Lesson Series 48

Enforced disappearance

Summary

This lesson introduces the new International Convention for the Protection of all Persons from Enforced Disappearance. The crime of forced disappearance is widespread throughout Asia. Impunity of state officials encourages the perpetuation of disappearances and other abuse, and also prevents victims and their families from obtaining redress.

The lesson examines disappearances in various Asian countries through individual cases. The lesson also discusses the implementation of domestic provisions to ensure that the spirit of the new Convention is upheld.
THEME: Enforced disappearance

The Issue

Enforced disappearances are a gross form of human rights abuse. They deprive individuals of their basic freedoms and deny them all access to the law. Disappearances leave victims’ family members in limbo, not knowing the whereabouts or condition of their loved ones. International law considers systematic disappearances to be a crime against humanity.

Enforced disappearances are rife in many Asian countries. In most of them however, there is no law prohibiting or punishing enforced disappearance. This lack of legislation grants impunity to the perpetrators and prevents victims from obtaining redress.

The Lessons

Lesson 1 discusses the occurrence of enforced disappearances in various Asian countries, examining systemic as well as social factors involved.

Lesson 2 introduces the new International Convention for the Protection of all Persons from Enforced Disappearance, with suggestions for effective implementation.
Lesson 1

This lesson examines the disappearance of persons, systems and social discourse in various Asian countries.

A. Disappearance of persons

On 12 July 2006, the AHRC reported on three cases of enforced disappearances that had been brought to its attention in Pakistan. All three victims were allegedly taken by military and police personnel without due process, and have not been heard of since. In one case, the Sindh police arrested Mr Mehar Uddin Marri, a journalist based in Badin district, Sindh province from the house of the Federal Minister of State Mr Mohammad Ali Malkani on 2 July 2006. Mr Marri was part of the delegation called by the minister to discuss land disputes in Badin. During the meeting, the minister accused Mr Marri of being ‘anti-government’ and of associating with the Balochistan resistance movement. Officers from the Chohar Jamali and Sujawal police stations then cordoned off the minister’s home and arrested Mr Marri. Since his arrest his whereabouts are unknown, while the police deny arresting him in the first place. His family fears that Mr Marri might be in army custody and subject to brutal torture.

Similarly, police from Hub district, Balochistan province arrested Mr Mir Mitha Khan Marri on 13 January 2006, accusing him of involvement in the resistance movement. Although he claimed that he had no political affiliations, he was forced to accompany the police officers. Although the Hub Police Station House Officer, the Inspector General of Police and Chief Minister of Balochistan assured Mr Marri’s family that he would be returned home, until today his whereabouts are unknown. According to an anonymous source in the army, Mr Marri is in army custody in Punjab province. His family believes he was arrested because he has the same surname as the Marri tribe, which has been organizing the Balochistan resistance movement.

In another case that occurred on 26 June 2006, chairperson of the Sindh Nationalist Forum and a publisher working at the Peace Publishing House, Mr Asif Baladi was abducted by unidentified armed men from Share Faisal Road in Karachi. Mr Baladi had allegedly received several threatening phone calls before he went missing. The Sindh Nationalist Forum was planning to hold the Sindh Message Conference in August and September aimed at raising the issue of army brutality in Sindh province, with the participation of several international experts. On June 27 and 28, his family received phone calls from Mr Baladi, who told them to give his passport to two men who would come to the house. On June 29, two unidentified men collected his passport and identity card from his house without revealing their identity. His family suspects that Mr Baladi might be in army custody, but his whereabouts remain unknown.
According to local human rights groups, more than 600 persons have been reported as disappeared from Sindh and Balochistan provinces in the first half of 2006. Among them, more than 20 persons were found dead after allegedly being tortured [See further: AHRC UA-227-2006, 12 July 2006].

Thailand is another country in Asia with a large number of disappearances. While victims and their families have largely kept silent on this issue in the past, slowly they are making their voices heard. On 30 August 2006, the International Day for the Disappeared, the Asian Legal Resource Centre (ALRC) together with the Working Group on Justice and Peace, a local human rights group, submitted to the United Nations details of 12 disappearances in southern Thailand, arising from seven incidents between 2002 and 2005. In each of the cases, the Thai government has paid the families 100,000 Thai Baht (USD 2500) per disappeared person, but has never given any information about what happened to the accused, or conducted credible investigations to identify and hold the perpetrators accountable.

