicial killings, cases of enforced disappearances are also starting to be reported.

Also worrisome is the fact that next to the mounting cases of extra-judicial killings, cases of enforced disappearances are also starting to be reported.

Moreover, two proposals have been brought before the

Congress for discussion. The first proposal concerns the lowering of the minimum age for criminal liability from 15 to 9 years old. The rationale is that children are often involved in drug dealing and making them criminally liable would dissuade their parents from making them part of it.

The second proposal under discussion concerns the reinstatement of the death penalty for around 16 crimes defined as particularly severe.

## SOUTH KOREA:

A political turmoil erupted in South Korea in October 2016, when President Park Geun-hye links to Ms. Choi Soon-sil were disclosed. Choi Soon-sil, a woman with no security clearance and no official position, was found to have been giving secret counsels to the president.

As a result, a series of protests, also known as National Emergency Action for the Ousting of President Park Geun-hye, took place all over the country.<sup>2</sup>

With regard to disappearances, the OHCHR office in Seoul published on December 7, 2016, a Report called '*Torn Apart: The Human Rights Dimension of The Involuntary Separation of Korean Families*',<sup>3</sup> to stress that the issue of abduction and enforced disappearance urgently needs to be resolved.

Indeed, after as long as 60 years, many families remain separated and in need of responses about the fate of their loved ones.

## SRI LANKA:

2016 was a fundamental year as it saw the ratification

<sup>1</sup><http://news.abs-cbn.com/news/12/06/16/more-than-5800-killed-amid-war-on-drugs-pnp>

<sup>2</sup><https://www.theguardian.com/world/2016/oct/29/south-korea-president-orders-10-staff-members-to-resign-amid-worsening-crisis>

<sup>3</sup>See the full Report at: [http://www.ohchr.org/Documents/Publications/Report\\_TORN\\_APART.pdf](http://www.ohchr.org/Documents/Publications/Report_TORN_APART.pdf)

of the Convention on Enforced Disappearances by the Government of Sri Lanka on 26<sup>th</sup> May 2016. This was indeed a welcome step, much awaited by the Sri Lankan society, which is still deeply scarred by the consequences of the conflict, during which around 60,000 people reportedly disappeared.

Following the ratification of the Convention, the government also created the 'Office of Missing Persons', a permanent body with the mandate to search and trace missing persons, clarify the circumstances of enforced disappearances, and identify ways to provide redress. The creation of this office was welcomed by some groups and organizations, while it was heavily criticized by others on various grounds: first of all its name, which generically indicates 'missing persons' and does not refer directly to victims of enforced disappearances; moreover, the lack of transparency and consultation were also criticized by parts of the society.

***"2016 was a fundamental year as it saw the ratification of the Convention on Enforced Disappearances by the Government of Sri Lanka on 26th May 2016."***

Overall, although in Sri Lanka in 2016 a wider space for discussion could be observed, fear of retaliation is still present and many wounds are still open, which need to be healed.

#### **TIMOR LESTE:**

In 2016, AFAD's organization in Timor-Leste, HAK, successfully organized two reunification events. The first event took place in May and saw the participation of 12 'stolen children' with their biological families. The second event took place in November. Although instances of harassment of human rights defenders have still been reported as recently as last year, on the occasion of the visit of Indonesian President Joko Widodo, the government of Timor-Leste has slowly started opening up to the issue of the stolen children. Indeed, the Prime Minister met with some of the stolen children during the family reunion that took place in May.

# Two Years of the Jokowi Regime: The President's Commitment Put To The Test

by Tioria Pretty



Eighteen years have passed since Indonesia became a democratic State, after thirty-two years under President Soeharto's authoritarian government. Of various gross human rights violations that occurred during the New Order regime, there are at least 53,456 victims of enforced disappearance.<sup>1</sup> Although five presidents have come and gone, nothing has changed for the families who are still waiting for news on the fate and whereabouts of the persons they love. Impunity in Indonesia is still ongoing, even flourishing, on the second year of President Jokowi's administration, despite his promise during his campaign that he would resolve cases of gross human rights violations, the majority of which occurred under Soeharto<sup>2</sup>.

## A WEAK MEMORY OF THE NATION

During the time of Soeharto, there were many cases of gross human rights violations. There were many

casualties, while other people lost their rights and have not received legal, social or psychological remedies until now.

The legacy of past crimes in the authoritarian Soeharto era featured a number of repressive policies which were enforced to dampen the aspirations of society. In the era of the New Order, Soeharto's role as President was dominant and most determinant in policies of that time. The promotion of 'national security' was at the heart of his political regime and economic policy. Various violent practices had Soeharto's blessings, starting with the military operations against separatists in Aceh, Timor and Papua, for example through the establishment of Military Operations Area (DOM) in Aceh in 1989-1998. As a result, there were various forms of human rights violations such as killings, torture, arbitrary detentions, enforced disappearances, confiscation of property, as well as social discrimination during this period.

Despite all the gross human rights violations that occurred during the Soeharto leadership, only 18 years have passed since the fall of his regime and already, the Government of Indonesia is planning on awarding him the title of National Hero. Even though the Legislative Act at the time of Soeharto's resignation clearly stated that court hearings should be conducted against Soeharto and his cronies, Soeharto until his dying breath was never sentenced by a court. This is not because he was proven innocent; rather, his case was ruled out due to his deteriorating health condition.

However, this does not eliminate the serious human rights violations perpetrated, and the corruption, collusion and nepotism that he practiced for 30 years.

<sup>1</sup> See A/HRC/30/NGO/100

<sup>2</sup> Called Nawacita, a nine-point pledge which has become the policy platform of Jokowi's administration. This platform included the objective to "solve past human rights abuse cases"

## DERAILED

Until his second year, a number of policies and decisions have been taken by President Jokowi and his ministers to respond to public demand for State accountability related to the resolution of past crimes. These, however, are disappointing, alarming and likely to go astray. A number of policies and measures adopted by the current administration have been the opposite of what he promised; instead of bringing a just resolution to gross human rights violations, President Jokowi actually made decisions that are contradictory to justice and perpetuate impunity.

First, the appointment of Wiranto, a former armed forces commander in the New Order, as Coordinating Minister of Political, Legal and Security (*Menkopolhukam*) is one of those actions that go against the objectives of justice. Wiranto himself is widely known to be on the list of names of those responsible for numerous gross human rights violations, as it has also been mentioned in numerous

National Human Rights Commission (*Komnas HAM*) reports. His name was cited in events such as the killings in Trisakti, Semanggi I & II, May 1998, and the abduction and disappearance of pro-democracy activists 1997/1998, and Bloody Biak. He was also mentioned in a special report issued by the United Nations (UN) under the mandate of the Serious Crimes Unit, stating that, "Wiranto failed to account for his position as the supreme commander of all armed forces and police in East Timor to prevent the commission of crimes against humanity and Wiranto failed in punishing the perpetrators." These clear statements make it

***"The State seems to be forgetting the basic principles of resolving human rights violations: truth, justice, reparation and guarantees of non-recurrence, not only for the victims and their families, but also for the future generations of the nation."***

difficult for Wiranto to move to other countries where he would be subject to a different jurisdiction, such as the United States, where he has been on the US Visa Watch List since 2003.

Second, in the case of Abductions and Disappearances perpetrated between 1997/1998, Jokowi is not taking any step to issue a presidential decree to form an *Ad hoc* Human Rights Court that would be tasked to search for victims who are still missing, provide reparations to the victims and families similarly, no action was taken to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, as stated in the result of the *Komnas HAM* investigation and the

Parliament's Recommendation in 2009.

Third, for a decade, the case file of the 1997 / 1998 Disappearance has been going back and forth between *Komnas HAM*, as the investigator, and the General Attorney, as the prosecutor, on the

grounds that the *Ad hoc* Human Rights Court has not yet been established.

However based on national law, the *Ad hoc* Court will be established only after an investigation and prosecution by the General Attorney. As such, the prosecution by General Attorney should be conducted first before the *Ad hoc* Court can be established. As they were playing table tennis with the case file, they were also playing with the fate of these victims, and this must be stopped. However, as the highest authority, President Jokowi fails to be effective in coordinating law enforcement

officials such as the Attorney General and *Komnas HAM* to work professionally and be accountable, resulting in the non-resolution of these case files. The government currently attempts to simplify the resolution of the case through a palaver as presented by *Menkopolhukam Wiranto* in a statement related to the resolution of human rights violations in Indonesia: "Judicial process is a win-lose. There is winning and losing in court. But in non-judicial [process], it is a win-win, since the issue is solved through consultation and consensus. "

It has been two decades since the fall of Soeharto's authoritarian regime and it has been two decades since Indonesia became a democratic State. However, the rule

of law began to be abandoned and replaced with various political ideas.

Since the issue of this non-judicial settlement in 2015 by the Indonesian government, the State has always conveniently resorted to non-judicial settlement in place of judicial processes. Non-judicial settlements can be determined by the government itself as they like it. The State seems to be forgetting the basic principles of resolving human rights violations: truth, justice, reparation and guarantees of non-recurrence, not only for the victims and their families, but also for the future generations of the nation.

# The Thief and His Victims

by Christian Gultia

They say ideally, acceptance and forgiveness are the first few steps in the long, agonizing process of moving on. But, what really allows an individual to accept a painful reality? What could possibly justify the granting of forgiveness?

In the context of abuses during the dark years of Martial Law, the victims play the role of those who were unaware. From the victims' perspective, denial is a big rock that needs to be toppled. They experience a series of disturbing phases primarily attributed to actual nightmares of torture, wounds of disrespect of their dignity and from the loss of their loved ones. The perpetrators, not so surprisingly, become the **thieves** – always pretending to be the innocent, clearing their names from all the sufferings they caused and turning their backs on their atrocities. Denial on their part is perhaps a form of easy and immediate escape; a manifestation of their spinelessness.

## STRUGGLE FOR TRUTH

Acceptance is not an easy phase for the victims. It is perhaps the most difficult. It is not like a spoon we can just force down their throats. Asking them to accept their traumatic experiences without justice is like saying that everything that they have been through should be forgotten. What allows an individual to accept a painful reality? More than answers, the victims need justice to be fully served. For those whose family members have been forcedly disappeared during the Martial Law years, they need the actual bodies of their loved ones: dead or alive. How would one pick up the broken pieces if these pieces were stolen? It is important for the victims to know the truth and whereabouts of their disappeared loved ones as it will determine their future steps.

For the perpetrators, acceptance and truth serve an entirely different purpose. As for all thieves, the truth is no longer necessary. They would do anything to cover up and change the public perception of them and of their acts. They would capitalize on their accomplishments, as if these were heavy enough to disregard the thousands of lives they compromised. Truth, for them, is a matter of perspective. They would point their fingers at institutions and personalities, they would use their wide connections to revise history. They would invest into political figures who would clean up their mess for them.

## THE DOOR OF FORGIVENESS

Eventually, both the victims and the thieves need to move forward, hoping that the long painful process will lead to healing and restoration of trust. The last phase should start with the granting of forgiveness – for the ones left behind to actually forgive the tormentors. Forgiveness, however, is earned.

The easiest way for the perpetrators to earn this is for them to recognize their acts and mistakes. Without recognition, there will never be forgiveness. Secondly, the perpetrators will have to apologize – to shut down their egos and their interests and once and for all show their sincerity. Finally, the perpetrators will have to be an instrument of healing themselves; to join the victims in their search for truth, justice and guarantees of non-repetition.

The victims, from this point forward, will also have to heed the call to join the crusade for national unity.

The fulfillment of the three stages is expected to ignite a new spark of hope. It shall open a new chapter of healing of the wounds of the past. And although the perpetrators should be the first to initiate closure, both

parties will have to agree to meet in the end. Only then will they have the courage to put their broken pieces back together – intact and perhaps, much stronger.



Human rights victims, families and students gather at the Rizal Park to protest the burial of former President Marcos at the heroes' cemetery.

# A Portrayal of the Afflictions of Families the Disappeared in South Korea

by Minwoo Ryu

This article hopes to bring to light the issues faced by families in South Korea, who have family members that disappeared (abductees by North Korea) and do not know whether they are still alive. For decades, there has been no hope or opportunity to reunite them with their families, and all efforts made to find them have shown little progress.

This article is divided into three sections, in order to show the plight of the disappeared family members as well as the progressive work done to help them. First of all, I will briefly introduce the situation and background of the disappearances committed by North Korea and their consequences. The second part is a compilation of several letters written by South Korean families, that give voice to their difficult situations and the conditions they face from having had disappeared family members. In the third section, we will look into the activities carried out by NKHR and the actions that were taken in order to solve these serious problems together with international community. We will also see the response of the Republic of Korea and the Democratic People's Republic of Korea.

## DISAPPEARANCES IN SOUTH KOREA

In the decades following the Korean War, thousands of South Korean citizens were abducted by North Korea. Of these, currently 516 South Koreans abductees are considered to be victims of enforced disappearances. These disappearances occurred as a part of a systematic policy of abducting foreign nationals (most of whom were South Korean citizens) throughout the 1960s and onward. During those years, 3,835 South Korean nationals were abducted by the North Korean government and roughly 90% of them were fishermen abducted out at sea. The remaining 10% includes office workers, passengers on a

commer as well as young students on summer vacations. Out of the total number of people who were abducted, 3,310 were released and returned to South Korea within one year, while nine were recorded to have escaped back to South Korea on their own. It is presumed that the remaining 516 South Korean nationals are still in North Korea. No one has heard anything from them since their disappearance decades ago, and their family members have little or no knowledge at all about the the victims' fate and whereabouts.

