

■ By **Mary Aileen Diez-Bacalso**

### Until when shall we wait?

ON August 30, 2001, on the occasion of the International Day of the Disappeared, a delegation from the Asian Federation Against Involuntary Disappearances (AFAD) and the Families of Victims of Involuntary Disappearance (FIND) had an audience with then newly-installed President Gloria Macapagal Arroyo. The delegation brought to the president's attention the still unresolved cases of enforced disappearances of the previous regimes (Marcos, Aquino and Ramos administrations). The president promised that in her administration there would be no single case of enforced disappearances.



AFAD and FIND lobbied for the Philippine government's support for what was then a draft United Nations Convention for the Protection of All Persons from Enforced or Involuntary Disappearances as well as for the enactment of the anti-enforced disappearance bill. The president assured the delegation that the Philippine government would support the international treaty and would enact a domestic law criminalizing enforced disappearances. She then referred us to then-Vice President and Secretary of Foreign Affairs, Teofisto

# DISAPPEARANCES CONTINUE WITHOUT LET-UP



Relatives of *desaparecidos* (disappeared) and advocates tireless in their quest for justice.  
(PEPITO FRIAS)



**Former Akbayan Rep. Etta Rosales, Edith Burgos, mother of missing activist Jonas Burgos, and the author pause for a brief chat while enforced disappearances opponents hold vigil for victims of human rights violations (right photo).**

Guingona who likewise promised to do something concrete for the Philippine government's support to the treaty.

Five years after, on December 20, 2006, the UN General Assembly unanimously adopted the Convention. Less than a couple of months later, on February 7, 2007, fifty-seven countries signed the newly adopted international treaty. The number of signatory countries would reach 61 within a few months.

This Convention provides for two new rights: the right to truth and the right not to be subjected to enforced disappearances.

Surprisingly, despite the Philippines' record of being prompt when it comes to signing UN treaties, our country is not one of the signatories to this newly adopted treaty.

The much-needed Philippine domestic law criminalizing enforced disappearances, which was expected to be the first ever law against enforced disappearance in Asia, has never seen the light of day. Recent developments show the likelihood of Nepal being the first Asian country to enact such a law. The bill, which has languished in Congress for thirteen years now, was filed anew when the 14<sup>th</sup> Congress assumed its function, with Rep. Satur Ocampo and Rep. Edcel Lagman

as authors. Supporters of the bill have to start from square one again in their lobby work.

In a meeting with representatives of the Permanent Mission of the Philippines to the United Nations in Geneva during the September 2007 session of the UN Human Rights Council, AFAD renewed its appeal for support. The same response was heard: the Mission had not yet received instruction from Manila. Still, the Mission gave a reassurance that the Philippine government is performing its human rights commitment step by step, as manifested in the repeal of the death penalty, its support to the Convention Against Torture and the approval of the Writ of Amparo.

But there is nothing reassuring about the continued and unabated cases of forced disappearance in the country. As cases of disappearances remain unsolved, the families of the disappeared incessantly ask: Until when shall we wait?

### **The international convention**

The International Convention on the Protection of All Persons from Enforced or Involuntary Disappearance is a universally binding instrument intended to address the problem of enforced disappearances. The final text of the Convention was approved in



**Photos: Asian Federation Against Involuntary Disappearances (AFAD).**

September 2005 by the inter-sessional Open-ended Working Group to Elaborate a Draft Legally-Binding Normative Instrument for the Protection of All Persons from Enforced or Involuntary Disappearances. It was adopted by the UN Human Rights Council on June 27, 2006, approved by the General Assembly in December 2006, and signed by 57 States on February 7, 2007 in Paris. As of this writing, four more governments had signed the treaty. The Convention will enter into force as soon as it is ratified by 20 States.

The Convention states that no person shall be subjected to enforced disappearances under any circumstances, may it be a state of war or a threat of war, internal political stability or any other public emergency. It

strongly holds that enforced disappearance constitutes an offense under criminal law as it considers this widespread and systematic practice a crime against humanity.

Furthermore, the Convention provides for the right of the relatives of the disappeared person and of the society as a whole to know the truth regarding the fate and whereabouts of the disappeared and on the progress and results of the investigation.

State Parties to the new Convention shall cooperate in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

Moreover, the Convention contains a provision that emphasizes the right to form



**Rep. Rosales was one of the main authors of the anti-enforced disappearance bill during her stint in Congress.** Photos: AFAD



and participate freely in organizations and associations supporting the cause of the disappeared.

Finally, the Convention provides that:

- Enforced disappearance is a continuing offense,

therefore statutes of limitation shall not apply until the fate and whereabouts of the victim are established;

- Enforced disappearances constituting crimes against humanity (systematic and widespread practice) are

imprescriptible;

- No one shall be held in secret detention;
- All State Parties shall establish official registers of persons deprived of liberty;
- In cases of enforced disappearance “victim” means the disappeared person and any individual who has suffered harm as a direct result of an enforced disappearance; and
- All victims (in the broad sense stated above) of disappearance have the right to obtain reparation and prompt, fair and adequate compensation. This shall include:
  - restitution,
  - rehabilitation,
  - satisfaction (including restoration of dignity and reputation), and
  - guarantee of non-repetition.

