

Panel Discussion on
Enforced Disappearance and the Absence of Law
Concerns on Enforced Disappearance in Thailand and Asia
Thammasat University, Faculty of Law
International Day of the Disappeared
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Thank you for inviting me to be on this panel this afternoon. I will be speaking at this panel, both as a victim (wife of Sombath Somphone, who disappeared 7 years ago in December 2012) and also as a representative of AFAD.

In my presentation, I will focus on 3 areas:

1. What is AFAD and what does it do?
2. What is the situation of ED in the Asian Region, and
3. What actions can we take to address the issues of ED in our society and community

As many of you are probably unfamiliar with AFAD, let me just say something about AFAD. AFAD stands for the Asian Federation Against Enforced and Involuntary Disappearance.

AFAD was founded in June 1998 in Manila, mainly through the efforts of Families of Victims of Involuntary Disappearance or FIND (Philippines), the Association of Parents of Disappeared Persons (disputed state of Jammu and Kashmir), and the Organization of Parents and Family Members of the Disappeared or OPFMD (Sri Lanka).

The founding of AFAD was essentially motivated by the increasing problem of enforced disappearance in Asia, which necessitated a regional response from similar organizations working on a common issue.

AFAD grew from three organizations in three countries, now to become a federation of 14 member-organizations spanning countries of Bangladesh, India, Indonesia, Nepal, Pakistan Philippines, South Korea, Thailand, and Timor-Leste, with two (2) individual members from Geneva (Switzerland), and one (1) from Laos. And we hope that Malaysia's CAGED (Coalition Against Enforced Disappearance) will also become a member in the near future.

In Thailand the organization Justice for Peace founded by Khun Angkhana Neelaipajit, is also a member of AFAD. I want to use this opportunity to congratulate Khun Angkhana. I am sure many of you already know that for Khun Angkhana's HR's work and dedication to the cause of ED, she is the 2019 Recipient of the Ramon Magsaysay Award, Asia's Nobel Prize. So Khun Angkhana, warmest congratulations to you.

The formation of AFAD did not only help bring together organizations and networks working with families of ED, but one of the biggest achievements of AFAD was the role it played in lobbying the UN and negotiating for the passing of an International Treaty for the Protection of all Persons Against Enforced Disappearance in December 2006.

Since the passing of the Convention, AFAD has worked tirelessly to lobby states in Asia to sign and ratify the Convention as a means to hold states accountable to give truth and justice for all victims of ED, and to end the horrendous practice of ED.

Now, let me turn to the issue of Enforced Disappearance in the Asia Region.

I don't think many people know that the practice of enforced disappearance actually dated back to Nazi Germany when Adolf Hitler officially adopted this tactic in an official *Nacht und Nebel Erlass* (Night and Fog Decree) issued on 7 December 1941. It's the official decree from the Nazi Government to use Enforced Disappearance as a tactic of terror. Indeed ED's aim was and still is to spread terror and insecurity within the whole society because victims were spirited away by State agents or by groups/individuals who acted on behalf of the State, and placed outside the protection of the law. The victims are literally disappeared into "the night and fog".

Enforced Disappearance is today still used by many states as weapon of terror to silence political opponents, labor activists, journalists, academics, students, lawyers and anyone deemed critical of the government. ED victims cut across all social economic classes and political affiliations.

In Asia, enforced disappearance was used as a terror tactic during the Suharto regime in Indonesia, the Marcos regime in the Philippines, and throughout the civil war between the Sinhalese and Tamil ethnic groups in Sri-Lanka. And despite the end of the Suharto, Marcos regimes, and the end of the civil war in Sri-Lanka, enforced disappearances continue to take place regularly in these countries today. It also occurs frequently in Bangladesh, India, the disputed states of Jammu and Kashmir, Pakistan, China, Thailand, Vietnam and Laos. And recently, it also happens in Malaysia.

The UN Working Group of Enforced Disappearances (UNWGEID) has since its inception recorded more than 50,000 active cases of enforced disappearances in 88 countries, with Asia reporting the largest number of cases.

AFAD and its member organizations have also been trying to collect and update its data on Enforced Disappearance, but we all believe that the data are incomplete because many victims of Enforced Disappearances do not report the cases.