Reports published by media outlets indicate that the rate of occurrence of enforced disappearances by North Korea, including those of non-Koreans, have increased over the years. From 2011 to 2013, the abduction rate of non-Koreans by North Korea was 0.8%, but from 2013 to 2014 it increased to 2.3%. There has been increased anxiety in relation to the safety of Koreans living abroad, following the discovery of the body of a Korean-Chinese Christian pastor in the Chinese border of the Jilin province on April 30, 2016. Condemning this incident, the South Korean government warned its citizens of an increased risk of abduction to North Korea. In addition, the South Korean government stated that all precautionary measures have been put in place for the safety of its citizens abroad. However, considering the fact that North Korea has always been unpredictable, these measures are not enough to keep all citizens safe.

Unfortunately, in the decades following the abductions, the South Korean government made little effort to bring back the abductees or even obtain information on their whereabouts.

In addition, the South Korean government only seems to deepen family members' wounds by treating the victims

and their families as possible spies for North Korea and ostracizing them from society. Only in recent years have the civil society, the South Korean government, and the international community begun to seek answers and solutions to these continuing disappearances.

## CASES AND LETTERS RELATED TO ABDUCTEES

Below are letters that have been written by the families that have suffered from having missing family members abducted by North Korea. However, the first letter is unique in that it is written by Taewon Park (assumed to be about 59 years old) who was a fisherman of the boat 'Gilyoungho.' Mr. Park was abducted by North Korea and after 38 years, he successfully sent a letter to his family in South Korea while remaining in North Korea. The second letter was sent to the UN Secretary General to determine whether his brother is still alive-- a man who was also kidnapped by North Korea as well. The third letter is written by JaSuh Lee and sent to her older brother Gonghee Lee who was a fisherman on a boat called Odaeyang 61. He was abducted by North Korea in 1972. Lastly, the fourth letter is written by Gwangpyo Hong (a younger brother of Gunpyo Hong who was abducted by North Korea on Hongdo Island) to the president of South Korea asking for help to find information about his brother's situation.

### A LETTER WRITTEN AFTER 38 YEARS OF SILENCE

The case of Taewan Park is a classic example that depicts the current hardships and sadness that both abductees and their families go through. Mr. Park was an abductee by North Korea who was able to write to his family in the South after 38 years; here is an excerpt from his letter:

*"Who knew that I would experience this sudden separation and have no way of reporting the current status of my life for a long time. This miraculous chance has come to me, so I want to report the fact of my survival to my family. I remember my younger sister, Soon Hee, desperately crying in front of me before I left, 'Taewon! Please stay healthy*

*and earn lots of money and come back home safely!' at the bus station. This was how I had parted from my loving sister after all these years. During a tragic time of my life, I was going North on a boat called 'Gilyoungho' on January 17<sup>th</sup>, 1966. The boat I was on was facing a distressing situation and was ultimately rescued by a North Korean fishing boat. Through the enforcement of a humanitarian policy in the North Korean government, I raised a family. I have three daughters, and among them, two left home and one is still living with me."*

For the protection of Mr. Park, only a few parts of the letter have been revealed to the public. Park Tae Won (assumed to be 59 years old now) was a member of the Gilyoungho boat crew. It was announced by the South Korean government that the crew had been kidnapped by China. He succeeded to send a letter to his family in South Korea after 38 years of silence. The source of dispatch is from the South Pyongan Province; the truth was that he was not kidnapped by China, but by North Korea. Mr. Park sent a letter to his family through a person in China who was able to fax the letter to his sister Soon Ja (62) in Dong hae, Kangwondo (South Korea).

Believing that Tae Won Park was being held in China, the family was very surprised to find out that he was actually living in North Korea. Sister Soon Hee (54) cried as she remembered him saying to her, "I will buy you a present."

The boat 'Gilyoungho' was a 60-ton Busan-based ship and it disappeared in the Yellow Sea (90 miles Northwest) on January 22<sup>nd</sup>, 1966. At that time, the South Korean government had requested four times for a nearby ship to rescue Gilyoungho, since it was believed that Gilyoungho was attacked by an armed Chinese fishing ship. Then the government announced that the 14 crew members had been kidnapped to Shantung after a shooting occurred for 20 minutes. The government requested repatriation of the crew through the United Kingdom, but China notified that they only heard about the issue from the news and were not directly involved in the event that had occurred.

However, through the cooperation and communication between the Gilyoungho abductees' family members, the families insisted and announced that the Gilyoungho was kidnapped by North Korea. Mr. Choi, a representative, said, "when abducted people from North Korea send a letter to their families in the South, they tend to describe North Korea positively; they are careful just in case their letters fall into the hands of North Korean authorities." Mr. Choi also mentioned that: "a witness named JeongPal Jin returned from North Korea in November 2001 and confirmed that the Gilyoungho's had been kidnapped by North Korea." Jin had heard about the kidnapping and shooting on the ship directly from the crew, during the time when he was living with them in North Korea. Meanwhile, only two crew members of Gilyoungho are on the South Korean government's list of unknown abductees; Tae Won is not one of them. Though there is much data that suggest that these people have been abducted by North Korea, it is difficult to find confirmation or proof as they are unable to be reached.

#### **I wish I knew whether he is alive or not ..**

*"I want to know whether he is living or not in North Korea. I want to realize my dead mother's dream".*

Mr. Hyeong-Su Do (74) cannot fall asleep on the night of June 5<sup>th</sup> – Memorial Day. On this day in 1970, Sergeant Jong-Mu Do (at that time 24 years old), Mr. Hyeong-Su Do's younger brother, battled against North Korean soldiers. During a battle, Sergeant Jong-Mu Do was kidnapped by North Korea and his family does not know whether he is alive or dead. 45 years have passed since the day of his disappearance,

Mr. Hyeong-Su Do collected scraps of the *DongA Ilbo* (Korea Daily Newspaper) which reported the facts of that time. *DongA Ilbo* wrote: "On June 5, 1970, the Ministry of National Defense of Korea announced that at 1:40 PM on the same day, our Navy broadcasting ship (dispatched to protect our fishing fleet) was attacked by surprise and its crew kidnapped by North Korea" (June 6, 1970 the front page).

The 20 crewmen, including Sergeant Do, fought bravely but were outnumbered by the North Korean soldiers. The South Korean navy vessel suffered heavy damage and sent a last message stating that it was battling against a speedboat from North Korea.

Fifteen minutes after the message was received by the South Korean government, Korean F-5A fighter plane sallied forth. However, the Navy vessel had already been kidnapped to the north of NLL.

Though it cannot be confirmed whether Sergeant Do is alive or not, the Ministry of National Defense of Korea acknowledged in 1976 that he is being held captive. After acknowledging Sergeant Do's status, the Law on personnel management of the Korean military forces was amended in 1994, stating that military personnel who have been kidnapped and held captive for more than 10 years should be considered as combat fatalities. As a result, Sergeant Do is now classified as a combat fatality.

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Su-Eun Yi, Sergeant Do's mother, never received confirmation about the status of her son until the time she passed away at the age of 99 on October 2, 2013. Mr. Do insists that the Ministry of National Defense of Korea should demand confirmation on the status of those held military captives in North Korea, as well as request for these captives to be sent back to South Korea. Currently, it is known that about 81 military captives escaped from North Korea and returned to Korea. In addition, it is estimated that about 500 military captives are still alive in North Korea. Mr. Do may be one of those captives waiting to return to South Korea.

## WAITING INTENTLY FOR THE DAY WE REUNITE

*To my older brother, Gonghi Lee,*

*Older brother, how have you been all these years? The time we have been apart has become so long that saying hello to you again feels strange. I'm sure you remember, older brother, that the last time you came home was around the time I was applying to colleges. Do you remember telling me that if I got accepted into college you would give me a tailor-made dress? After that time, I was accepted into college and the home became a house of mourning.*

*And now thirty years have gone by. Dad believed that you would have done well where you are because he said you always had good social skills and that, in comparison to other people, you were a lot younger at the time. Our father passed away in May of 1996. As for Mom, she only wished that she could have heard these few words from you: "Mother, I am alive." Many times she regretted letting you*

*follow your dream to become a sailor to earn a living and work on a boat. Mom passed away in April of 2003 with you deep in her heart.*

*We were able to find you this year in the newspaper where you took a picture at the Myohyang mountain commemoration. I wish Mom was able to see this picture before she passed away. As for the other family members, I'm sure you know that they are doing well since you probably remember how they were before. Ever since you were young, people said that you always looked like our Father and I looked like our Mother. Even though so many years have passed, it won't stop you from recognizing me, right? I hope you have been well all these years."*

*October 2005*

*JaSuh Lee, younger sister*

## A LETTER TO THE PRESIDENT

*"Dear President,*

*I am GwangPyo Hong, the younger brother of eonPyo Hong (kidnapped Hongdo high school student), who has been confirmed as an abductee by North Korea. He was a senior at Cheonan Commercial High School when I was in the fourth grade of elementary school. I still remember my brother saying that he was going to travel during summer vacation and I chased him around telling him to bring me tasty snacks. Our family has been waiting for him for 33 years after he left on his trip that summer. My father went through many difficult travels as he searched every corner of the land of Joenlado in order to find my brother. I still vividly recall my father kicking the memorial service table and crying on the porch during Chuseok (Korean thanksgiving day) the year when we lost GeonPyo Hong. He never turned off the light at home after losing him. 10 years ago, when my father passed away, he cried very sadly and said that he missed GeonPyo a lot while calling my brother's name with a choking sob. Now, my mother is*

turning 82 years old. I am hoping that you would use your authority, Mr. President, to help my family so that my mother will not have to pass away while calling GoenPyo's name, like my father did.

After my father passed away, we tried to change the owner's name of the house from my father's to my mother's. The court asked us to confirm the missing person among the inheritors so we visited the Cheonan police station. However, the police officer in charge said that our uncle was a commie during the Korean Civil War and GeonPyo Hong defected to North Korea with the uncle. We still cannot change the owner's name to our house.

The South Korean government considers abductees by North Korea an uncomfortable topic to discuss (with North Korea), North Korea continues to keep silent about such incidences, and non-governmental organizations treat us as a group that hinders unification.

Yours sincerely,  
GwangPyo Hong"

## **THE INTERNATIONAL COMMUNITY'S EFFORTS AND RESPONSES OF THE REPUBLIC OF KOREA AND DPRK**

Despite the release of the landmark 2014 report by the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, the problems of separated families, Enforced disappearance and the abductions during and after the Korean War remain unresolved. The South Korean government did not ratify the UN Convention for the Protection of All Persons from Enforced Disappearance and the issue of abductions of South Korean citizens to North Korea is still considered a "separated families issue" and not as a separate category. Furthermore, North Korean authorities have denied all cases submitted to the UN Working Group on Enforced or

Involuntary Disappearances (WGEID). So far, North Korea replied to only a few of the cases transmitted by the WGEID. Their response was very short in each of the cases stating that "no one is held against their will in the Democratic People's Republic of Korea". However, none of the abducted persons has yet been given permission to contact their families in order to prove their claims. The former UN Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, Mr. Marzuki Darusman, has emphasized for many years that the issues of abduction and enforced disappearances must be urgently addressed. He specifically requested that immediate attention must be paid to the matter of separated families in North and South Korea, while giving special consideration to families that were separated longer.

## **NKHR'S ACTIVITIES AND EFFORTS**

NKHR submitted ten new individual cases of disappeared South Korean nationals to the UN Working Group on Enforced or Involuntary Disappearances (WGEID) in 2015. As of now, ten more cases are being prepared. Documenting these cases is an important way to record ongoing disappearances. When the Working Group transmits the case to record ongoing disappearances. When the Working Group transmits the case to the North Korean government, it puts the North Korean government on notice that the international community condemns the detention holdings of these victims as grave human rights violations, for which the North Korean leadership will be held accountable. The submissions to the WGEID also help lay an important foundation for legal accountability and transitional initiatives for reunification that can bring forth truth and justice to the victims and their families. Indeed, now is the time to collectively develop a strategy that will unify victims of abduction and their families, facilitate the return of remains, and lead to truth and justice.

# Dysfunctional Institutions in Bangladesh Cause Further Human Rights Abuses and Deprivation of Justice

by Sazzad Hussain



Civil society organizations and human rights defenders gather to commemorate the International Day in Support of Victims of Torture.

The human rights situation in Bangladesh has deteriorated into a more deplorable situation due to the lack of democracy and functional institutions since after the Fifteenth Amendment to the Constitution of Bangladesh was approved in June 2011. As a result, the Awami League reassumed power through a controversial and farcical Parliamentary election held on January 5, 2014. Disorder in the electoral systems in Bangladesh became more widespread after January 2014. As a result, conducting a free, fair and neutral election has become almost impossible. All the local government polls since then were marked with unlawful activities, including massive electoral flaws, rigging, 'capturing' of polling stations, casting of fake votes, and violence, which made the whole election process a farce.

Due to a heightened politicization, institutions such as the National Human Rights Commission, Information Commission, Anti Corruption Commission and Election Commission, instead of remaining independent, are actually playing controversial roles and are subservient to the government and ruling party. Even the judiciary has increasingly been subjected to political

manipulation under the government, to the extent that its independence is often found to be compromised by controversial appointments, promotions, removals, and conduct of judges.

Human rights have rapidly deteriorated in recent years due to the absence of a popularly elected and accountable government; freedom of expression, assembly and association are restricted and human rights defenders are facing persecution. Due to this dire political situation, incidents of enforced disappearance, extra-judicial killing, custodial torture and other forms of human rights violations are increasing alarmingly and with immense impunity. As a result, victims of human rights violations are being deprived of justice.