Asian countries do not have a regional mechanism to protect, promote and uphold human rights, be it a Convention, a Commission or a Court. In comparison, Latin America has its Inter-American Convention for the Protection of All Persons from Enforced or Involuntary Disappearances, while Europe has several human rights instruments such as the Council of Europe and the European Convention on Human Rights. Moreover, at

present, not a single country in Asia has a national law criminalizing enforced disappearances. Thus, the Convention, if adopted and ratified, will facilitate the enactment of national legislations criminalizing enforced disappearances and ensure the implementation of the provisions of the future treaty.

A look at statistics will show why Asian countries are in direst need of such mechanisms. Recent reports of the UN Working Group on Enforced or Involuntary Disappearances show that the highest number of disappearances occur in the Asian countries. The cases occurred in the past and continue to happen at present, as in the experience of the Philippines. With the absence of national, regional and international mechanisms criminalizing enforced disappearances, the UN is the only venue which the families of the disappeared in the Asian region can use.

A state that ratifies the said Convention will be compelled to enact the necessary legislation to ensure that it fulfills its international obligations. While it may not have a felt effect in the short-term, it will still be able to oblige States to act in a more humane manner.

The anti-enforced disappearance bill, which is on its 13<sup>th</sup> year since it was first filed by the late Rep. Bonifacio Gillego,

adopts the definition provided for in the international Convention and many of its salient provisions.

The Convention is a clear step in the struggle against impunity. It would ensure indictment of the perpetrators and provide hope to the survivors and the relatives of the victims.

### Under scrutiny: Human rights record of Philippines

At no other time than now should the Philippine government sign and ratify the Convention and make way for a national law criminalizing enforced disappearances. Several times, the government of France, in many joint events with AFAD, called on the Philippine government to do so. As a member of the UN Human Rights Council, the Philippines should manifest its political will to resolve past cases of enforced disappearances and prevent their recurrence. It should do this especially since the Philippine government is once again in the limelight because of its appalling human rights record.

The country faces censure from the international community because of the rising number of cases of human rights violations, particularly cases of enforced or involuntary disappearances and extra-judicial executions.

According to the human rights group *Karapatan*, in a presentation before the National Consultative Summit on Extra-Judicial Killings and Enforced Disappearances called for by the Supreme Court, 188 cases of enforced disappearances have been documented since the Arroyo administration assumed power in 2001.

One of these recent cases is that of Jonas Burgos, 37, a peasant organizer who was forcibly taken by four unidentified men and a woman on April 28, 2007. Despite the filing of a case of *habeas corpus* and the extraordinary efforts of the victim's mother, Jonas is nowhere to be found. The case



**Asian Federation Against Involuntary Disappearances (AFAD) lobbied hard before the United Nations for the ratification of the International Convention on the Protection of All Persons from Enforced or Involuntary Disappearance.**

Photo: AFAD

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..... has been personally filed before the UN Working Group on Enforced or Involuntary Disappearances by Edita Burgos, the victim's mother. The Philippine National Police, alleged to have been responsible for the disappearance, completely denies responsibility and has conducted a smear campaign by accusing the victim of being a member of the New People's Army. Such a desperate effort to justify the disappearance leads to fears for the life of Jonas. There is also widespread concern that the case will become one of the many unresolved cases of enforced disappearances.

Apart from the Burgos case, more recent cases include the still unresolved disappearance of UP students Karen Empeño and Shirlyn Cadapan, as well

as that of Pastor Berlin Guerrero of the United Church of Christ of the Philippines.

FIND's presentation before the same consultative summit show the following data:

1. As of June 2007, there had been 2,023 reported victims of disappearance nationwide (since 1971);
2. The Marcos regime registered the biggest number of reported disappearances (855);
3. Most of the victims come from the basic sectors: farmers (820), workers (254) and youth (149);
4. The AFP registered the highest number of involvement in disappearance cases (1,040) followed by the defunct PC-INP (225) and Marcos' ICHDF (146);
5. Majority of the victims are between 16 and 25 years of age (482) followed by those between 26 and 35 years old (409). The age records of 498 victims were not available;
6. Most of the disappearances occurred in the following regions: Western Visayas (327), Western Mindanao (193), Southern Mindanao (181);
7. The period 1983-1985 (peak of the mass protest against the Marcos dictatorship) recorded the highest

number of disappearances, followed by the period 1987-1989 (during the Aquino Administration's *Total War Policy*);

8. FIND has exhumed 81 remains of victims nationwide.

Thus, from separate presentations of both *Karapatan* and FIND, it is evident that while cases of the past remain unresolved, recent cases continue to occur without letup. Perpetrators enjoy the privilege of impunity that is causing non-resolution of the cases and repetition of the same crimes.

Beyond mere statistics, these cases speak of lives lost, of families broken, of mothers waiting for their disappeared children to come back, of children waiting for their disappeared parents to return, of wives searching without success for their husbands. This crime against humanity violates the most basic of rights and causes emotional and psychological trauma among the surviving kin of the victims.

