

THE CRIME OF ENFORCED DISAPPEARANCES MUST END

Relevant for: Developmental Issues | Topic: Rights Issues - Human Rights and NHRC

The [democracy movement in Myanmar](#) is at a critical juncture. [On February 1, 2021, the military launched a coup d'état](#) to overthrow the democratically elected government led by Aung San Suu Kyi's party, the National League for Democracy.

The military is committed to suppressing the people's movement, and the police are carrying out unimaginable acts of violence and oppression against those demanding freedom of expression and the restoration of democracy.

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Since the coup, the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) has received reports of enforced disappearances from the family members of victims. There is concern that there will be a plethora of cases of enforced disappearances, torture, arbitrary detention, and even murder if the situation continues to deteriorate.

Myanmar is not the only country in Asia that enforced disappearances are becoming a major concern. There are other leaders and regimes that have the mistaken notion that they can do anything to maintain their power. Regrettably, this includes using enforced disappearances as a tool to suppress the people.

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In China, the Working Group has received numerous reports from family members and concerned civil society organisations that a massive number of enforced disappearances have occurred in the Xinjiang Uyghur Autonomous Region. Under the pretext of re-education to prevent terrorism, members of the Uyghur minority ethnic group are forcibly sent to what Chinese authorities call 'vocational education and training centers', with no information on their whereabouts and fate given to their families.

The Working Group Chair has met many people from the region who are trying to find out what happened to their family members and they are living in fear. It is especially concerning because the basis for such forced disappearances is often very trivial: for example, having relatives living abroad or maintaining international contacts could lead to an enforced disappearance. 'Residential Surveillance at a Designated Location (RSDL)' under Article 73 of the amended Criminal Procedure Law, is used against individuals accused of endangering state security, and is another issue of serious concern. Because RSDL places individuals under incommunicado detention without disclosing their whereabouts, it may amount to a form of enforced disappearance.

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Sri Lanka has experienced more than three decades of domestic conflict, which was accompanied by various forms of enforced disappearances. It seemed that there was some hope developing because of efforts by the government to confront its history. However, recently, the government is weakening initiatives it previously started to search for and investigate enforced disappearances and has now returned to promoting a culture of impunity for these

crimes.

It is also disheartening to point out that enforced disappearances are being committed in the name of counter-terrorism measures. Increasing numbers of enforced disappearances are being reported in Pakistan and Bangladesh, and it does not seem that the situation will improve in the near future.

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Enforced disappearances became widely known to the world in the 1970s and the early 1980s during the 'Dirty War' in Argentina where the Argentine military dictatorship committed the forceful disappearances of some 30,000 of its own citizens while denying that they kidnapped, tortured, and murdered them. To fight against these gross and systematic human rights violations, the UN Commission on Human Rights established the Working Group in 1980 as the first special procedure mechanism of the UN Commission on Human Rights.

An enforced disappearance is defined by several constituent elements. First, it is characterised by the deprivation of liberty, where persons are arrested, detained or abducted against their will or otherwise deprived of their liberty. Second, there are grounds for seeking governmental responsibility for the act, including of officials of different branches or levels of government or by organised groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of, the government. Third, such an act typically occurs in the context of a state's continuous refusal to take relevant action, including refusal to disclose the fate or whereabouts of the persons concerned or refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.

Under the Declaration on the Protection of all Persons from Enforced Disappearance (1992), the Working Group works to assist families of disappeared persons to ascertain the fate and whereabouts of the disappeared and to assist and monitor states' compliance. Additionally, with the assistance of the secretariat members based in Geneva, the Working Group monitors states' compliance, and documented cases of enforced disappearance. The Working Group receives individual petitions from victims' families and civil society members, and channels them through to the relevant governments to demand searches for the disappeared persons, investigations, and punishment for those responsible. The WGEID also presses states to offer remedies, including compensation and a guarantee of non-recurrence of the violations.

Since its inception, the Working Group has transmitted a total of 58,606 cases to 109 states, and as of 2020, the number of outstanding cases under active consideration stood at 46,271 in a total of 92 states. Unfortunately, the number of cases of enforced disappearances in Asian states is not decreasing and we are seeing a rapid increase in some countries.

The Working Group has serious concerns about the impact of COVID-19 on enforced disappearances. Not only have enforced disappearances continued during the pandemic, but it has generated new contexts for enforced disappearances and has reduced the capacity of all actors to take the necessary action to search for and investigate cases of disappeared persons.

To protect the right to be free from enforced disappearances, the international community adopted the International Convention for the Protection of all Persons from Enforced Disappearance in 2006, which became effective in 2010. However, the number of participating states is still very low compared to other treaties. Among 63 member states of the treaty, only eight states from the Asia-Pacific region have ratified or acceded to the treaty. Only four East Asian states — Cambodia, Japan, Mongolia, and Sri Lanka have ratified it.

Asian countries should consider their obligations and responsibilities more seriously and reject a culture of impunity in order to eradicate enforced disappearances. They should also understand that their domestic criminal law systems are not sufficient to deal with the crime of enforced disappearance. An enforced disappearance is a continuous crime that needs a comprehensive approach to fight against it.

While working as an expert for the UN Human Rights Council's Working Group for the past five years, I have come to understand that one of the most tragic dimensions of the crime of enforced disappearance is the suffering that is inflicted on the people who know the victims. Enforced disappearance is a serious crime that goes against the philosophy of humanity. The pain and suffering of the family members do not end until they find out the fate or whereabouts of their loved ones. Bottles of water and facial tissues should always be readily available when interviewing the family members of the disappeared persons because their stories cannot be told without tears.

Mothers looking for sons, wives looking for husbands, and the children looking for parents demonstrate the endless chain of tragedy in our contemporary world. This human atrocity must end immediately. I hope that the international community will strengthen its efforts to eradicate enforced disappearances as soon as possible.

Tae-Ung Baik, Professor, is Chair, UN Working Group on Enforced or Involuntary Disappearances. The article has been co-published with the 'Melbourne Asia Review' (<https://bit.ly/3fdkWjD>), Asia Institute, University of Melbourne

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