The current government is suppressing dissenting voices and threatening the people who have alternative beliefs. In order to restrict freedom of expression, the government drafted several repressive laws in 2016 to control the media and hinder freedom of expression of the citizens. The Information and Communication Technology Act of 2006 (amended in 2009 and again in 2013) is enforced against any person whose comments go against high officials of the government and their family members. Furthermore, the government often bars and attacks meetings and assemblies of the opposition parties or of organizations which are protesting for various demands. On October 5, 2016, the Parliament passed "The Foreign Donations (Voluntary Activities) Regulation Act." This Law contravenes international human rights law by taking approval mandatory even for an individual who is undertaking or operating any voluntary activity by receiving foreign donation or contribution and imposing serious limitations on the work of civil society organizations.

The Government officials will be able to inspect, monitor and evaluate the activities of all NGOs and the persons belonging to the NGOs who individually or collectively receive foreign fund for implementing projects, will come under constant surveillance under this law. This also contradicts the people's democratic rights. Under the new law, making 'inimical' and 'derogatory' remarks about the Constitution and constitutional bodies by any foreign-funded NGO constitutes a criminal offense.

## JUDICIARY

The Judiciary has become increasingly politicized and the justice-delivery system has become weaker. Lack of transparency and accountability, and corruption in the justice mechanism pushed the country into a vulnerable situation. The higher judiciary is also suffering from indirect government supervision, in particular through the appointment of judges and state attorneys, who are often known for their political allegiances. While the politicization of these appointments has been pointed out for several years, no law detailing the procedure, qualifications and way of appointment of Judges of the higher Judiciary has been enacted.<sup>1</sup>

Although the government has never enacted a law to regulate the appointment of the Supreme Court Judges, it has, on the other hand, already restored the Parliament's power to remove any Supreme Court Judge for misconduct or incapacity, through the 16<sup>th</sup> Amendment to the Constitution.<sup>2</sup> That was also done despite enormous criticisms on the part of conscious citizens in general, constitutional experts in particular, and also all opposition political parties. Moreover, no

law has yet been enacted detailing the procedure of an inquiry into allegations of misconduct or incapacity of a Supreme Court judge for his/her removal by the Parliament.

## POLICE

The police force has, over the years, drawn flak for its failure to protect the citizens and for deviating from proper policing and Code of Conduct as per Police Regulation and the Police Act, 1861. Instead of upholding the rule of law, the police has been indiscriminately used by governments and major political forces for self-serving interests. Consequently, the police enjoys political patronage and impunity. This state of affairs has impeded the independence of the police force, undermined accountability measures and led to a deficit of public trust regarding their ability and willingness to uphold public interest. The police is publicly known for its corrupt practices that range from accepting money from traffic rule violators, to helping criminals escape. The reluctance on the part of the police to offer protection without bribes or pressure from some higher authorities, has virtually privatized State security services in favor of the rich and influential.<sup>3</sup>

In Bangladesh, the officers of law-enforcement agencies conceal their illegal assets using the names of their wives, children, or in-laws; thus, there are no effective mechanism for holding policemen accountable for their illegal wealth. The political regimes and the institutions, such as the Anti-Corruption Commission, which is mandated to curb corruption, constantly keep their eyes

<sup>1</sup> In a writ petition (Writ Petition No. 4403 of 2010), Justice Md. Imman Ali issued a Rule asking the Government to explain 'why guidelines should not be framed in respect to the process of the selection of persons for being appointed as Judges of the Supreme Court of Bangladesh and to publish the same in Bangladesh Gazette Extraordinary in order to bring transparency and competitiveness in such a process under the Constitution by causing a wider pool of applicants to be considered through public notifications inviting application as mandated by the settled principles of Separation and Independence of Judiciary being the basic structure of the Constitution ...' Neither has the petition yet been disposed of, nor guidelines been framed.

<sup>2</sup> On September 17, 2014 the Parliament unanimously passed the much-talked "The Constitution (Sixteenth Amendment) Bill, 2014" restoring the parliament's power to remove Supreme Court judges for their 'misconduct or incapacity'.

<sup>3</sup> [http://www.ti-bangladesh.org/beta3/images/2014/fr\\_nis\\_NICSA\\_14\\_en.pdf](http://www.ti-bangladesh.org/beta3/images/2014/fr_nis_NICSA_14_en.pdf); A publication of TIB titled "National Integrity System Assessment Bangladesh" Authors: Professors Salahuddin Aminuzzaman and Sumaiya Khair, 14 May 2014

averted so that the rampant corruption can serve their mutual purposes. Subsequently, the chain of command is systematically replaced by a "chain of corruption" within the law-enforcement agencies.<sup>4</sup>

Furthermore, the police is largely involved in gross human rights violations, including extrajudicial killings, enforced disappearances, torture, illegal and arbitrary arrest and deaths in custody. Torture in police remand is very common. There are allegations against police that they extract information from accused or suspected persons in the name of interrogation in remand through torture in custody.

According to information gathered by Odhikar, from January to October 2016, 90 persons were killed extra judicially by police while eight persons died due to torture in custody and 28 people were allegedly disappeared<sup>5</sup> during this period, mainly by the Detective Branch of Police.

## NATIONAL HUMAN RIGHTS COMMISSION

The National Human Rights Commission of Bangladesh (NHRC) was established in 2007 under the Human Rights Commission Ordinance, and reconstituted under the National Human Rights Commission Act on June 22, 2010. With powers to investigate, but no authority to sanction, the NHRC has been established as an "independent body"<sup>6</sup> for "protecting, promoting and providing guarantee to human rights properly."<sup>7</sup> The

NHRC Act 2009 empowers the NHRC to investigate any complaint of human rights violations and make recommendations to the government to take action against the perpetrators. However, these recommendations are not binding and are therefore mostly ignored. Furthermore, the NHRC has failed to take effective measures against human rights violations despite having acknowledged that these human rights violations are taking place in Bangladesh.

The NHRC seems to forget the main purpose for which it was created: to protect the rights of the people. Rather, it has become subservient to the government. The case of Limon is a blatant example of this. On June 23, 2013, Limon, who lost his leg after being shot by RAB<sup>8</sup>, came to Dhaka for treatment and also went to meet the Chairman of the National Human Rights Commission with his parents, Henoara Begum and Tofazzel Hossain. Shockingly, instead of offering support, the then NHRC Chairman suggested that Limon cease his fight against the Government and asked him to withdraw the case filed against six RAB members, in consideration of his financial and security issues.<sup>9</sup> Limon and his parents refused to do so. The NHRC did not make any recommendations and no legal action has been taken so far against the RAB members who shot him.

Incidents of human rights violations reported by national and international human rights watchdogs were also not investigated by the NHRC. Considering the human rights situation in Bangladesh, the country needs a national institution empowered to protect those rights, but such an institution should follow the Paris

<sup>4</sup>The State of Human Rights in Bangladesh, 2013 by AHRC. <http://1dgy051vgyxh41o8cj16kk7s19f2.wengine.netdna-cdn.com/wp-content/uploads/2013/12/AHRC-SPR-008-2013-HRRpt-Bangladesh.pdf>

<sup>5</sup>Odhikar only documents allegation of enforced disappearance where the family members or witnesses claim that the victim was taken away by people in a law enforcement uniform or by those who said they were from law enforcement agencies.

<sup>6</sup>NHRC Act 2009, Chapter II, section 3 (2), see [http://www.nhrc.org.bd/PDF/NHRC%20Act%202009\\_1\\_.pdf](http://www.nhrc.org.bd/PDF/NHRC%20Act%202009_1_.pdf)

<sup>7</sup>NHRC Act 2009, Preamble

<sup>8</sup>For further information, see Odhikar fact finding report and Annual Human Rights monitoring report 2012 [www.odhikar.org](http://www.odhikar.org)

<sup>9</sup>The Daily Star, 24/06/2013, <http://archive.thedailystar.net/beta2/news/an-unusual-request/>

Principles, adopted by the UN General Assembly on March 4, 1994.<sup>10</sup> The role and work of the NHRC of Bangladesh, unfortunately, fell far from these expectations since its inception, being a powerless institution that does not serve the interest of the people of Bangladesh.

## ELECTION COMMISSION

The Election Commission (EC) is a constitutional body. The Constitution of the People's Republic of Bangladesh specifically lays out its composition and functions. However, the neutrality of the Election Commission has become hampered due to the arbitrary appointment of the Chief Election Commissioner and other Commissioners with a partisan image, the recruitment of local level election officials with partisan background, politicization and planned placement of officials of the administration before elections.<sup>12</sup> All these are reflected in the results of elections in favor of the ruling party. A number of irregularities and a high level of corruption within the EC have also been observed in respect to the promotion and transfer of the officials at both the EC Secretariat and at the field offices. Financial irregularities and lack of transparency in a number of cases have also been registered.<sup>13</sup>

On January 5, 2014, the 10<sup>th</sup> Parliamentary Elections were held unilaterally, without the participation of the opposition political parties. Because of this, many people were prevented from casting their votes. The opposition political parties were demanding elections under a neutral 'caretaker' government; a provision which the government removed from the Constitution by

introducing the controversial 15<sup>th</sup> amendment. The country is being placed in an extremely vulnerable position by the abolition of a free, fair and inclusive elections process, under a neutral government system. As a result, the controversial elections were held and extensive irregularities and violence occurred during local government elections since 2014.

Moreover, the local government elections were seen as highly controversial due to direct political influence and participation. In order to make these local government bodies weak and subservient to the ruling party, the government amended the Local Government Act. The President of Bangladesh enacted an Ordinance on November 2, 2015 introducing amendment to the Local Government Act, so as to provide for local body polls to be held under political party banners.<sup>14</sup> The Cabinet approved the draft of the amended Local Government Act on November 9, 2015 thus clearing the way for the elections to all local bodies to be held under political party banners. After the Ordinance was declared, the Election Commission drafted the Code of Conduct for the candidates and sent the final draft to the Ministry of Law for its opinion on November 5, 2015.<sup>15</sup> On November 22, the National Parliament passed three Bills providing for partisan elections to the Mayoral post at the City Corporation level (urban local government) and to the Chairman post at the Upazila Parishad and Union Parishad levels.<sup>16</sup>

There seems to be a serious lack of professionalism in delivering the function of the Election Commission. Poor understanding of the electoral laws, non-implementation of the laws, non-performance of their

<sup>10</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

<sup>11</sup> According to Article 118(1) of the Constitution, the Election Commission consists of a Chief Election Commissioner and not more than four Election Commissioners and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in their behalf, be made by the President. In the 1972 Constitution, there was no mention of the maximum number of Election Commissioners. The number of Election Commissioners along with the Chief Election Commissioner was fixed to a maximum of five by the 15<sup>th</sup> Amendment to the Constitution.

<sup>12</sup> The Daily Star, 09/02/2012, <http://archive.thedailystar.net/newDesign/news-details.php?nid=221691>

<sup>13</sup> <http://archive.thedailystar.net/beta2/news/the-choice-between-the-unpalatable-and-disastrous/>

<sup>14</sup> The daily Prothom Alo, 10/11/2015, the daily Manabzamin 12/11/2015

<sup>15</sup> The daily Prothom Alo, 11/11/2015

regular duties, lack of accountability and the absence of stock-taking, indicate that the present leadership of the Election Commission is completely unable to conduct any fair election in future. There is no government policy on strengthening the EC in terms of using the experience of field-level officials through their proper placement. No successive governments have ever shown interest in strengthening the EC in terms of legal reforms, through enacting enabling laws for the EC administration. No government has really wanted to create an empowered, independent Election Commission.

## **INFORMATION COMMISSION**

Since its establishment on July 1, 2009, the Information Commission has so far made little progress in ensuring the people's right to information through the proper implementation of the Right to Information Act of 2009. The 2009 Act envisages a three-member 'independent' Information Commission to oversee the information dissemination process. It is evident that the government intends to have control over the Commission formation of a five-member 'Selection Panel' designed to choose the members of the Commission. The government has direct control over three of the five members of the selection panel under the 2009 Act, which says that the presence of three of the five members will make a quorum and that the decisions will be made at the meeting/s of the Selection Committee based on the opinion of the majority of the members. There is, therefore, hardly any scope for independent people, politically or intellectually, to be members of the 'independent' Information Commission.

The government's intention to keep the Commission a 'toothless' body is also evident in the very limited jurisdiction that the 2009 Act has granted to it, i.e. to

punish errant authorities responsible for providing information to the public. Even after seven years, the Commission has made little progress in the proper implementation of the 2009 Act.

Many organizations, both government and non-government, are yet to appoint officers for providing people with information. The Commission ordered the appointment of 'Designated Officer/s' and 'Appellate Officer/s' in at least five of the appeals, against the denial of information to people, it disposed of in 2014, according to the decisions in the appeals posted on the website of the Commission.<sup>18</sup> The designated officers are transferred and their positions remain vacant, depriving people of their right to information.

## **ANTI CORRUPTION COMMISSION**

The Anti-Corruption Commission (ACC) was established under the Anti-Corruption Commission Act, 2004 in order to prevent corruption in the country and to investigate other specific crimes, including forgery and money laundering. Section 2 of the Act says, "This Commission will be independent and impartial." However, the ACC is functioning as per instructions of the ruling party, a fact that has been reflected in several of its activities over the years.