Since the government crackdown in the south in 2004, more than 1300 people are estimated to have been killed. Significant numbers of disappearances, extrajudicial killings and other abuses committed by the police and military are also believed to have occurred; however, documenting these has been difficult due to overwhelming fear and security concerns [See further: AHRC UA-286-2006, 1 September 2006 and UG-010-2006, 5 July 2006].

On 30 August 2006, the International Day of the Disappeared, the AHRC lamented the widespread disappearances and impunity throughout Asia.

In Sri Lanka and Indonesia the scars left by a history of disappearances have not been healed. A series of commissions documented the tens of thousands lost from 1989 to the early 1990s in Sri Lanka, but no perpetrator has ever been prosecuted. The families obtained some paltry compensation. In Indonesia the state has not gone any way towards resolving questions over disappearances or addressing the demands of families. Neither of these countries has done anything to prevent the prospect of future mass disappearances if conditions again deteriorate to the point that the authorities find such a policy expedient.

In Thailand and Pakistan, disappearances are ongoing. Opponents of the Pakistani government, journalists, writers, lawyers and others have been vanishing at an alarming rate: some 600 are reported to have fallen victim to the practice in 2006 alone. In the last five years 4000 persons are estimated to have been disappeared after arrest. Some bodies that have been recovered later show signs of severe torture. Still the country’s military government is continuing to deny any knowledge of these incidents. In Thailand, a handful of families in the south have been paid some compensation by the government, but there have been no prosecutions and service personnel there have been indemnified under a law that is a blatant violation of the country’s international obligations. Meanwhile, disappearances are known to be going on all over the country and yet a proposal by the forensic science institute for a missing persons investigation centre has been subjected
to constant obstructions by the police and other parts of government. The lack of sincerity with which the Thai government has approached the problem of disappearances has been typified in the case of human rights lawyer Somchai Neelaphajit: two-and-a-half years since his disappearance and despite huge pressure and recognition by the entire country—including the prime minister—that the police abducted and killed Somchai, the authorities are no closer to revealing what happened to him and obtaining justice for his family than they ever were. Even a recent attempted abduction of one of the country’s National Human Rights Commissioners was met with shameful silence by the national administration.

Like in the south of Thailand, the northeast of India is a heavily militarised area where disappearances are reported to be going on constantly. Protest in Manipur, Assam and Nagaland against the Armed Forces Special Powers Act is muzzled by undocumented arrest, torture and killing. Those who survive are kept in detention under another severe law, the Unlawful Activity (Prevention) Act. Complaints against the armed forces are not taken up by civilian courts. Even the Supreme Court of India has failed to address the ongoing disappearances by turning down challenges to the legality of the laws used in the region.

Nepal has been among the lead countries in the world for forced disappearances during recent years, but political change has brought new hope and heavy expectations. By the reckoning of the National Human Rights Commission of Nepal in its first five-year report, some 1700 had been disappeared throughout the period of conflict between the armed forces and Maoists up to April 2006, when the absolute king was toppled by a popular uprising. During the conflict, and particularly since 2001 when the army was unleashed under new emergency regulations, the security forces used arbitrary arrest and detention, torture and other gross abuses together with disappearances under guarantees of complete impunity. Since April the incidence of reported abductions has dropped considerably; however, around a thousand cases remain unresolved [AHRC AS-201-2006, 29 August 2006].

The disappearance of any person is a violation of the basic rights to life, freedom and due process. Every individual has the right to be free from arbitrary arrest, abduction or torture, and all those accused of crimes have the right to a fair trial and due process. When persons are disappeared, when their identity is callously taken away, a gross act of abuse is committed. This abuse is suffered not only by the disappeared individuals, but also by their families.

