

Promotion of the Convention: Regional Trends in Asia
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World Congress on Enforced Disappearance - Asian Consultation

Good afternoon from the headquarters of AFAD in Manila.

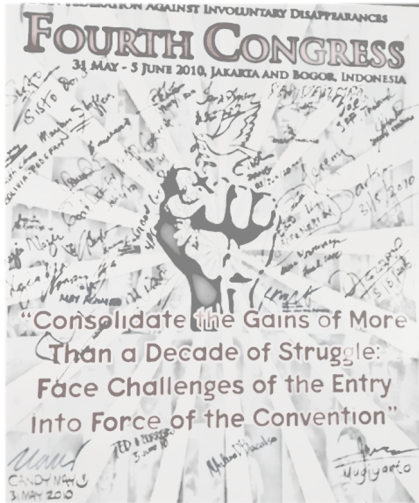
(Backgrounder) The Asian Federation Against Involuntary Disappearances (AFAD) was organized in 1998. Along with representatives from Latin America, Africa and Europe, AFAD became part of the inter-continental forum against involuntary disappearances in April 2000. The group presented the global phenomenon of involuntary disappearances at the halls of the United Nations during the 57th session of the *United Nations Commission on Human Rights. (*later replaced by the UN Human Rights Council in 2006)



In 2003 the first session of the former UN Working Group to Draft a Legally Binding Normative Instrument for the Protection of All Persons from Enforced Disappearance commenced. Alongside FEDEFAM (Latin American Federation of Associations for Relatives of the Detained – Disappeared), AFAD was instrumental in proving that enforced disappearances was a regional phenomenon in Asia as well. By December 2006 the Convention for the Protection of All Persons from Enforced Disappearances was adopted by the UN General Assembly. This was the first universally binding treaty that categorized enforced disappearance as a human rights violation and a prohibited act. This convention entered into force in December 2010.

The Victim-Families and CSOs Push for Ratification and Local Legislation

The direct contribution of AFAD representatives to the Convention is reflected on Article 24, Section 7: *Each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.*



It was in this spirit that AFAD programmed its actions since 2010. Member organizations of victim-families and their human rights networks lobbied for country-specific ratification of the International Convention. The premise being that ratification or accession to the International Convention would lead to a commitment by a state to enact a law criminalizing enforced disappearance – the bottom line.

AFAD focused its campaign for the ratification of the convention by the various Asian countries where it operates. Today thirteen (13) Member Organizations of the Federation are present in ten (10) Asian countries. Of the ten countries, three (3) were signatories (India,

Indonesia, and Thailand); two (2) have ratified the Convention (Republic of Korea, Sri Lanka); and four (4) had enacted their own anti-enforced disappearance law (Philippines in 2012, Sri Lanka in 2018, Nepal in 2018, Thailand in 2023).

In the entire Asian Region, twenty-four (24) countries have yet to act on the Convention. AFAD monitors developments in countries where member organizations operate:

Signatories to CPED (presence of member organization)	State Parties to CPED (presence of member organization)	No Action within country of operation	Domestic Law/s on ED within country of operation
<ol style="list-style-type: none"> 1. Azerbaijan 2. Cyprus 3. India 4. Indonesia 5. Lao People's Democratic Republic 6. Lebanon 7. Maldives 8. Thailand 	<ol style="list-style-type: none"> 1. Armenia 2. Cambodia 3. Iraq 4. Japan 5. Kazakhstan 6. Mongolia 7. Oman 8. Republic of Korea 9. Sri Lanka 	<ol style="list-style-type: none"> 1. Bangladesh 2. Nepal 3. Pakistan 4. Philippines 	<ol style="list-style-type: none"> 1. Philippines 2. Sri Lanka (Office of Missing Persons Act) 3. Nepal (National Penal Code) 4. Thailand

The table above shows that there is no strict sequencing among signatories, state parties and domestic laws on enforced disappearances. Moreover, the resulting domestic laws vary in substance when compared to the Convention in terms of addressing the right to truth, assurances of non-recurrence, penalizing perpetrators, and providing reparation to the victim-families.

The Philippines was first in Southeast Asia to enact such a measure in December 2012. It took the Families of Victims of Involuntary Disappearance (FIND) sixteen years of lobbying - even prior to CPED- for the Philippine Congress to time its legislation. To date the Anti-Enforced Disappearance Act of 2012 has yet to be fully implemented with occurrences still

piling up. Philippines is listed under “No Action” as the state argues that the domestic legislation is enough compliance to the Convention.

Working in Difficult Environments (WiDEn): a trend in Asia

In addition to the aforementioned observations, AFAD is witness to a developing trend of States’ reprisal to human rights defenders and civil society organizations. The rise of authoritarianism in the region had contributed to more than just shrinking the civic spaces for participation and movement of non-government organizations in several countries. In recent years various government regulations and existing criminal laws had proven to be potent weapons for the States to curb dissent and criticism, and ultimately create a chilling effect for the rest of civil society to ponder upon. Negative labelling or red baiting by the governments often lead to arbitrary detention and arrest, and in many instances, extra judicial killing. Populist leaders had demonized the concept of human rights publicly and justified violations with lies and hate campaigns using the government propaganda machinery and institutionalizing the use of social media troll armies. Both the legislative and judicial branches of the subject countries support this mode of governance.

The ominous situation had actually and forcefully affected how civil society organizations operate in their respective countries. In Kashmir, India, for example, practically no CSO can operate under extreme harassment after human rights defenders and journalists have been arrested using their anti-terror law (Unlawful Activities Prevention Act). This law allows authorities to detain individuals for 180 days on mere suspicion alone. In some other countries, laws on anti-money laundering have categorized civil society organizations as medium to high risk and have, therefore, been constantly on the watchlist. Libel and violations of electronic information / social media codes are being used to slap charges against those (HRDs, journalists, lawyers, activists) who criticize and expose critical social issues.

The net effect of all these would be a chilling effect on the civil society community. Tighter regulation and restriction shrinks the civic space. But weaponization of laws (anti-terror laws, anti-money laundering, libel, regulatory laws) and constant surveillance, coupled with misinformation / disinformation / malinformation virtually dissuade any open criticism to the state – that includes monitoring and reporting of human rights violations. All these are ingredients to make truth and justice even more elusive and further the practice of enforced disappearance.

Recommendation



The International Convention for the Protection of All Persons from Enforced Disappearance is yet the best anchor in the fight to end enforced disappearances in Asia and elsewhere. It addresses the most significant aspects of truth and justice. We should not limit ourselves, however, to the expected sequential order of things.

Each of the four pillars of transitional justice, in the case of enforced disappearances, may be addressed in part or as a whole, depending on existing conditions. Especially when working in difficult environments innovative approaches that can lead to the bigger goal of ending ED must be looked into. In fact, even related and complementing policies (i.e., Certificate of Absence Bill) must be made part of the bigger picture.

But for this to take place, we should also be concerned in developing CSO resiliency and defending our human rights defenders (i.e., Human Rights Defenders Protection Bill).

Article 24 of the Convention can serve as guide and direction to us all.

Article 24

1. For the purposes of this Convention, "victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.
2. Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.
3. Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.
4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.
5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:
 - (a) Restitution;
 - (b) Rehabilitation;
 - (c) Satisfaction, including restoration of dignity and reputation;
 - (d) Guarantees of non-repetition.
6. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.

7. Each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.

endED

PROTECTION, **not persecution**, OF HUMAN RIGHTS DEFENDERS

disappearED Asia