ACC had initiated investigations into acts of corruption by the former Ministers, Members of Parliament, influential politicians and bureaucrats. However, most of those graft suspects have been given a 'clean chit' by the Anti Corruption Commission.<sup>19</sup>

It is to be noted as well that the Commission also relieved some senior Awami League leaders and people

<sup>16</sup>The Daily Star, 23/11/2015

<sup>17</sup> Bangladesh Election Commission, A Diagnostic Study by TIB, [http://www.ti-bangladesh.org/research/ES\\_ElectionCommission.pdf](http://www.ti-bangladesh.org/research/ES_ElectionCommission.pdf)

<sup>18</sup> <http://www.infocom.gov.bd/>

associated with the ruling party of graft charges in 2013. Those ruling party men include former parliamentarian HBM Iqbal and former Chief Whip and Awami League leader Abul Hasnat Abdullah. In June 2013, the ACC relieved former Home Minister Mohiuddin Khan Alamgir for an allegation of corruption. In the meantime, the ACC continues to carry on legal proceedings in the cases filed against top leaders of the BNP<sup>20</sup>. About 50 officials of the Anti Corruption Commission have been accused of taking bribes from graft suspects for setting them free. There were allegations that ACC officials demanded bribes from the accused threatening to file cases, investigate and press charges against them. Most of the victims did not dare to complain to the ACC, but made allegations to intelligence agencies.<sup>21</sup>

## CONCLUSION

All the national institutions have been politicized and the complete lack of accountability of the government has made them almost dysfunctional. The foundations of 'democracy' are freedoms and human rights. Democracy is not merely a process of exercising power; it is the result of the peoples' struggle for inalienable rights, which become the fundamental premise to constitute the State. The democratic legitimacy of the State is directly related to its willingness, commitment and capacity to ensure human rights, dignity and integrity of citizens. The conflict in Bangladesh is created due to the failure of the government to ensure rule of law, human rights and fundamental freedoms. It is to be mentioned that democratic and effective institutions are the pre-condition to establish the rule of law and human rights in a country. Unfortunately, lacking all these, the country has become a fragile state. In order to function effectively, all the institutions

including National Human Rights Commission, Anti-Corruption Commission, Information Commission and Election Commission need to be reformed and strengthened enough to become truly representative of the interest of the people. They must have independent role to play in protecting rights of the people and their accountability must be ensured. The NHRC must have adequate power to investigate any incident of human rights violation and to take appropriate action against perpetrators. The justice delivery system should also be strengthened and independent enough to ensure human rights and equal justice without any political biases or influence of the government or the ruling party. Such reformation and reorientation are possible under a democratic and accountable government. However, the ruling Awami League government, in the name of 'combating terrorism', is not only attacking social and political organizations that believe in democratic politics, but even human rights organizations have come under attack. That means the ruling party continues to use a stranglehold policy towards their political opponents and civil society organizations. If this repressive system continues, the consequences will not only affect Bangladesh, but it may become a threat to the whole of South Asia. To cope with this situation, restoration of democracy and right to vote are the utmost important tasks in order to get out of this dire situation; and that can only be possible through a free, fair and inclusive national election with the participation of all political parties, under the supervision of the United Nations.

<sup>19</sup> *The daily Manabzamin, 10/10/2014*

<sup>20</sup> *The daily Manabzamin, 10/10/2014*

<sup>21</sup> *The Daily Ittefaq, 23/10/2014*

# More Than One Victim

by Saira Rahman Khan

The crime of enforced disappearance may be considered as a way to create terror in societies as victims are picked up and never seen again, and victims' families are left in a maelstrom of fear, uncertainty and, in many cases, economic crises. The international community has condemned this form of human rights violation through Resolution 65/209, where the UN General Assembly expressed its deep concern regarding the increase in enforced or involuntary disappearances in various countries, including arrest, detention and abduction, when these are part of, or amount to, enforced disappearances. Through this resolution, the UNGA also adopted the International Convention for the Protection of All Persons from Enforced Disappearance.

According to An Vranckx, in her 2006 book '*A Long Road Towards Universal Protection Against Enforced Disappearance*',<sup>2</sup> modern history "ascribes the invention of enforced disappearance to Adolph Hitler. Whereas Stalin and dictators before him locked away nationals in far-off camps without much of a law, Hitler's 1941 *Nacht und Nebel Erlass*<sup>3</sup> provided quite openly for deportation of inhabitants of territories occupied by the Reich, who were believed to endanger German security. The Erlass, moreover, explicitly restricted the possibility to divulge information about the deported. The remains of those who were deported would only be found at the end of the Second World War in, and around, concentration camps"<sup>4</sup>. Later on, as history shows,

some Latin American regimes used enforced disappearances to eliminate political opponents.

This was also practiced in Haiti, Brazil and Guatemala in the 1960s and in other countries in later decades. Even today, enforced disappearances occur – with reports and case studies from Nepal, India, and Pakistan as well as from other countries across the world.<sup>5</sup>

In 2009, enforced disappearances in Bangladesh were being reported at a rate that soon sparked protests from civil society and human rights groups. Two people were reported to have been disappeared in 2009 – and the number swelled to 18 in 2010 and up to 30 in 2011<sup>6</sup>. From knowledge gleaned from investigation reports, newspapers and the electronic media in Bangladesh, witnesses narrate how people are taken away by men either claiming to be police or from some other law enforcement agency, never to be seen again. Family members rush to the local police stations or police camps, where officers have no knowledge of the incident and deny any involvement.

This adds to the confusion and panic suffered by the families. According to Odhikar's data, between January and August 2016 there were a total of 61 reported cases of enforced disappearance, of which it is alleged that 19 were committed by men claiming to be members of the Rapid Action Battalion (RAB) and 14 by alleged members of the Detective Branch of Police.<sup>7</sup> Twenty of

<sup>1</sup>The writer is a founding member of Odhikar and teaches at the School of Law, BRAC University in Dhaka, Bangladesh.

<sup>2</sup>At: <https://biblio.ugent.be/publication/371025/file/6796547.pdf>. Visited on 17 September 2016.

<sup>3</sup>Hitler's 'Night and Fog Decree' of 7 December 1941, which targeted political activists and resistance "helpers" and "anyone endangering German security" throughout Nazi Germany's occupied territories. A part of the decree read: "After lengthy consideration, it is the will of the Führer that the measures taken against those who are guilty of offenses against the Reich or against the occupation forces in occupied areas should be altered. The Führer is of the opinion that in such cases penal servitude or even a hard labor sentence for life will be regarded as a sign of weakness. An effective and lasting deterrent can be achieved only by the death penalty or by taking measures which will leave the family and the population uncertain as to the fate of the offender. Deportation to Germany serves this purpose." from: Crankshaw (1956). *Gestapo: Instrument of Tyranny*, at page 215.

<sup>4</sup>Supra note 1 at page 3.

<sup>5</sup>See <https://biblio.ugent.be/publication/371025/file/6796547.pdf>, <https://www.hrw.org/world-report/2015/country-chapters/brazil>, [www.amnesty.org/en/press-releases/2013/08/enforced-disappearances-still-appalling-reality-americas/](http://www.amnesty.org/en/press-releases/2013/08/enforced-disappearances-still-appalling-reality-americas/)

<sup>6</sup>See [www.odhikar.org](http://www.odhikar.org) and also <http://www.bbc.com/news/world-asia-17451178>.

<sup>7</sup>Odhikar only documents allegations of enforced disappearance where the family members or witnesses claim that the victim was taken away by people in law enforcement uniform or by those who said they were from law enforcement agencies.

these arrests were made by men not in uniform, but claiming to be members of law enforcement agencies. Bangladeshis who are old enough to remember and have themselves experienced the horrors of the War of Liberation are not unfamiliar with enforced disappearances. During the war, many notable intellectuals were abducted and their whereabouts remained unknown till their bodies were found. After independence, the crime has continued under various regimes. Notable among the victims are radical leftist leaders Siraj Sikdar in 1975 and Kalpana Chakma in 1996<sup>9</sup>. In Bangladesh today, the human rights violation of enforced disappearances continues. When a person is up by people claiming to be from a law enforcement agency, the common fear is that he may be tortured – or that he may disappear. Odhikar reports that between January 2009 and August 2016, 296 persons have reportedly disappeared. According to witnesses and families, they were picked up by people either claiming to be law enforcers or wearing uniforms. According to the same data, a majority of the arrests (131) were made by men from RAB followed by 82 arrests by the Detective Branch of Police.

Despite flatly denying that torture occurs, the government has taken a bold step and introduced an act to punish perpetrators of the human rights violation of 'torture'. However, criminal law provisions on the crime of enforced disappearance still have to be introduced in Bangladesh. There are criminal provisions for crimes such as abduction, wrongful confinement, and grievous hurt. One must keep in mind that 'abduction' is a criminal offence, defined clearly in the Penal Code. 'Enforced disappearance' is not only a crime but is also a gross violation of human rights – a crime perpetrated

by the State. When a government is in denial and claims that 'abductions' and not 'disappearances' occur – it is, actually, protecting its law enforcement agencies and attempting to veer away from international condemnation. As a result, when it comes to investigations of these so-called 'abductions', the authorities drag their feet. One must also realize that it is the duty of law enforcers to effectively investigate and use all means to rescue the victim, regardless of whether it was a crime of abduction or enforced disappearance. Furthermore, if a government denies that law enforcers were involved, is it not only in the best interest of the latter to investigate and clear its name?

Of the documented 296 victims who disappeared between January 2009 and August 2016, 39 were found dead, 136 were either shown as arrested in various pending cases after a prolonged period, or were found alive in various parts of the country; the whereabouts of 121 still remain unknown.<sup>10</sup> A majority of these 296 victims left behind or have family wives, mothers, children most of whom depended on them financially. They are the other victims of enforced disappearance: the families of the disappeared.

In many cases, the disappeared is the sole earning member of a family who is left in economic crisis. With the main bread-winner disappeared, or found tortured and invalid, how do the family members cope? Furthermore, there are reports that highlight that families are threatened by perpetrators or their 'representatives' not to talk about the matter, not to report the crime, to stop criminal proceedings or even to pay large sums of money in order to get information. As a result, one crime of enforced disappearance may give birth to several other violations, keeping the victim

<sup>8</sup>Odhikar statistics from its documentation center.

<sup>9</sup>See: [https://groups.google.com/forum/#!topic/soc.culture.bangladesh/trB2aOZ-\\_\\_U](https://groups.google.com/forum/#!topic/soc.culture.bangladesh/trB2aOZ-__U), <http://newagebd.net/82779/followers-observe-40th-death-anniversary-of-siraj-sikder/>, [bdnews24.com/.../12/.../family-members-of-siraj-shikder-protest-attempt-to-malign-him](http://bdnews24.com/.../12/.../family-members-of-siraj-shikder-protest-attempt-to-malign-him), <http://iphndefenders.net/bangladesh-abduction-kalpana-chakma-police-fail-submit-report-court-30th-time-last-20-years/>, [www.amnesty.org/en/latest/campaigns/2014/06/kalpana-chakma-information-disinformation-non-information/](http://www.amnesty.org/en/latest/campaigns/2014/06/kalpana-chakma-information-disinformation-non-information/), for more information.

<sup>10</sup>Data from the documentation centre of Odhikar. Odhikar collects reports and information of enforced disappearance from its network of local human rights defenders and from reports published in the news.

families in a state of perpetual fear of their lives, the life of the disappeared and of the future.

Let us take a moment and discuss the general position of women in Bangladesh. These are women who are from rural areas, or must struggle to make ends meet in the urban town and cities. Their lives have not always been safe, secure or trouble-free. Faced with the potential and actual dangers of domestic violence, sexual harassment, rape, child marriage, dowry violence, mental violence, stalking, poor pay, health hazards, early motherhood, violent employers, stunted education and a host of other issues – how can life be safe?<sup>11</sup> It is just as well that there are so many non-governmental organizations trying to assist women to make their lives a little less burdensome and a little more bearable. Such organizations assist women who are in troubled marriages, and they campaign against dowry violence, sexual harassment and other violations. They organize mediations to get couples to make their marriages work – or to break marriages as smoothly and equitably as possible. They organize rallies and protests and human chains demanding victims' rights. They have shelter homes for violated women and those who need support. They fight for women's empowerment. These organizations must be commended for their efforts in trying to bring justice for women, for working to give them employment opportunities and trying to ensure workplace security, for assisting in their legal fights, and for taking various measures to empower them. I am sure that many, many women over the years owe these organizations a debt of gratitude for changing their lives.

However, the group of resilient women who continue to fight for the return of their disappeared relatives has not been given the attention or the support that it should

get. These women have not been sexually harassed or have been victimized by domestic violence. They do not need mediation to patch up a marriage or tie in an errant husband. Take for example Razia Begum, whose farmer husband Rahat was a victim of extrajudicial killing by the police in Kushtia in September 2012; or Razia Delwar, whose son Rubel, who worked in a medicine shop, was tortured to death in a police station in Dhaka in April 2011; or Moyna Khatun, whose husband Mohbbat was picked up by RAB in front of a large crowd of people in January 2013 in Kushtia and was disappeared since<sup>12</sup> What do all these women – and more – share in common? Not just the loss of a male family member, but also the loss of an important or sole earning member of the family.

How are these women and their families faring now? Who is supporting them and their children? Who is ensuring that they get justice? Just like for torture, the need to have in place a legislation to prevent enforced disappearances and punish the perpetrators is imperative. The law must include compensation and all relevant forms of support for the family members of the victim, as a State responsibility.

They might not be victims of 'violence against women' as we generally think of the term – but they are victims of injustice, fear, insecurity, and economic violence. Are there any organizations assisting them? Monitoring their welfare or ensuring their children get an education? Assisting in their fight for justice for their husbands/fathers/sons? Or are they at the mercy of relatives who cannot afford to support them? Such women too need social safety nets supported by civil society organizations. They need to support their children's education. They need to survive to be able to fight.