In response to this alarming phenomenon, the government established the Task Force Usig and later the Melo Commission in order to look into cases of extra-judicial execution and enforced disappearances. Both bodies confirmed these killings and enforced disappearances, implicating General Jovito Palparan Jr. for these crimes. Yet in her 2006 State of the Nation Address, President Arroyo heaped praises on Palparan.

The United Nations Special Rapporteur on Extra-Judicial Killings, Prof. Philip Alston, was invited by the Philippine government to look into cases of extra-judicial killings, which are closely related to enforced disappearances. In many cases, victims first disappeared before they were found dead.

Alton's report to the UN Human Rights Council in March 2007 states:

The impact of my visit, although I have not yet

completed my final report, has been deeply schizophrenic. On the one hand, the President has taken a range of positive initiatives, many of which I list in my preliminary note to the Council. On the other hand, the military and many key officials have buried their collective heads in the sand and announced that business will continue as usual.

More recently, the Secretariat of the UN Working Group on Enforced or Involuntary Disappearances (UNWGEID), in a meeting with the Asian Federation Against Involuntary Disappearances held in Geneva, Switzerland on September 27, 2007, confirmed that the Working Group has made an official request for another visit to the Philippines. Such request is obviously a follow-up of the result of the visit of Professor Alston which confirmed that there are indeed cases of enforced disappearances perpetrated by the military. This request, if accepted by the Philippines, could be crucial to the evaluation of the Philippine Government's performance in the field of human rights as it will be subjected to the Universal Periodic Review by the UN Human Rights Council in April 2008.

In its Resolution 60/251, the General Assembly decided that the Council will, among others, undertake a universal periodic review based on objective and reliable information of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all Member-States. The review shall be a cooperative mechanism based on an interactive dialog with the full involvement of the country concerned and with consideration given to its capacity-building needs. Such a mechanism shall complement and not duplicate the work of



**AFAD member Daisy Valerio, fourth from left, and other international human rights activists pause for a moment of silence for victims of enforced disappearances all over the world.**  
Photo: AFAD

treaty bodies.

It will be recalled that in 1991, upon the invitation of the Aquino administration, the UN Working Group on Enforced Disappearances visited the country. Such visit confirmed cases of enforced disappearances both during the Marcos regime and the then incumbent administration of President Corazon Aquino. The following were the recommendations of the UNWGEID to the Philippine government:

1. Sever the national police from the army and put the police under a different cabinet minister in order to reduce the power in the area of maintenance of public order in the hands of one single body;
2. Disband the CAFGUs - as recommended also by the International Labor Organization, the Peace Commission, the Senate Committee on Justice and Human Rights and various NGOs - or at least restrict their deployment to the defensive action under the supervision of the army in which strict discipline should be enforced;
3. Introduce legislation to narrow powers of arrest by strictly circumscribing which category of public officials may arrest civilians for which offences, in case the

Supreme Court had no immediate occasion to review its rulings on warrantless arrests;

4. Introduce legislation that should provide for civil action against military and police personnel for all offenses involving civilians;
5. Prosecute those responsible for disappearances and take severe disciplinary measures against officers who have failed to enforce adequate measures to prevent disappearances;
6. Fight actively against the practices of "red labeling";
7. Establish regional and central registers of arrest in order to facilitate the search for missing persons;
8. Pursue even more vigorously the clarification of disappearances;
9. Initiate a thorough overhaul of both the law and practice of *habeas corpus*; and
10. Protect witnesses.

Sixteen years later, instead of seeing the above recommendations implemented, it is sad to note that cases of the past remain unresolved. Worse, they continue unabated. With the implementation of the Human Security Act of 2007, the country's local anti-terror law, it is feared that the sorry human rights record of the country will only worsen.

The government, therefore,

should seriously consider the UNWGEID's request for a second visit to the country if it is to manifest its political will to resolve this lingering phenomenon.

With the absence of disclosure of what really happened to victims of enforced disappearances and efforts to establish the identity of their perpetrators, truth becomes a hollow byword. Justice remains elusive as no court has made a breakthrough in prosecuting perpetrators. Redress is unreachable as no victim or family of the victim has been indemnified. Reconstruction of the historical memory of the disappeared will not be fully made possible without the attainment of truth, justice, redress and reparation.

### A ray of hope

Yet the unused powers of the judiciary enabled the Supreme Court to call for a National Consultative Summit on Extra-Judicial Killings and Enforced Disappearances. A breakthrough in the country's history, it not only institutionalized the issue of extra-judicial killings and enforced disappearances, but came up with concrete recommendations to guarantee solutions.

A couple of months later, on September 25, 2007, the Supreme Court approved the draft Rule on the Writ of Amparo. It provides "a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity." To take effect on October 24, 2007, the Rule protects people from extra-judicial execution and enforced disappearances and therefore, gives guarantee for the right to life.

Amidst this dark night of the disappeared, a ray of hope flickers. ■

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