Disappearances cannot occur without state recognition and involvement. This means that governments have official policies for conducting enforced disappearances. Such policies require the disabling of certain institutions and removal of controls.
B. Disappearance of a system

Together with the disappearance of persons, they must also disappear a system; the system of rule of law, of human rights. This must start with the institutions meant to protect and defend their fellow citizens, the police and army. Without regard for the usual due process procedures, policemen and soldiers are now told to ‘disappear’ people. They no longer keep records of the arrests and detention of victims. Criminal investigation becomes a mockery. Postmortem procedures are ignored in order to ensure that bodies can be disposed of secretively. Not only is this done by overlooking present laws and regulations, but also by introducing new ones. The phenomenon of manipulating law as a means of social control can be seen throughout history, from Nazi Germany, apartheid South Africa, to Pinochet’s Chile (as discussed in Lord Steyn’s Attlee Foundation Lecture of 11 April 2006 www.attlee.org.uk/Transcript-Steyn.doc).

Similarly, in Sri Lanka, where as many as 60,000 persons were abducted and killed without a trace between 1989 and 1992, two preceding indemnity acts and emergency regulations removing all limitations to the powers of law enforcement officers, ensured that no one was ever punished. In Bangladesh an indemnity law was introduced to protect the police and other state officials responsible for atrocities under “Operation Clean Heart” in 2002 from the courts. In the words of the UN Special Rapporteur on extrajudicial killings, the emergency decree operative in southern Thailand makes “impunity look like the official policy” of the government.

Once criminal investigation procedure and the behaviour of law enforcement agencies are removed from rule of law norms and standards, only anarchy and violence is possible. Officers who are used to engaging in illegal arrest, detention, torture and killing cannot go back to earlier norms. They will be unable to perform any tasks of normal law enforcement with a sense of conviction. They will have developed physical and psychological skills to deny the rule of law rather than to uphold it.

A programme of disappearances cannot be confined to a particular locality, no matter the intention of its planners. Once abductions begin, the state as a whole must deny them. Internal distrust and confusion increases and causes permanent damage to the functioning of government. The cumulative result of disappearances is a deep cynicism in society. The value of life and truth, prospects of government adhering to standards of transparency and accountability, and sense of basic human decency are all gravely undermined.

This can most clearly be seen in countries such as Sri Lanka or Indonesia, where disappearances of decades ago still haunt both society and state. When enforced disappearances are not punished, a social climate is created which has no trust in institutions, and thereby there is no social stability. Furthermore, such instability and impunity can only lead to further violence, as presently occurring in Sri Lanka. During the 1980s, armed men travelling in white vans without number plates abducted thousands of persons who were never seen again. These vans are now reappearing in the Jaffna peninsula. Just after midnight on 11 September 2006, 15 armed men
broke into a house on the Jaffna peninsula. After much searching and questioning, they forcibly took one of the family members away with them. The men had come in a van and two motorbikes, mostly dressed in black.

Not surprisingly, the person’s whereabouts are not known since then, even though complaints have been made to the police and other authorities. The abducted person has not been seen or heard of ever since although the family members have made complaints to the police and all other authorities. Will he become another statistic, one more addition to the hundreds of disappearances reported in recent months from the North and the East, as well as an addition to the tens of thousands of people who have disappeared in Sri Lanka in the recent decades?

According to the Human Rights Commission of Sri Lanka, 419 persons have disappeared from the Jaffna peninsular since December 2005. Not all of these disappearances are attributed to ‘armed men in white vans without number plates’, which is usually the military. The Liberation Tigers of Tamil Ealam (LTTE) and other militant Tamil groups alleged to be working with the military have also been accused of such abductions.

In the above case however, family members suspect that the military was either directly or indirectly responsible. Such complicity comes as no surprise; reports of the Commissions appointed to investigate earlier disappearances within the country place the responsibility squarely on the shoulders of state agencies.

The AHRC notes that the Sri Lankan state continues to use enforced disappearance as a legitimate means to deal with ‘terrorism’. When opponents of the government, such as the LTTE or the (Janatha Vimukthi Peramuna or Peoples’ Liberation Front) use violence, the state sees fit to respond with similar violence, including extrajudicial killings and enforced disappearances. The notion that the violence of terrorism must be dealt with by equal or more ferocious violence is an unquestioned part of the state ideology, regardless of which government is in power.