<sup>11</sup> See [odhikar.org/violence-against-women](http://odhikar.org/violence-against-women), [www.askbd.org/ask/category/hr-monitoring/violence-against-women-statistics](http://www.askbd.org/ask/category/hr-monitoring/violence-against-women-statistics), [www.bangladeshsociology.org/BEJS%2010.1%20Kazi%20Tobarak%20Hossain%20](http://www.bangladeshsociology.org/BEJS%2010.1%20Kazi%20Tobarak%20Hossain%20), [www.un.org/womenwatch/daw/egm/vaw-stat-2005/docs/expert-papers/Farouk.pdf](http://www.un.org/womenwatch/daw/egm/vaw-stat-2005/docs/expert-papers/Farouk.pdf) for more information on the issues of VAW in Bangladesh.

<sup>12</sup> Case studies have been taken from Odhikar's documentation centre. Odhikar created and coordinates a victims' network for the families of victims of enforced disappearances



Family members hold pictures of the disappeared at an Odhikar meeting on 30 August 2016.

In Bangladesh, non-governmental organizations that choose to 'play safe', tend to steer away from issues of enforced disappearance, extra-judicial killings, torture and other practices resorted to by repressive governments. It is easier to get government permission for programs related to cultural, social and economic development and on projects for women and children. It is almost certain that family members of the disappeared will not get full-fledged support from such organizations. They need to find strength from each other.

We can take a cue from the human rights movements of Latin American countries, where the Mothers of Plaza de Mayo of Argentina<sup>13</sup> have been rallying since April 1977 for their sons and daughters who were disappeared by the military government. Some were found in unmarked graves with signs of torture on their bodies. The Mothers gathered every week in a designated spot in silent protest, supported by their families and by each other. They soon realized that they had to be their own champions and support group because the government was not going to help them. There are other such groups of strong women around the world, protesting the torture, disappearance and wrongful detention of male family members – the Mothers of the Disappeared and

the Association of the Parents of Disappeared Persons in Kashmir and the Mothers of Soacha<sup>15</sup> in Colombia being good examples.

Female family members of victims of torture and other human rights violations, which result in the victim being unable to support his family due to disability or death, are also victims of violations. Their right to life, health, safety and education are seriously hampered and their future, in many cases, is far from secure. They do not have to be victimized directly to fall into the category of a female victims of human rights violation. They too need a champion. In reality, their first line of support is their own unity, from which they can gather strength and support.

The government of Bangladesh has ratified the Convention against Torture<sup>16</sup>, but has yet to accede to the International Convention for the Protection of All Persons from Enforced Disappearance. Enforced disappearances and torture are both violations of human rights and criminal offences. The State does not need to ratify any international instrument to pass such a law or amend the Penal Code to include provisions related to enforced disappearances. It needs a political system based on the will of the people and their right to vote. A system that is based on Rule of Law; that will work with integrity and sincerity towards its citizens. Those monitoring the application of the 2013 anti-torture legislation may be sorely disappointed at the lack of implementation of this law. This could also possibly be the case if a law against enforced disappearances is enacted. However, the fact that there is or will be a law, gives victims the scope to prosecute. Without such legislation, there will be no justice; and this violation – which creates more than one victim – will continue with impunity.

<sup>13</sup>See [www.womeninworldhistory.com/contemporary-07.html](http://www.womeninworldhistory.com/contemporary-07.html) for more information

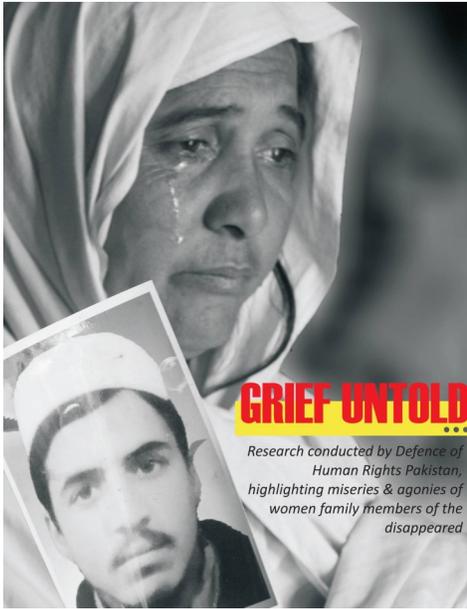
<sup>14</sup>See [apdpkashmir.com](http://apdpkashmir.com), [www.worldpress.org/Asia/3748.cfm](http://www.worldpress.org/Asia/3748.cfm).

<sup>15</sup>See <https://www.amnesty.org/download/Documents/36000/amr230022010en.pdf>.

<sup>16</sup>Ratified in 1998. The government is not a State Party to the OP-CAT.

# Enforced Disappearance: A Paradox

by Amina Masood Janjua



The purpose of this article is to analyze present approaches deployed to tackle enforced disappearance, in order to identify their weak points, and to encourage dialogue and brainstorming for novel approaches.

Enforced disappearance (ED), and the fight against it, both form a paradox. Enforced Disappearance/s is perpetrated by the State, an institution which is meant to protect its citizens. Ironically, to carry out enforced disappearance/s, the State uses the very organs of its machinery such as the police, army and judiciary, which are themselves designed to dispense protection and justice. Demanding justice and recovery of a disappeared person from the very perpetrators of this violation is like trying to open a padlock which is hanging invisible on the other side of a solid door. Progress in the fight against enforced disappearance/s can be slow, if not altogether fruitless, unless this paradox is resolved.

On a hypothetical scale of 1 to 10 to measure how difficult it is to fight against human rights violations (HRVs), enforced disappearance rests with no doubt at number 10. Broadly speaking, the role of a human rights defender is to effect a change of order from the State to

solve a particular issue. We can categorize HRVs under different headings. Before moving ahead, it may be noted that the existence and severity of a particular HRV may vary from region to region, and from one period to another. However, it can be easily surmised that HRVs are more prevalent in the "Third World", as compared to developed countries. And among the third world countries, those which have been afflicted by military rule in the past half century tend to be more severely affected.

Ideally, as well as philosophically speaking, the State is meant simply to stay true to its reasons for existing, i.e to protect its citizens from outside threats and create an internal mechanism where all citizens can enjoy life with complete freedom, with reasonable restrictions to prevent unhealthy internal strife.

Situations of human rights violation/ surface only when a State fails to fulfill its human rights obligations. This could be due to the lack of ability, or to willful neglect, or even willful suppression. These three causes of human rights violation/ shall loosely provide for a basis of the three main categories of HRVs for the present discussion.

Examples of neglect are: non-provision of basic needs such as clean water, and education, and the inability to provide sufficient security and an adequate justice system. Such conditions usually arise due to poor economic conditions. The second cause of HRVs is willful neglect, an example of which can be taken from Pakistan, where in certain parts of the country some pressure groups try to keep women from voting in elections. Despite being quite aware of the situation, the State has failed to address the issue simply because challenging powerful groups might cause problems for the ruling elite.

The third and most serious form of HRV is willful suppression. Here, we face political targeted killings, laws that provide for arbitrary detentions, filing of false criminal cases, military courts functioning as kangaroo courts, different methods of harassment against honest government officials, etc. A long list of HRVs under this heading could be drawn; however, what stands at foremost is enforced disappearance. A perpetual state of mental torture directed to the primary and secondary victims; a continuing state of fear of physical torture and death, coupled with complete darkness and helplessness in the face of an all-powerful state machinery, are what render ED as the deadliest of all HRVs.

But why do states resort to ED at all? This is the same as asking why a particular thief turned out to be a thief. When dealing with a thief, two approaches are possible: one is to punish the thief no matter what, and the other is to revert to social and psychological analysis of the circumstances which made him a thief. The proponents of the second approach claim, or hope, that if you change the underlying circumstances, you minimize the chances of churning out more thieves. This approach brings up secondary questions, such as whether applying a similar approach to understand motives and actions of States can provide new insights for the fight against ED. Can it provide a better strategy and straighter and shorter paths to the goal of a world without ED? Simply speaking, trying is the only way of finding out.

ED is only a part of a bigger canvas. It is interesting to note that wherever there is ED, there you can find other HRVs that take place due to the State's lack of ability and willful neglect. In fact, they are an integral part of the big picture.

Many aspects of the character of a State can be compared with psychological characteristics of individuals. A discussion on this topic may stretch out too many pages. To keep this article short, we will focus on the instinct of survival, which is something that is both shared by human

beings and States; this may serve as a starting point. States that perpetrate ED are usually scared States. They fear for their very existence.

ED also shows the inability of a State to tackle a threat, as well as the lack of moral grounds, to declare a certain person or their acts as threats. In such States, corruption and greed evolve in institutions; democracy, if at all present, is only a smokescreen. Economy in almost all cases is weak, laden with debt. Huge trade deficits are another common feature. In such States, a limited number of cities or city centers resemble advanced countries in outlook and amenities, but the rest of the country depicts an entirely different picture.

On the other hand, the masses lack moral courage (exceptions are human rights defenders). Moral values e.g. democratic principles, honesty, etc., are much cherished slogans but are not part of personal character. People tend to consider the four walls of their home a complete world, beyond which nothing matters. The State tries to keep the masses in such condition through limited and low quality education, as well as by inefficient infrastructures. This approach prevents a fair diffusion of wealth, access to education and, consequently, it undermines the development of higher and nobler ideals.

As stated earlier, although EDs are a very serious crime, they are only a small blot on a big canvas. After this analysis and given these features, which are common among most of the countries afflicted by plight of ED, it appears that the fight against ED demands something broader and deeper than conventional campaigning techniques. To eradicate ED, a touch of politics, and an amalgamation and alliance with other forces aimed at social change would be necessary to escape the ED paradox.

# Sri Lanka's Disappeared and the Office of Missing Persons

by Ruki Fernando



DHR Pakistan's Amina Massood meets with Sri Lankan families of the disappeared.

Mauri Inoka's husband was abducted in September 2013. Two months later, she delivered her twin children. They have never seen their father. For three years, Mauri has been struggling to find her husband and still look after her children. She had complained to Police, Human Rights Commission and to the UN Working Group on Enforced or Involuntary Disappearances (UN WGEID). Whenever the case comes up in courts, it gets postponed. Her appeals to the former and present Presidents, interviews with various media and numerous protests have not brought results. She was also abducted, threatened, restricted in her peaceful protests and subjected to Police investigations. She almost lost her job. She and children were often scared, homeless, hungry, displaced by floods and dependent on the occasional support that very few family members, friends, and activists were ready to offer.

Information about what happened to disappeared journalist Prageeth Ekneligoda has emerged and some military personnel have been arrested since last year. This is largely due to a courageous and sustained campaign of nearly 7 years by his wife Sandya, which is

supported by some local and international activists. She had to raise two young boys alone and was compelled to cook and sell rice packets due to poverty. But since the day I first met her, a few days after the disappearance, Sandya has never wavered from her struggle for truth, justice and reparations. However, even the limited progress is threatened now, with the President expressing reservations about detention of the suspects and Sandya complaining of threatening calls.

Both the above are Sinhalese. Tamil human rights activist Stephen Suntharaj disappeared in 2009. To date, there is no news about him, despite his wife Vathana's efforts. Like Mauri and Sandya, Vathana too has to take care of young children alone and become the sole income earner for the family, while trying to find her husband.

Wives are not the only ones who have been trying to find their disappeared family members. My friend and colleague Pattani Razeek is among the Muslims who disappeared. He was one of the few whose bodies were found after he disappeared. Some suspects have been arrested, but his son believes the masterminds are free and he is desperate to get justice.

In August 2006, Father Jim Brown, a Catholic priest and his assistant, Vimalathas, both Tamils, disappeared after going into a navy held area in Allaipiddy, Jaffna. Fr. Brown offered shelter to people in his church to save them from shells during heavy fighting, but many civilians were killed and injured inside the church. Fr. Brown survived and later pleaded with the navy to take

<sup>1</sup>Ruki Fernando is a Sri Lankan human rights activist who works with families of the disappeared, and has been involved in documentation, campaigns and advocacy in relation to the disappearances. He is a member of Watchdog Collective, Advisor to INFORM Human Rights Documentation Centre in Colombo, member of the Justice, Peace and Integrity of Creation Commission of the Conference of Major Religious Superiors in Sri Lanka and an Executive Committee member of Asian Forum for Human Rights and Development. His writings, talks, interviews are available at [www.rukiiiiiii.wordpress.com](http://www.rukiiiiiii.wordpress.com) and he can be contacted at [rukiii@gmail.com](mailto:rukiii@gmail.com) or [@rukittweets](https://twitter.com/rukittweets).

the injured out of the fighting zone. He was reportedly threatened by a navy officer.

There were reports that the navy refused orders of the magistrate to hand over the log book at the checkpoint where Fr. Brown and Vimalathas signed in. The distraught mother of Fr. Brown passed away without knowing what happened to her son. His lonely and elderly father's only hope is to hear news of his son before he dies.

These are amongst the 65,000 Sri Lankans reported to have disappeared, according to the government. Most of those disappeared in 1980s were Sinhalese. Since then, the majority of those who disappeared have been Tamils. In the 36-year-old history of the UN WGEID, the second largest number of cases taken up from a single country is from Sri Lanka.