So just to illustrate, Kashmir reported more than 8,000 cases; Sri Lanka stated that it has more than 5,600 cases "reviewed". In the Philippines, some 2,300 people remained missing since the 1970s when martial law was declared in the country; while Nepal reported about 500 cases, Timor-Leste more than 400, India 350, Indonesia 162, Pakistan 99, Thailand 86, China 30, North Korea 20 and Laos 12. All these are cases with the UNWGEID and as stated, it's only just the tip of the iceberg because people are not reporting for fear of reprisals from authorities.

What is worse is that in many countries in the region, ED has recently become more prevalent. In the Philippines for example, the current war on drugs has led to many more ED cases. In Bangladesh, ED cases are also on the rise with many political opponents being disappeared under the pre-text of being terrorists. And now in Jammu and Kashmir and in Papua, the situation has become even more precarious as the state governments have cut off internet access and media coverage in both these places. Reports smuggled out from these places indicated widespread violations of human rights, including ED, incarcerations, extra-judicial killings, rape and sexual abuses of children and women.

So what can we from civil society, HR organizations, the legal professions and the academic community do to address ED?

Unfortunately, despite the adoption of the UN Convention for the Protection of all Persons Against Enforced Disappearance, countries in Asia not only continue to record the largest number of ED cases, it also remains the region with the smallest number of countries which have ratified the Convention. To date only Cambodia and Sri-Lanka have ratified the Convention. Thailand has indicated that it would be willing to ratify, but it stated that it must first review and revise its law to align its domestic laws with the international laws on ED before it can ratify.

However, the ratification of the ICPED by Asian countries would be important. It would at the minimum needed to help strengthen legal protections against enforced disappearances, because the convention mandates that each state party has the duty to ensure that enforced disappearances constitutes an offense under the country's criminal law, and hold those responsible accountable for the crime. In the absence of a law that criminalizes enforced disappearances, the journey to find truth and justice would be extremely challenging.

We should also do more is to provide help to the families of the victims of Enforced Disappearance. The families and victims of ED need tremendous emotional, psychological, social, and economic support. The act of Enforced Disappearance is so emotionally and psychologically violent that it is very difficult for the families to overcome. Worse, there seems to be no end to their suffering – as many victims never come back and the families are left to wait endlessly in limbo.

More importantly, the families of the Disappeared also often face social and political discrimination from their friends and even family members who want to

dissociate themselves from these families for fear that they would also be politically tarnished. I have experienced this and so have others. I am sure the families of the ED cases here have many testimonies they can give of the kinds of social and political discrimination they face and continue to face.

Last but not least, as most of the disappeared are men, the wives and mothers are left behind to bear the burden of taking care of the family. Most face economic difficulties because the main breadwinner of the family has been taken. Most have difficulty gaining access to the victims' assets for economic survival because there is no proof of death or other documentation to prove their loved ones are disappeared. In some places women have no rights to property, etc. As a result, many victims' families face tremendous economic hardships.

Hence support systems should be set up for the victims to render them economic and social assistance. However, the real situation is that very few civil society groups actually work with the victims and their families. Our experience in AFAD is that the victims and their families often have to come together to form their own associations or organizations to help themselves.

But the bright side of this is that many of the victims have become fierce fighters for human rights and have become stronger in the process. In fact, most of AFAD's member organizations are actually formed by victims' families who band together to support each other and courageously fight for truth and justice for their loved ones. One good example in Thailand is of course Khun Angkhana's organization, Justice for Peace, which has grown in strength and recognition and is extending support to others.

Lastly, we need to publicize the issue of ED more broadly in the public realm and show how unacceptable and unjust it is. Unfortunately, ED still does not receive the attention it deserves even in the work of most HRD, or even within many HR organizations. Public knowledge about ED issues is limited, and even for many HRDs, the issue of ED is still a little distant. All this means that there is a great need to systematically conduct advocacy, awareness and public education campaigns on ED, and to put the crimes of ED on the public consciousness. The advocacy campaign must highlight the heinousness of the crime, the need for justice, and the need to stop the impunity of such crimes.

To you the audience I want to make this plea – ED is a crime and it can happen to anybody – to your family, your neighbor or your friend. Let's pledge seriously to raise our voice and take serious and concerted actions at every venue and occasion to bring an end to this horrendous crime, not only on occasions like today, the International Day of Disappearance, but on a regular basis. Let's educate ourselves and others about the issue, and let's not be silenced.

Thank you.