

Asia Pacific

Enforced disappearances in the Asia Pacific region must end

The Day of the Disappeared, held on August 30 each year, draws attention to the tens of thousands of victims of enforced disappearance throughout the world. Victims of this crime include not only those subjected to enforced disappearance but their families. Enforced disappearance is a grave human rights violation and a crime under international law. Across the Asia Pacific region the fate and whereabouts of thousands of people are unknown and cases of enforced disappearance continue to be reported. Amnesty International calls for an immediate end to this practice and for all cases to be investigated. In addition, where there is sufficient admissible evidence the suspects must be prosecuted, the truth about the crimes needs to be established and all the victims and their families need to be able to seek and obtain full reparations.

Enforced disappearance, if committed as part of a systematic or widespread attack, amounts to a crime against humanity. Enforced disappearances, according to the International Convention for the Protection of All Persons from Enforced Disappearance, “is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared persons, which place such a person outside the protection of the law”.¹

The suffering of persons subjected to enforced disappearance and their family members continues unabated. Those taken are cut off from the rest of the world, and placed outside the protection of the law. Often they are tortured; many are never seen or heard from again. For the relatives, this means never knowing what happened to loved ones. In most instances, enforced disappearances go unresolved and the perpetrators of this crime operate with impunity. The failure of states to investigate enforced disappearances means that those responsible may never face justice.

This brief report provides information on enforced disappearance in six countries in the Asia Pacific region. Insights into the situation of enforced disappearances are given for India, Nepal, North Korea, Pakistan, the Philippines and Sri Lanka. The report focuses on updates in each of these countries during the past year, highlighting the continuing occurrence of enforced disappearances and the disappointing lack of progress made to investigate and bring to justice those responsible. The report ends with key recommendations to governments in the Asia Pacific region to take immediate steps to end enforced disappearance and bring perpetrators to justice in fair trials in accordance with international law, and which do not impose the death penalty.

¹ International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the UN General Assembly resolution 61/177 on 20 December 2006, Article 2.

India

In March 2008 the Srinagar-based Association of the Parents of Disappeared Persons (APDP) publication, *Facts under Ground*, indicated the existence of multiple graves in the Uri District of Jammu and Kashmir which, because of their proximity to the Line of Control with Pakistan, are not accessible without the specific permission of the security forces. The graves of at least 940 people have reportedly been found. They are believed to contain the remains of victims of unlawful killings, enforced disappearances, torture and other abuses which have occurred in the context of the armed conflict persisting in the state since 1989.

The Indian army has claimed that those found buried were armed rebels and "foreign militants" killed lawfully in armed encounters with military forces. However, the *Facts under Ground* report recounts testimonies from local villagers saying that most buried were local residents.

In June 2008 the residence of Pervez Imroz, a human rights defender, lawyer and head of the APDP, was attacked with gunfire and a hand grenade. The attack was carried out by between eight and 10 persons, reportedly from the Central Reserve Police Force and Kashmir Special Operation Group (SOG). Amnesty International is concerned that the attack was an attempt to halt an ongoing inquiry into unmarked graves being conducted by the International Tribunal on Human Rights and Justice in Kashmir, which is being facilitated by the APDP.

Reacting to the situation in India, Members of the European Parliament (MEPs) passed a resolution in July 2008 calling on the Government of India to conduct an urgent, independent and impartial investigation into the alleged existence of unmarked graves. The Government of India replied that the "resolution ... by a miniscule number of MEPs will no doubt receive the consideration it deserves from the government."

Nepal

The Comprehensive Peace Accord of 21 November 2006 ended a decade of armed conflict in Nepal between the security forces and CPN (Maoist). At least 13,000 were killed and at least 900 people disappeared after they were detained by the security forces. In addition the CPN (Maoist) is responsible for several hundreds of killings, abductions and torture of people perceived to be opposed to their cause.

The Accord expressed commitment to make public the status of all those "involuntarily disappeared" during the conflict period within 60 days of the signing of the Accord. However, almost two years on most of the families of those subjected to enforced disappearance are no nearer to knowing the fate and whereabouts of their loved ones. Moreover Amnesty International is gravely concerned by government initiatives to establish an amnesty for serious human rights violations which threatens to reinforce impunity and undermine the rights of victims.

Many families continue to wait for information on their loved ones. Sanjiv Kumar Karna, together with four friends Durgesh Kumar Labh, Pramod Naraya Mandal, Shailendra Yadav and Jitendra Jha, disappeared on 8 October 2003. The five men were arrested by the armed security services on suspicion of Maoist activities in the Dhanusha district. There have been allegations that Sanjiv Kumar Karna and his four friends were killed in a police station on the day of their disappearance

and that their bodies were buried in a nearby location around that time. The fate and the whereabouts of these young people remain unknown.