## **REPRISALS AGAINST CAMPAIGNING FAMILIES AND ACTIVISTS**

Like Mauri and Sandya, other families of the disappeared and activists have faced numerous threats, intimidation, restrictions, surveillance, arrests and detention as they campaigned for truth, justice and reparation for the disappeared. In August 2014, a private discussion between some families of the disappeared with lawyers, activists and diplomats was disrupted by a mob led by Buddhist monks who invaded the private church-run building. Families of the disappeared were stopped twice from coming to Colombo from the north during the previous regime.

In December 2011, Lalith and Kugan, two Tamil campaigners against the disappearances were themselves disappeared. In March 2014, Jeyakumary, a Tamil mother searching for her disappeared son ( whose photo had been seen in a government-run rehabilitation

facility) was arrested. A colleague and I were arrested when we went to investigate . We are still terrorist suspects with pending cases against us. Jeyakumary and I continue to be harassed and intimidated even by the present government. And families like Sandya and Mauri have faced intimidation even under the new government.

## **IMPUNITY**

Sri Lanka's legacy of disappearances is accompanied by the state failing to ensure the families' rights to truth, justice, and reparations. Eyewitness testimonies and other evidence indicate that the Sri Lankan state – particularly its army, navy, police and para militaries, may be responsible for most disappearances, particularly in the context of counter-terrorism operations. The Liberation Tigers of Tamil Eelam (LTTE) is also responsible for many abductions , especially during the last stages of the war.

About 5,000 soldiers from the Sri Lankan armed forces and several LTTE leaders have also been reported as missing and disappeared. Among the families I have worked with is a mother of a a disappeared air force officer and a wife of a LTTE leader who disappeared after surrendering to the army.

There is no progress in most cases before police and courts, including well known cases of Tamils, despite evidence pointing to the military, such as in the disappearances of journalist Ramachandran Subramaniam, Fr. Francis Joseph and Jeyakumary's son. *Habeas corpus* cases in relation to those who allegedly to the Army in front of eyewitnesses and then disappeared on the last day of the war, have dragged on for years. The Army is reported to have denied the existence of a list of people who surrendered, after initially admitting to the existence of such a list. In the very few cases that have seen progress, these have been exceptionally slow.

## EFFORTS OF FAMILIES AND NEW INITIATIVES OF THE NEW GOVERNMENT



Monument of the Disappeared in Colombo

Since the end of the war in 2009, families of the disappeared have become front liners in pursuing truth, justice, and reparations and mobilized significant international attention. Due to this, in November 2015, the Government invited the UN WGEID to visit Sri Lanka, 16 years after their last visit. In May 2016, the International Convention for the Protection of All Persons from Enforced Disappearances was ratified; however, Sri Lankans are prevented from submitting complaints directly to the Committee monitoring the implementation of the Convention, as the government did not recognize its competence pursuant to Article 31. And disappearance is still not a crime under Sri Lankan law. \*

### THE OFFICE OF MISSING PERSONS (OMP)

The commitment to set up an Office of Missing Persons (OMP) came at the UN Human Rights Council in Geneva in September - October 2015. It was one of the focuses

of the Consultation Task Force appointed to conduct nation-wide consultations on transitional justice. However, the Government relied on a secret process to come up with a draft Bill to establish the OMP, with just two hastily conveyed token debriefings for few activists and families of disappeared which were held only in Colombo, and just few days before the draft bill was approved by the Cabinet. The draft Bill was passed by Parliament on 11th August with no substantial debate on its content, with the former President Rajapakse's allies criticizing it and the Government limiting itself to defending it.

Among the appeals of families of disappeared and activists before the draft Bill was approved was to change the name from "missing" to "disappeared" or to make it "missing and disappeared". But despite promises to consider it, the name remains unchanged.

The OMP Act has some positive features in relation to the right of the families to truth, with no temporal or geographical restrictions, anonymity for witnesses, opportunities for international expertise, powers to summon any person and obtain documents and other materials, make unannounced visits to relevant places, seek search warrants and court orders for exhumation and have branch offices.

But there are limitations. Gender and ethnicity are not specified. Families' involvement is not guaranteed at top levels of OMP's structures. The regularity to provide information to families is not specified and it is not mandatory to provide maximum information to families. Procedures and obligations to deal with human remains are weak.

The OMP Act does not give the OMP prosecutorial authority. This may hamper the offering of plea bargains and immunity in exceptional circumstances and other

\*The Sri Lankan Government recently passed a Bill Criminalizing ED on Feb. 9, 2017

forms of incentives to elicit information. The right to pursue justice is compromised as the OMP can refrain from sharing information with external prosecutorial bodies where offenses are involved and due to a clause saying OMP's findings will not give rise to criminal or civil liability. There is no provision to ensure that tracing investigations will be done in tandem with criminal investigations or that the OMP will ensure information and evidence discovered will be treated with best international criminal investigation standards, to enable them to be admissible during any subsequent prosecutions. If enforced disappearance is not made a crime in Sri Lanka prior to the OMP beginning to operate, holding perpetrators responsible for this serious crime may become difficult within Sri Lanka.

Furthermore, the OMP has no powers to address economic justice for the families or offer any interim financial and material assistance, despite desperate needs of many families who have been living in poverty for years. There is no clear date for the establishment of an Office for Reparations, a separate entity whose linkages with the OMP are not clear.

## CHALLENGES

Many families do not have adequate financial, emotional and legal support and accompaniment to strengthen their struggles, including engagement with mechanisms such as OMP.

In the months leading up to the establishment of the OMP, cases of abductions continued to be reported, with at least 10 cases reported within a three month period this year. All are Tamils, mostly from the North. At least two of those who disappeared have not returned, despite complaints to the Police and Human Rights Commission. Some were found in Police or remand custody after being abducted and one was dumped on the roadside.

But there is still a possibility to make the OMP an institution that can provide some degree of truth, justice, and reparations to families of the disappeared. For this to happen, persons with integrity, experience, and competence, and no suspicion of having been implicated or covering up disappearances should be appointed as members and staff. The appointments should include families of the disappeared, women, and ethnic and religious minorities. Families of the disappeared and activists have stressed the importance of international involvement to ensure independence, confidence, and the competence of the OMP. The internal regulations, which the OMP leadership has powers to draft, should maximize discretions provided in the OMP Act towards fulfilling the rights of families of the disappeared for truth, justice, and reparations. And the Government should criminalize enforced disappearances before OMP begins its operations. Expediting *habeas corpus* cases and disappearances cases pending for long years in the courts and measures towards economic justice will facilitate confidence and better participation of families in the OMP process. A full stop to continuing disappearances and abductions is also essential to create an enabling environment for the OMP to operate. Draconian laws with vast powers to military, police and executive and minimal and delayed protections, such as secret draft counter-terror law of the government now before parliament, will serve as a license for enforced disappearances and severely undermine confidence in the OMP.

Principled and substantial support of donors, UN officials, and others with expertise and experience will be important to make the OMP a success. But in the end, the success of the OMP will depend on Sri Lankans. Families and concerned activists will have to critically engage with the OMP process, without resorting to boycotts or becoming part of government propaganda.

## **Dark Year for Human Rights in the Philippines\***

by Mary Aileen Diez-Bacalso

The Philippines flunked in its human rights performance in 2016. A culture of death has brought about an atmosphere of fear.

The last months of former President Benigno Aquino's term saw his failure to implement his social pledge of leadership, economic reforms, good governance, human rights, and justice and peace.

Aquino stepped down without solving cases of torture and enforced disappearances despite an administrative order that was supposed to create a body to look into rights violations.

Among the unresolved human rights violations were the killings and massive exodus of tribal people who were displaced by mining operations.

On enforced disappearances, six years of pleas by families of the disappeared for Aquino to sign the UN Convention on Enforced Disappearances fell on deaf ears.

Disappointed by Aquino's promise of "straight path" governance, 16 million Filipinos voted Rodrigo Duterte, who vowed to bring change, into power.

Duterte became president despite warning that 1,000 victims of summary executions in his home city of Davao would grow to 100,000 deaths.

"You will see that the fish in Manila Bay will get fat. I will throw you out there," Duterte warned drug dealers and users.

In his first State of the Nation address, the new president said, "human rights must work to uplift human dignity."

"But human rights cannot be used as a shield or an excuse to destroy the country," he added.

True to his words, more than 6,000 people have already died, with an average of 38 killings each day since he came into office six months ago.

Worse still, the so called super majority in congress railroaded the approval of bills proposing the lowering of age of criminal responsibility from 15 to nine and restoring the death penalty.

Duterte's allies will ensure the Philippines becomes the only country to have abolished the death penalty twice and restored it twice despite it being a party to the International Covenant on Civil and Political Rights and its Second Optional Protocol binding the country to abolishing the death penalty.

Lest we forget, at the zenith of impunity, nine out of 15 Supreme Court justices voted in favor of the burial of former dictator Ferdinand Marcos in the country's cemetery for heroes.

The controversial decision, a fulfillment of Duterte's campaign promise to the Marcos family, has polarized the nation, bringing back thousands of old and young to the streets in protest against the burial that took place on November 18.

For victims of human rights violations, the burial of the

*\*\*Reprinted from UCAN News, published on January 3, 2017*

dictator in the cemetery means the death of truth and justice.

The international community has spoken but remains unheard.

"I unequivocally condemn his apparent endorsement of extrajudicial killing, which is illegal and a breach of fundamental rights and freedoms," said Ban Ki-moon, secretary-general of the United Nations.

Duterte dismissed the UN for being "stupid and easily swayed into interfering in the affairs of this republic."

Fatou Bensouda, a prosecutor at the International Criminal Court in the Hague, also condemned the killings, but Duterte dismissed it as "useless."

The Catholic Church has added its voice to the condemnations.

Bishop Broderick Pabillo signed an online petition for Duterte to be investigated for crimes against humanity. Beginning December, bells in several churches around

the country tolled to protest the killings.

In his Christmas homily broadcast on national television,

Bishop Teodoro Bacani expressed alarm over drug-related killings victimizing the poor. Parish priests in various provinces called for an end to the killings.

***"Against the dark night of death of the wretched of the earth, these voices should spread from parochial initiatives to a prophetic unified response. "***

In a statement, Archbishop Socrates Villegas, president of the bishops' conference, urged Filipinos to "truly unite" and make a stand on pro-life issues.

Against the dark night of death of the wretched of the earth, these voices should spread from parochial initiatives to a prophetic unified response.

Amplifying the prophetic voice of the church in this predominantly Catholic country in Asia is imperative.

# The Making of Duterte's Myths: How the Filipino Society Accepted the Killing of Their Own Civilians?

by Julie Choquet



A victim of Duterte's War on Drugs  
Photo by Harold Thibault.

It is quite a coincidence that – with the campaign carried out by Rodrigo Duterte – drugs were identified as the number one problem in the Philippines. Indeed, people believe it to be so. Why during the campaign, the land reform was not targeted by the politicians? Why not talking about the awful working situations of the overseas people and the huge amount of tax that the State is taking from them? Why not focus on a redistributive program? The debate is all about drugs everyday because the president succeeded in making people think about it.

## BUILDING A MYTH

Politics is all about creating myths and making people believe them. This is what the French sociologist Pierre Bourdieu called "the symbolic violence of the state." But the difference here in the Philippines is that this violence is not only symbolic– it has already killed more than 4,700 people so far (The Inquirer). When the majority of the population supports and justifies the violence within the State because of the simple fact that a man who became president decided to use it, the so called

"democratic system" is vanishing. Do Filipino people remember what Martial Law was like during the dictatorship of Ferdinand Marcos? It doesn't seem so. The lack of criticisms inside the Filipino educational system about the massive human rights violations during Marcos era could be a key to the understanding of the present situation. The poor knowledge about Filipino history of majority of the population could explain the ongoing collective amnesia.

## A POPULAR BELIEF INTO THE STRENGTH OF POWER

The Philippines is a vast country, with plenty of islands in which remain a variety of languages, cultures and beliefs. This particular geography has to be taken into account for the analysis of the political framework. Indeed, the specific concerns of more rural areas may remain far from the political arena in Manila. I am not sure whether in those distant places, people thought that drug addiction was the main issue before they have heard president Duterte's speeches.

In this context, political representation of the people by those in power can be challenging. It's hard for the majority of the Filipinos to get their interests represented in Manila, however we can imagine how hard it is for the government to implement his policy in remote places. This fact could open the door of a passive resistance against extra-judicial killings. The main reason why people are following the law is usually because they trust the structure of power. This is what democracy and dictatorship have in common: building national symbols on which citizens can supposedly rely.

While the former uses a symbolic violence within the Constitution, the latter normally denies the individual rights of the people by using effective violence and spreading terror among the whole of society.

### **A LICENCE TO KILL**

Still, political power always fails outside of the capital – even during the worst Marcos times, I guess – because you cannot fully control the Philippines even if you wished so. Ask both the Spanish during the colonial administration, and after that the Americans about ruling the Philippines and you will observe an acknowledgement of this failure. As a European, I clearly have a foreign point of view from which I cannot escape. My opinion is that when a State asks its people to do the dirty job in its place, such as killing people for alleged drug relations, it is likely that the country will end up in a mess. Thus, nobody knows the terrible consequences this will have on Filipino history.

However, it is not that hard to guess what is going to happen; it is sufficient to look away from the Philippines for a moment. Just think about what happened in Indonesia after the 1965 massacre against communists: an outbreak of settling of scores between the population and a government who incited hatred against the communists. In this context, there is no need to highlight that being a communist or being a drug addict is conceptually the same thing, as no one will ask for any evidence after having murdered somebody. On the contrary, it became indeed an opportunity to denounce someone you dislike, or a neighbor that one night annoyed you with his loud karaoke. In any event, just like now in the Philippines, it was very easy to get a “killing licence”.