In the latter part of the 1980s, then deputy minister of defence Ranjan Wijeratne, was known as a leader who openly advocated and carried out this policy; disappearances during that period are officially cited at 30,000, while non-state sources cite higher numbers. Today, it is commonly accepted that only a handful of these victims were in fact insurgents, although even then they should not have been disappeared. The reports of the Commissions of Disappearances mentioned above indicated that most cases of disappearances happened after securing arrest, which often took the form of abduction.

For leaders like Ranjan Wijeratne, disappearances were the most practical method of dealing with insurgency; he told the parliament that if this was to be done through legal means, it would take too much time. Enforced disappearances do away with the necessity for arrest and detention, which can create many legal difficulties; the keeping of political prisoners, which is another awkward predicament; conducting trials, which requires security arrangements, and other situations that create practical problems for state agents. Disappearances also ensure
the erasure of all evidence as they most often end in the secret disposal of bodies. The mistaken arrest of innocent persons in the use of this ‘easy method’ is unavoidable according to Ranjan Wijeratne, who termed such incidents as ‘mere excesses’.

This ideological position has never been clearly repudiated by any successive Sri Lankan government. Furthermore, Sri Lanka today has no government authority with the capacity to efficiently investigate disappearances such as the one mentioned above. For several years the AHRC has criticized the deep impasse in the state’s criminal justice system which makes it impossible for any gross abuse of human rights to be credibly investigated or prosecuted. There have been no attempts to cure this situation [See further: AHRC AS-213-2006, 13 September 2006].

Under these circumstances, the recent conviction in Argentina of Julio Simon is an inspiring judgment.

On August 4 a court in Argentina sentenced Julio Simon to 25 years in prison. Simon, who is now 65, was a police officer who in late 1978 was among those responsible for the abduction and killing of José Poblete and Getrudis Hlaczik. The couple was held incommunicado for at least a month before being killed. Their baby daughter was given to the family of an army officer, and it was not until she reached adulthood that her real identity was discovered. Simon and others like him were granted immunity from prosecution for the abduction and killing of government opponents from 1976 to 1983 under subsequent amnesty laws, but in 2005 the country’s Supreme Court declared the amnesties illegal. Simon is the first police officer to have been sentenced for his part in the forced disappearances that rocked the country through those years, due in large part to the lifelong vigorous struggle by families of victims to obtain justice for their loved ones. Another senior police officer is facing similar charges in connection with a further six cases.

The Asian Human Rights Commission (AHRC) joins the applause that was heard throughout the courtroom in Buenos Aires when Simon was convicted last Friday, and which is now echoing around the world. As many as 30,000 persons were abducted during the seven-year “Dirty War”, Poblete and Hlaczik being but two of them. However, to obtain a landmark judgment is a significant event and it can be expected that it will open the way for further progress, not only in Argentina but wider afield too [AHRC AS-187-2006, 8 August 2006].

C. Disappearance of social discourse

The conviction of a criminal such as Julio Simon is possible not only when there is a proper legal system in place, but when there is a certain social climate. Systems are not made on their own, nor do they function as such. In fact, systems tend to be greatly affected by the social climate. In a large number of Asian countries, legal systems are ineffective, fall short of international standards and in some they may even be non existent. In such situations, public demand for change and effective implementation of international standards is crucial to the
initiation of reform. On the other hand, even when there are adequate legal systems in place, without public demands for effective prosecution of criminals, they are unlikely to occur.

So why is there an absence of a social climate condemning disappearances—and other human rights abuses—in the majority of Asian countries? The answer can be found in the lack of coherent social discourse regarding these issues, which is perpetuated by missing terms of reference. Societies are held together by commonly understood words. When meanings of words are held in common, people work towards shared objectives. When meanings are lost, they become confused; institutions malfunction and the consequences can be disastrous.