North Korea (Democratic People's Republic of Korea)

North Korea's widespread policy of enforced disappearance has impacted the lives of tens of thousands of people from at least 11 countries including its own nationals, and from South Korea, Japan, Thailand and Lebanon. Instances of enforced disappearance cover a period from the Korean War (1950-53) to the present. In the majority of cases the North Korean authorities refuse to acknowledge that these individuals are being detained or to provide information on their fate or whereabouts.

Acute food shortages from the mid-1990s onwards in North Korea have led many to flee across the border into China's north-eastern province, a criminal offence under the North Korean Penal Code. North Korean nationals forcibly repatriated are typically detained and interrogated by North Korean officials from the National Security Agency (NSA). Afterwards, detainees are normally sent to prison camps or other detention facilities where they are forced to work and subjected to beatings, poor hygiene, inadequate food, and a lack of access to medical care. These harsh conditions can result in the death of detainees.

"My brother may already be dead." Son Jong-hun is talking about his brother, Son Jong-nam, a North Korean national who has not been seen or heard from by his family since January 2006. Son Jong-nam was first arrested in China in 2001 by Chinese police and then forcibly returned to North Korea. He was detained by the NSA in North Korea until February 2004. He was tortured while in detention and after his release was unable to work due to poor health. He was arrested again in January 2006, this time at his sister's house in Pyongyang on charges of treason. The charges against him are based on Son Jong-nam's visit to China from May to June 2004. During that time he met his brother Son Jong-hun, who had become a South Korean national. He was sentenced to death and taken to an undisclosed facility.

North Korean officials agreed on 13 August 2008 to re-open investigations into the fate and whereabouts of several Japanese nationals. On 17 September 2002, North Korean leader Kim Jong-il admitted to then Prime Minister Koizumi Junichiro that North Korea had abducted 13 Japanese nationals in the 1970s and 1980s. Five Japanese nationals were allowed to return to Japan. The children and an American husband of one of the Japanese women were also allowed to leave North Korea. North Korean officials claimed the remaining eight Japanese nationals had died. The Investigation Commission on Missing Japanese Probably Related to North Korea (COMJAN) lists 35 unresolved cases as potential abductions by North Korean authorities.

Pakistan

Prior to the February 2008 elections, the government of Pervez Musharraf consistently denied subjecting anyone to enforced disappearance or knowing anything of their fate and whereabouts, despite evidence to the contrary contained in affidavits, witness testimonies and cases documented by Amnesty International and other human rights groups. Attempts by the Supreme Court to trace the disappeared persons were repeatedly obstructed by government officials,

including by moving disappeared persons to other secret locations and failing to comply with court orders.

In October 2006, hopes were raised when Pakistan's Supreme Court began hearing petitions filed by the relatives of the disappeared persons. However, their hopes were crushed in November 2007 following the imposition of emergency rule by President Pervez Musharraf. During this period, President Musharraf dismissed the majority of the judges of Pakistan's higher courts, many of whom had been taking a tough stand on cases of enforced disappearance.

There are at least 563 unresolved cases, according to the Defence of Human Rights, an organization campaigning on behalf of disappeared persons. However, the clandestine nature of the arrest and detention of individuals makes it impossible to know exactly how many people have been subjected to enforced disappearance. People who have disappeared include foreign and Pakistani nationals suspected of links to terrorist groups and political opponents of the Pakistani government pushing for greater rights for their communities, including Baloch and Sindhis. Baloch groups put the number of persons disappeared in Balochistan in the thousands.

The new Pakistan People's Party coalition government has pledged to investigate all cases of enforced disappearance. The fate of disappeared persons has now become inextricably linked with the promised reinstatement of the dismissed judges who had previously been investigating enforced disappearance cases.

Philippines

In 2008, at least ten persons have reportedly been victims of enforced disappearance. Enforced disappearances mostly take place in the context of the armed conflict against communist insurgents, where political activists and members of left-leaning organisations are increasingly labelled as fronts and "enemies of the state". Amnesty International, the UN and other organisations have reported an increase from 2001, with the highest reported cases in 2006. While the numbers have significantly declined in 2007, enforced disappearances continue to occur. By the end of 2007, over 1,100 victims remained missing and at least 250 were found dead according to the Families of Victims of Involuntary Disappearances (FIND) who have documented disappearances since the mid-1980s. Most of those responsible for enforced disappearances have not been brought to justice.

In a positive step, the Supreme Court introduced a law, the writ of Amparo, in October 2007 that provides detained persons and their families an immediate temporary court order for protection against enforced disappearance and compels alleged perpetrators to produce "documents that may contain evidence" and to provide access to inspect "designated land or other property". Under this law the military was forced to release at least three persons from November to December 2007. In February 2008, the Supreme Court issued another law, the writ of habeas data that required government authorities to release information on persons subjected to enforced disappearance and provide access to their files.