### **PEOPLE CAN STILL SURRENDER AND ACCESS A REHABILITATION PROGRAM IF THEY ARE SCARED OF BEING KILLED.**

This is a sentence I have heard so many times! In the metro, from taxi drivers, in some newspapers or TV channels I will keep confidential. The truth is simple: NO, they cannot! I will try to explain why. Killing a drug addict or drug dealers on behalf of the government, is a common denial of the fact that any individual's life could change. Individual freedoms are not an optional concept for States that have decided to stick with democracy. If the common will determined that drug is a major problem, then it has to be financed under health and rehabilitation programs. Unfortunately, this has never been taken into consideration by Duterte's administration.

My critique is that you cannot undertake the responsibility to end drug trafficking while rehabilitation programs are not at all considered as an option. The reason is probably that those programs are expensive and the government does not want to spend money for rehab because this is too unpopular for a government which was just elected. However, people expect a quick fix and think that the “problem” could be solved without any social considerations.

The future of the Philippines has never been more unpredictable. There is in every individual a responsibility to denounce the current extra-judicial killings occurring all over the country and to fight together for truth, justice and for an effective application of the rule of law.

# Photo Essay on Family Reunions

by Sisto dos Santos

May 2016



Dialogue with the Prime Minister of Timor-Leste



The children meet their families

November 2016



Abdul with all his family



Abdul and his biological mother in Lospalos-Luro



Ansor is welcomed by his family



Ansor with his grandmother

# UPR Stakeholder Report for the Philippines: Executive Summary

by AFAD and FIND

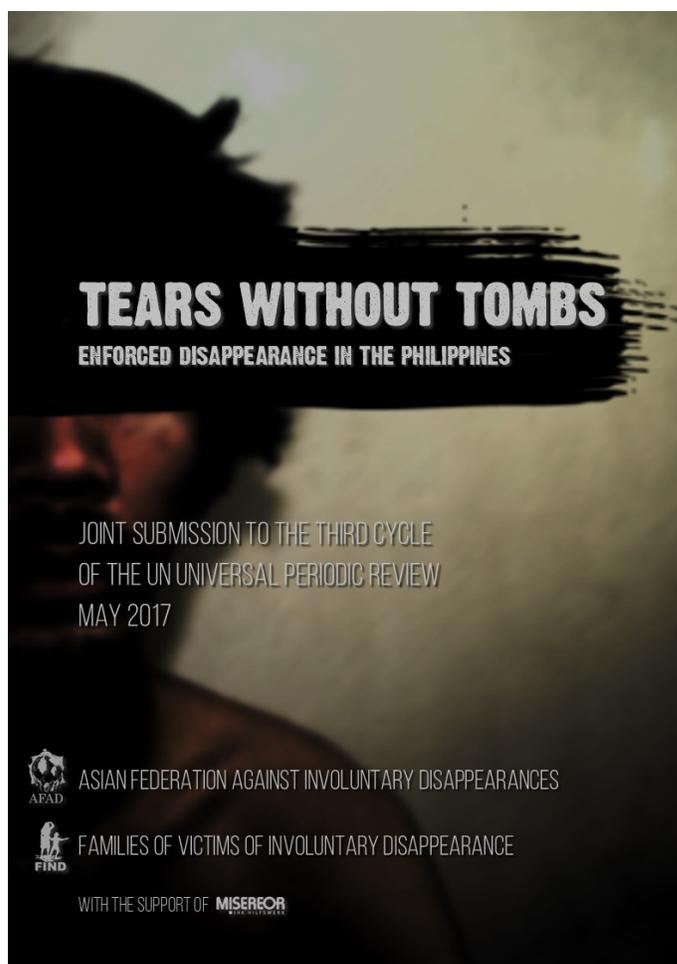
1. The Philippines is a state party to eight out of nine core treaties. The exception is the International Convention for the Protection of All Persons from Enforced Disappearance (CPED). It has been twice re-elected to the UN Human Rights Council since 2006. It must be noted that the Philippines made a voluntary pledge to take steps towards the signing and ratification of the CPED during its candidature to the UN Human Rights Council in 2007. And lastly, in 2012, after years of lobbying by civil society organizations led by Families of Victims of Involuntary Disappearance (FIND), the Philippine government enacted a domestic law that criminalizes enforced disappearance (Republic Act 10353).

2. Despite these developments, there is much to be desired with respect to ending and resolving enforced disappearances in the country. For instance, at present, there are 1,774 reported victims of enforced disappearance since the first documented victim in 1971. Out of the cases submitted to the UN Working Group on Enforced or Involuntary Disappearance (UN WGEID), 625 remain unclarified, this is the highest figure in Southeast Asia.

3. It has been 26 years since the UN WGEID last visited the Philippines in 1990. The Philippines has not replied to the UN WGEID's request to visit, which was first transmitted in 2006, nor to any of the UN WGEID's subsequent follow up requests.

4. Despite the promulgation of an Anti-Enforced Disappearance Law, the Philippines is not yet a state party nor a signatory to the CPED, the only remaining

core treaty that the Philippines has not ratified. As a state under review, the Philippines has consistently stated that it would study the said Convention in its reports during the First and Second cycles of the Universal Periodic Review. As previously mentioned, the Philippines has made a voluntary pledge to strengthen domestic support for the signing and ratification of the Convention during its candidature to the UN Human Rights Council in 2007. However, almost 10 years after, there has been no progress toward the signing and ratification of the Convention.



# AFAD Secretariat Page

by Toni Serrano-Soriano

The following are the activities organized by the AFAD Secretariat and its member-organizations in the Philippines for the year 2016:

## YEAR END ASSESSMENT, PLANNING AND PERFORMANCE EVALUATION OF SECRETARIAT MEMBERS

18-22 January, OCDS House of Prayer, Manila, Philippines



In the presence of AFAD Chairperson, Khurram Parvez, The AFAD Secretariat had an assessment of what transpired in 2015, planning for 2016 and a performance evaluation of members. Each staff member presented their respective program's reports and plans. There were also discussions about the status of projects, personnel at the regional and national levels, and policies. A 6-month plan was collated from individual plans.

## PAGKAKAIT NG KATOTOHANAN, KALBARYO NG KAWALAN NG KATARUNGAN

A Truth-Telling and Truth-Seeking Session of the Families of the Disappeared

23 March, Bantayog ng mga Bayani, Manila, Philippines



The Kalbaryo ng Kawalan ng Katarungan is the annual Holy Wednesday activity of the Families of Victims of Involuntary Disappearance (FIND). This year, for the first time, it was held together with both the Asian Federation Against Involuntary Disappearances (AFAD) and the Free Jonas Burgos Movement (FJBM). The activity featured a truth-telling session of the families of the disappeared, and solicited reactions from representatives from the human rights offices of the Armed Forces of the Philippines (AFP), the Philippine National Police (PNP), the Philippine Air Force (PAF), the Commission on Human Rights (CHR), and the Free Legal Assistance Group (FLAG).

## ANNUAL TEAM BUILDING

8-9 April, Banak Beach House,  
Batangas, Philippines



The objective of this activity was to bind the AFAD Secretariat team by enabling members to get to know each other better. It developed good working relationships among all members, including some families of the disappeared who are also working with AFAD. It was a simple way of giving the staff a treat, and a means for celebrating achievements.

## COMMEMORATION OF JONAS' 9<sup>TH</sup> YEAR OF DISAPPEARANCE

28 April, Bulwagang Pepe Diokno, Commission on Human Rights of the Philippines



Messages about Jonas Burgos' disappearance 9 years ago were shared through poems written and read by Jonas' daughter and niece, through videos of prominent friends who showed their solidarity by joining the campaign to surface Jonas Burgos. The final statement was strongly delivered by Jonas' mother, Mrs. Edita Burgos, challenging the president to bring the perpetrators to justice and bring Jonas back home.

## COLLECTIVE RESPONSES TO ENFORCED DISAPPEARANCES IN ASIA

Meeting of Asian Regional Organizations  
4-5 May, Holiday Inn, Bangkok, Thailand



A meeting with regional human rights and families' organizations took place in Bangkok, from 3-6 May 2016. Participants belonged to the following organizations: AFAD (Secretary General and Regional Campaign Officer), Families of Victims of Involuntary Disappearance (FIND), Forum-Asia, Focus on the Global South, International Federation for Human Rights (FIDH), International Commission of Jurists (ICJ), Odhikar, Asian Human Rights Commission, Al Jazeera and Ms. Shui-Meng Ng. The purpose of the event was to strengthen the Asian civil society voice against enforced disappearances through the collective of regional organizations. As a social issue, enforced disappearance should not be a parochial concern of AFAD and its member-organizations but of other human rights organizations as well. Taking into consideration

the strength of the perpetrators, it is but important for civil society organizations to be united in mainstreaming a regional human rights issue. To note, Asia is the continent that submitted the highest number of cases to the UN Working Group on Enforced or Involuntary Disappearances. During the meeting, each organization presented its plans and activities in relation to enforced disappearances, in order to highlight common areas for further cooperation.

## FINANCE TRAINING

16-17 May, Sequoia Hotel, Manila, Philippines



To improve systematization of AFAD's finances and the Federation's compliance with project requirements, AFAD reviewed the Bread for the World Project in terms of activities, outputs, use of outputs, impact, outcomes and the project's corresponding budget. Some gaps in the project were identified which needed to be discussed with the Bread for the World during its visit to the AFAD office on June 27.

The training was enlightening to all participants as it made them realize the difficulties in attaining agreed outcomes considering the limited activities and budget available. The need for some budget realignments was

thus seen and would be proposed to Bread for the World.

## COMMEMORATION OF INTERNATIONAL WEEK OF THE DISAPPEARED

### 1. Kite-Flying/Family Day

22 May, UP Diliman Sunken Garden, Manila, Philippines



### 2. Bangladesh Solidarity Event

27 May, Bulwagang Pepe Diokno, Commission on Human Rights of the Philippines



3. Radio Interview at Radio Veritas with FIND Co-Chairperson-Nilda-Lagman-Sevilla and AFAD Secretary-General, Mary Aileen Bacalso. The interview focused on the results of the national elections and the news about the planned reimposition of the death penalty in the Philippines.

These activities happened with the participation of families of the disappeared and colleagues from different sectors, who expressed solidarity in the fight to end enforced disappearances in the Philippines and Bangladesh.

### **BRAT (BASTA RUN AGAINST TORTURE)**

25 June, Quezon City Memorial Circle,

Manila, Philippines



AFAD Secretariat members and families joined United Against Torture Coalition (UATC) in the Run Against Torture. To note, the campaign against enforced disappearances goes hand in hand with the campaign against torture. The run was followed by a program where AFAD's Secretary-General, Mary Aileen Bacalso, and FIND's Co-Chairperson, Nilda Lagman-Sevilla gave solidarity messages.

### **UPR PLANNING**

5 July, FIND Office, Manila, Philippines

Discussion of planned activities during the visit to Geneva including lobbying with Missions, side event, meetings with the WGEID and UN CED, oral interventions, and participation in inter-active dialogue was conducted. The activity included a review of the status of the government's response to the issue of enforced disappearances; objective-setting of the planned lobbying activities in Geneva; inputs on how to draft a joint stakeholders' report.

The planning was facilitated by Atty. Cecilia Jimenez, the newly-selected UN Special Rapporteur for Internally Displaced Persons.

### **IN THE NAME OF THE FATHER**

31<sup>st</sup> Year of Disappearance, Fr. Rudy Romano and Levi Ybanez

22<sup>nd</sup> Anniversary of the Flame of Courage

13 July, "Ka Pepe" Diokno Hall, Commission on Human Rights of the Philippines



"In the Name of the Father" was an event organized by AFAD and FIND to commemorate the 31<sup>st</sup> year of disappearance of Father Rudy Romano. The event was held in partnership with the Commission on Human Rights (CHR) and was held at the *Bulwagang Jose "Ka Pepe" Diokno* Hall, within the CHR grounds.

During this event, resource persons Dr. Aurora Parong of the Human Rights Victims Claims Board, Atty. Ricardo Sunga, Independent Expert on People of African Descent, and Atty. Leah Armamento of the CHR, spoke about topics related to transitional justice and enforced disappearance such as rehabilitation, reparations, and guarantees of non-repetition.

After the sharing of the resource persons, an open forum was conducted in order to entertain questions

from families of the disappeared as well as CSOs who work with AFAD and FIND

## **INTENSIFYING COLLECTIVE ADVOCACY AGAINST ENFORCED DISAPPEARANCES AMIDST REPRESSION**

Annual Meeting and Training of Campaign Staff 2016

18-22 July, St. Gabriel's Foundation,  
Bangkok, Thailand



During the four days in Bangkok, participants took part in various events.

In particular, two trainings have been conducted:

1. Training on the UPR by UPR Info: this training complemented a previous one held in Manila, which had been facilitated by Cecilia Jimenez. This training was of fundamental importance given engagements for 2017.
2. Brainstorming session on how to engage with ASEAN, and AICHR in particular. This session was facilitated by Emmerlynn Gil of ICJ.

Moreover, the Annual meeting of campaign staff took place at the same venue. During this meeting country staff shared updates, highlighting the situation in each country and presenting the short- and long-term plans of their organization. A regional campaign plan for the rest of the year was then made.

The meeting also constituted the occasion to hold a solidarity event on Bangladesh and to take solidarity photos for Kashmir.

The objectives of the meetings included the discussion of individual plans, so as to come up with joint cooperation plans at various levels; to enhance capacity building and strengthen solidarity within AFAD's member organizations.

As a result of these meetings, AFAD member organizations enhanced their knowledge on the UPR process and ASEAN mechanisms, they gained insights on the situation of different countries and identified strategies and plans to be carried out for the rest of the year.

## **Mid-Year Assessment**

25-29 July, Peredo's Lodging House,  
Baguio City, Philippines



Together with AFAD's new Treasurer, Sri Suparyati, the Secretariat members undertook their mid-year assessment outside Manila. The Chairperson, Khurram Parvez, was not present due to repression in Kashmir. Per line of work, each presented their report for the first half of the year, then plans for the next half. Policies on security, gender, personnel, finance, and car were also reviewed.

It gave the Secretariat an appreciation of its work as part of its contribution to the over-all work of the whole Federation. It was important for each Secretariat

member to know what each one was doing and what areas of improvement there are. It gave them an opportunity to collectively come up with recommendations on the conduct of its work.

### **Training on Social Media and Online Security**

*16 August, AFAD Secretariat Office,  
Manila, Philippines*

The training aimed at giving all participants information on how to use social media in order to promote the activities of the Federation and increase its visibility. It helped members of the AFAD Secretariat learn how to protect their accounts and communications as AFAD handles confidential information and sensitive data.

The training was facilitated by Mr. Alvin Gallardo.

### **Citizens' Assembly Against The Marcos Burial in Libingan ng mga Bayani**

*14 August, Rizal Park, Manila*



AFAD Secretariat and FIND members joined Martial Law victims, various groups from different sectors and political parties during the protest rally against the burial of the late President Ferdinand Marcos at the Heroes' Cemetery. The activity was meant to urge President Duterte to withdraw his decision allowing a hero's burial for dictator Ferdinand Marcos.

FIND's Chairperson, Rep. Edcel Lagman, was one of the speakers who expressed their opposition to the burial. He stated that, "Marcos is not a hero. He is a villain. He is a tyrant."

### **BREAKING IMPUNITY: A TRIBUTE TO ALL DESAPARECIDOS**

*International Day of the Disappeared*

*30 August, Ateneo Law School, Manila, Philippines*



This event was a tribute to the disappeared and their families in the Philippines and the rest of the disappeared in the world. Together with FIND, AFAD presented its joint Stakeholders' Report for the Universal Periodic Review. Said report was submitted to the Human Rights Council in time of its review of the Philippines in May 2017.

On the same occasion, two Primers on the International Convention for the Protection of All Persons from Enforced Disappearance—the Primer for NGOs and Primer for Governments—were launched.

## **BUHAY AT BABAE, A FORUM ON WOMEN'S DIGNITY AND DEMOCRACY**

**Guest Speaker: Senator Leila De Lima**

*5 October, Commission on Human Rights*



AFAD Secretariat members attended the forum together with women's rights groups and other CSOs. De Lima narrated her experience being a victim of gender-based violence and discrimination. Former CHR chair Loretta Rosales announced that she and other women's rights advocates were filing a letter-complaint with CHR chair Jose Luis "Chito" Gascon, to hold accountable legislators for their plans and abuse.

## **CAMPAIGN ACTIONS FOR KHURRAM PARVEZ, AFAD'S CHAIRPERSON**



AFAD Secretariat, FIND and FJBM continuously

campaigned for Khurram Parvez's release. He was arrested last September 16. Statements and letters were disseminated to the Indian Embassy, UN, funders and other CSOs. Daily social media coverage and printing of T-shirts were done. Also, there were efforts from AFAD's member organizations and International Commission Against Enforced Disappearances (ICAED) members.

## **NATIONAL DAY OF PRAYER FOR THE DISAPPEARED**

*4 December, University of the Philippines-Diliman*



AFAD Secretariat and FIND held a commemoration of the National Day of Prayer for the Disappeared at the University of the Philippines-Diliman on December 4, 2016. A short program was also conducted which was led by AFAD Secretary-General Mary Aileen D. Bacalso and FIND Co-Chairperson Nilda Lagman-Sevilla.

## They Came at Night

by Ron de Vera

They came at night  
To rape our mothers  
They came at night  
To steal our fathers

They came at night  
To hurt our brothers  
They came at night  
To kill our sisters

They came at night  
To keep us silent  
They came at night  
To end our dreams

They stayed all night  
To take our lives  
But we were stars  
So we exploded

They stayed all night  
But then our dreams  
Destroyed them  
One by one

We were stars  
We burned bright  
As we exploded  
One by one

We were stars  
We drowned the night  
Until our light  
Filled the sky

Until the sunrise  
Until our children  
Could play outside  
In the sunlight

## ACCEPTANCE SPEECH

**Asian Democracy and Human Rights Award**  
Mary Aileen D. Bacalso, Secretary-General  
Asian Federation Against Involuntary Disappearances  
Taipei, Taiwan | December 10, 2016



**Her Excellency President of Taiwan,  
President Tsai Ing-wen, Chairman of the Taiwan  
Foundation for Democracy,  
Mr. Su Jia-chyuan,  
President of the Taiwan Foundation for Democracy,  
Mr. Hsu Shu-chien,  
friends, ladies and gentlemen,**

On behalf of the Asian Federation Against Involuntary Disappearances (AFAD), whose member organizations are located in Bangladesh, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, South Korea, Thailand, Timor-Leste and our individual members in Laos and Switzerland, I would like to express our profound gratitude to the Taiwan Foundation for Democracy for the recognition it has given to AFAD for its " *courage, leadership and vision.*" The heartening news of our winning the Asia Democracy and Human Rights Award came at a time when our Chairperson, Mr. Khurram Parvez, was persecuted – arbitrarily detained for 76 days by Indian authorities. Detained on 16 September,

he was released on 30 November – barely more than a week ago.

Our Federation sincerely thanks Ms. Evelyn Balais-Serrano, former director of Forum Asia and Mr. Basil Fernando of the Asian Human Rights Commission for nominating our Federation to this very important human rights award. Their high level of credibility in the field of human rights has contributed in large measure to convincing the Board of Judges to bestow upon us a prestigious award that gives due recognition to our Federation's contribution to the work of human rights in a region that, bereft of regional mechanisms for protection, bears the brunt of transgressions of human rights.

Enforced disappearance is a global phenomenon. It is a regional scourge in Asia as well. The UN WGEID reports 107 countries with outstanding cases of enforced disappearances, majority of which are Asian. It has received 53,273 cases since its inception in 1980,

of which 44,159 from 91 states remain active. These figures are no mere cold statistics. They signify precious lives...

Our Federation believes that this award recognizes the sufferings of the victims of enforced disappearances and the relevance of the struggle against enforced disappearances in the Asian continent that submitted the highest number of cases to the United Nations Working Group on Enforced or Involuntary Disappearances in recent years. In Bangladesh, India, Indonesia, Laos, Nepal, Pakistan, Philippines, South Korea, Sri Lanka, Thailand and Timor-Leste, enforced disappearances occur in the context of poverty, social injustice, authoritarian rule, internal conflicts and war against terrorism including democratic governments. Disappearances are committed by agents of states, who deprive victims of lives and liberty and tear apart the very fabric of the family, the community and the larger society.

For the first time in 18 years, AFAD has been officially awarded for its accomplishments that stem from the sacrifices of thousands of families of the disappeared in Asia and the rest of the world. What AFAD has now achieved also springs from the courage and determination of our human rights defenders. Former AFAD chairperson, Munir was poisoned by arsenic in a Garuda flight from Jakarta to Amsterdam via Singapore in September 2004 and died on arrival in Amsterdam. Our present chairperson Khurram Parvez, was recently released after his more than two months of arbitrary detention in a jail in Jammu, 300 kilometers away from his family. They are among the many human rights defenders, who, in the course of their work, engendered their states which, despite their democratic posturings, violate human rights.

Key outcomes of the Federation were identified during the announcement of the award, which include AFAD's role in the campaign for the Convention for the Protection of All Persons From Enforced Disappearance. The Convention on Disappearances is indeed, a landmark victory in the international struggle against this global scourge of enforced disappearances.

It is all the more important here in Asia wherein governments commit a significant number of cases and where strong regional mechanisms for protection are non-existent. Yet, the number of signatures and ratifications in this region is too few compared to the magnitude of the problem. And in the vast Asian continent, only the Philippines has a domestic law against enforced disappearances, which was made possible through the efforts of our member-organizations in the country.

Learning from the best practices in Central America, by partaking of the rich experience of reunifying stolen children with their biological parents in Guatemala and El Salvador, we are grateful to the Taiwan Foundation for Democracy for the recognition of the victories of our Indonesian and Timorese member-organizations in the continuing process of search and reunification of the stolen children in Timor-Leste with their biological parents. Indeed, the reunification process is the most humanly gratifying outcome any organization working on the theme of enforced disappearance can achieve.

The Asia Democracy and Human Rights Award bestowed upon the Taiwan Democracy Foundation to AFAD will, in no small measure, amplify our voices, fortify our efforts and multiply our gains here in Asia. Coming from Taiwan, which has a common experience of enforced disappearances during an authoritarian rule, this award is a noble expression of friendship and solidarity which mean so much to us.

18 years ago, on 4 June 1998 against the backdrop of enforced disappearances in the Asian region and inspired by the Latin American Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM), AFAD was given birth to by three organizations, the Families of Victims of Involuntary Disappearance (FIND), the Association of Parents of Disappeared Persons in the disputed state of Jammu and Kashmir and the now defunct Organization of Parents and Family Members of the Disappeared from Sri Lanka. It has grown to be a federation of 14 member-organizations from ten countries and 3 individual members from 2 countries.

18 years since AFAD's birth, we are receiving this award which we dedicate to all the disappeared in Asia and the rest of the world. They, who are spiritually present here and now, and in whose names we are receiving this award – they are the *desaparecidos*, the disappeared and in our language, *mga sapilitang winala*. From the bottom of our hearts, we thank you, our beloved disappeared for keeping the flame burning in our hearts as we journey with you amidst seemingly insurmountable barriers. For implanting the seeds of democracy and human rights, for offering the supreme sacrifice of your lives, no words are adequate to thank you for the breath of inspiration, commitment and energy you are giving us in our long and arduous journey to attain our much-cherished dream for a world without disappeared persons. That day will certainly dawn upon us, perhaps not in our lifetime but for the next generations.

To the mothers, fathers, wives, husbands, sisters, brothers, children of the disappeared; From whose bosom the *desaparecidos* were plucked; You on whose

lives, the Asian Federation Against Involuntary Disappearances; was conceived and given birth to; You who, in our day to day work, we link arms with; You who have given meaning and substance to the work of our Federation; For you and because of you, we have gone beyond geographical distance; transcend cultural, language, religious and political barriers; In your honor, we struggle for solidarity in its most concrete terms; For you and equally for your beloved *desaparecidos*, We dedicate this hard-earned award, which should go a long way towards searching for the truth; Overcoming the obstacles to justice; Realizing the much-cherished dream for Reparation, Memory and Non-repetition. This award is dedicated to all you and your beloved disappeared.

The Asian Federation Against Involuntary Disappearances proudly accepts this prestigious award.

Thank you very much.



The four-day visit to Taiwan ends with a meeting with His Excellency Vice President Chen-jen.

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NEPAL: Chudamani Acharya, Advocacy Forum (AF)

NEPAL: Janak Raut, Conflict Victims' Society for Justice (CVSJ)

PHILIPPINES: Edita T. Burgos (OCDS), Free Jonas Burgos Movement (FJBM)

PHILIPPINES: Nilda Lagman-Sevilla, Families of Victims of Involuntary Disappearance (FIND)

BANGLADESH: Adilur Rahman Khan, Odhikar

INDONESIA: Yati Andriyani, The Commission for the Disappeared and Victims of Violence (KontraS)

INDONESIA: Wanmayetti, Indonesian Association of Families of the Disappeared (IKOHI)

THAILAND: Boonthan Verawongse, Relatives Committee of the May 1992 Heroes (RCMH)

THAILAND: Pratubjitt Neelapaijit, Justice for Peace Foundation (JPF)

TIMOR-LESTE: Sisto dos Santos, Asosiasaun HAK

PAKISTAN: Amina Masood Janjua, Defence of Human Rights (DHR)

SRI LANKA: Brito Fernando, Families of the Disappeared (FOD)

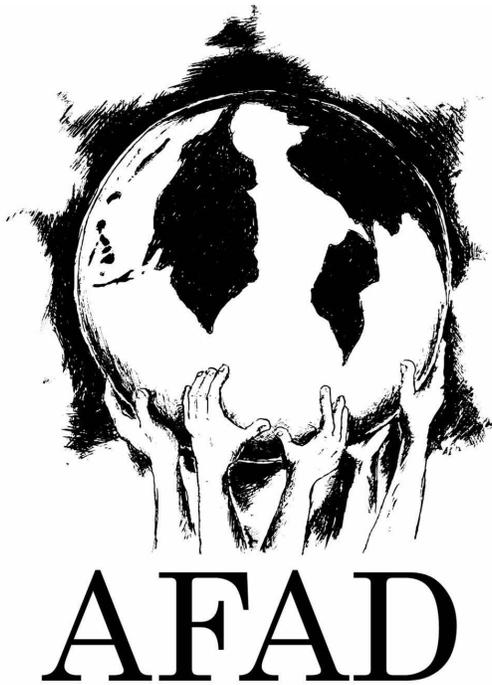
## EXECUTIVE COUNCIL 2017

**CHAIRPERSON:** Khurram Parvez

**SECRETARY GENERAL:** Mary Aileen Diez-Bacalso

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