Raymond and Reynaldo Manalo were abducted by the military on 14 February 2006 but managed to escape on 13 August 2007. On 26 December 2007 a court decision under the writ of Amparo established the involvement of Master Sergeants Rizal Hilario and Donald Caigas in the abduction

of the Manalo brothers. The Court of Appeals noted that “it is clear...that the participation of Hilario in the abduction and forced disappearance of the petitioners was established. The participation of other military personnel like...Caigas, among others, was similarly credibly established.” It also established that Major General Jovito Palparan, who has been allegedly implicated in many enforced disappearances and killings over the years but has never been charged with any offence, had been aware of the abduction. According to the Court of Appeals, ‘General Palparan’s participation in the abduction was also established. At the very least, he was aware of the petitioners’ captivity at the hands of men in uniform assigned to his command.’

In July 2008, Corporal Rodrigo L. Billones was found guilty of ‘kidnapping and serious illegal detention’ of six workers, suspected to be communist insurgents, in Mindanao in 2000. He was sentenced to life imprisonment. According to a witness from the military the victims, Romualdo Orcullo, Jovencio Lagare, Arnold Dangquiasan, Joseph Belar, Diosdado Oliver, and Artemio Ayala, men in their 20s and 30s, were tortured and their heads were hit with iron pipes, which caused their death. Subsequently their bodies were burned. The judge had requested the Department of Justice to conduct a separate inquiry on the alleged criminal responsibility of other higher commanding officers after a witness from the military gave testimony of their involvement in the enforced disappearance of the six men. The Philippines does not have a law on the criminal accountability of superior officers. The judgement, which may face appeal from higher courts, fell short of a sentence against the military officials for the abduction and killing of the victims.

Sri Lanka

There is a widespread pattern of enforced disappearances in Sri Lanka with several hundred cases reported in the last 18 months alone. In June 2008 the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) noted that in two months 22 people had disappeared, 18 of them in May. Families complain that fear of reprisals prevents many from reporting cases to the official bodies. By the end of 2007, 5,516 cases of enforced disappearances remained unresolved according to WGEID.

15 May 2008 was the last day anyone saw Sebastian Goodfellow, a driver for the aid agency Norwegian Refugee Council (NRC). It is feared he has been abducted, possibly by an armed group operating with the tacit support of the security forces. NRC reported his possible enforced disappearance to the Cinnamon Gardens police station in Colombo. His family reported the same to the police in the eastern city of Batticaloa, where he is normally based. Sebastian’s case is not an isolated one. Professor Sivasubramaniam Raveendranath, the Vice Chancellor of the Eastern University, disappeared from a high security zone in Colombo on 15 December 2006. Reverend Fr. Thiruchelvan Nihal Jim Brown disappeared in Allaipiddy parish in Jaffna on 20 August 2006. The cases of Sebastian Goodfellow, Professor Raveendranath, Reverend Brown and many others remain unsolved and must be promptly and impartially investigated.

Perpetrators of enforced disappearances continue to walk free. Three Presidential Commissions of Inquiry into the Involuntary Removals and Disappearances of Persons were established in the 1990s. They received about 30,000 complaints. The proceedings of the Commissions were not made available to the public and the main recommendations, including the repeal of emergency regulations, were ignored. The Commissions submitted lists of suspected perpetrators but this

resulted in only a handful of convictions. No independent body has been established to investigate these violations, giving perpetrators the confidence of impunity.

Recommendations

As the cases above demonstrate, enforced disappearance and impunity for such crimes is widespread throughout the Asia Pacific region. In the first instance all governments should officially condemn the use of enforced disappearance and make clear to all members of the police, military and other security forces that the practice will not be tolerated under any circumstances. In addition, Amnesty International calls on governments in the Asia Pacific region to:

- immediately end all enforced disappearances;
- immediately reveal the fate and whereabouts of all persons subjected to enforced disappearance;
- immediately release all surviving persons subjected to deprivation of liberty in violation of international law, unless they are charged with a recognizably criminal offence. Those who are not released must be brought promptly before a regular civilian court, charged with a recognizably criminal offence, and if remanded by the court, held in an official place of detention with access to lawyers, family members and the courts and given a fair trial without imposing the death penalty;
- investigate all cases of enforced disappearance and ensure that the perpetrators are brought to justice, in fair trials without imposing the death penalty;
- sign, ratify and implement the International Convention for the Protection of All Persons from Enforced Disappearances and make enforced disappearance a criminal offence under national law. States should also make the declarations set out in articles 31 and 32, recognizing the competence of the UN Committee against Enforced Disappearances;
- Victims of enforced disappearance, which includes the families of disappeared persons, must be assured full reparation for their suffering.