For instance, a judge is by norm a person who is trained to assess and decide disputes based upon an impartial reading of the law and the standards of civilized society. The decisions given by the judge must be rational, explained and open and records of these are kept to show how a decision was reached. The decisions of a judge may relate to life and liberty, and therefore, they must be made with the greatest care. These are among the most serious decisions put before society.

A judge defends society’s values: above all, the value of life. Although not appointed as a guardian of morality—but rather only as a guardian of the law—a judge resolves moral disputes by preventing vengeance from becoming the means by which conflicts are resolved. The decision of a judge is not the same as the decision of a mob. It is not the same as the decision of a policeman. For this reason, it occupies a special place.

Where forced disappearances or extrajudicial killings occur, the power of decision making that is normally with the judge is passed to the hands of police or military personnel, or persons working for them. They act as the arbiters of life and liberty. They do not keep records of what they do. They act secretly. They do not reveal anything to the public or other concerned government authorities and groups. They do not follow an established procedure. There is no way to appeal against them. In effect, they are usurping the powers of a judge.

When the executive or military take the powers of judges, people become confused about the meanings of different words. The distinct and common meanings of ‘judge’, ‘policeman’ and ‘soldier’ are lost. There is uncertainty and instability. Sensible discussion about social problems becomes difficult, perhaps even impossible.

Forced disappearances or extrajudicial killings attack the foundations of judicial power. Its entire authority is cast into doubt. When the state can detain and kill people without reference to due process, the judiciary becomes irrelevant, and even ridiculous. The judiciary depends upon public confidence for its survival and effectiveness. It cannot survive if it is nothing more than the butt of jokes. When it is reduced to this, it cannot function to protect morality through adherence to law.

Without the judiciary to protect morality, there is an inability to distinguish between good and bad behaviour. Of course, ideas about good and bad vary from time to time and place to place. Here the importance of morality is not what is defined as good or bad per se but how society uses this distinction to create a common
understanding—hence the need to distinguish between that which is more serious and that which is less serious.

The loss of any distinction between serious and trivial decisions, that is, the ability to make moral choices, undermines the meaning of life itself; what meaning does the question “Life or death?” hold when there is no distinction between what is serious and what is trivial? When the distinction between life and death itself is reduced to casual considerations, the entire meaning of life, a society and its traditions is also trivialized. In this way people are diminished. Without the morality attached to the value of life, no other forms of morality are valid. This is the ultimate effect of forced disappearances or extrajudicial killings on a society, which can be seen in the Asian societies described in the previous sections.

Questions For Discussion

1. Do you know any victims of forced disappearances? Are there many such victims in your country? Do these victims share any common characteristics (such as occupation, ethnicity or political affiliation)?
2. Are people speaking out against disappearances? If not, why?
3. In your opinion, what is the relationship between your country’s legal system and enforced disappearances?
4. Discuss what you can do to address this serious human rights abuse.
Lesson 2

This lesson studies the new International Convention for the Protection of all Persons from Enforced Disappearance, how it came into being and what needs to be done to ensure its success.

A. Historical overview

The Working Group on enforced or involuntary disappearances was established by the UN Commission for Human Rights at its 1980 session. The Group’s mandate was to act as a channel of communication between families of disappeared persons and the governments concerned, with a view to ensuring that individual cases were investigated and the whereabouts of the disappeared persons clarified. In 1992, the UN General Assembly adopted the Declaration on the Protection of All Persons from Enforced Disappearances, and the Working Group was given the task of monitoring states’ compliance with it. The Declaration was an attempt to place states under an obligation to take effective measures to prevent and terminate acts of enforced disappearance. Since its creation, the Group has submitted more than 50,000 individual cases to governments in more than 90 countries.

On 30 August 2006, the International Day of the Disappeared, the Group stated its deep concern at the large number of reports of disappearance submitted over the past year; many reports noted the disappearance of children, and in a few cases even people with mental and physical disabilities. Human rights defenders, relatives of disappeared persons, witnesses and legal counsel continue to be harassed and threatened. The Group stressed that ‘anti-terrorist’ activities are being used by an increasing number of governments as an excuse for not respecting the obligations of the Declaration on the Protection of All Persons from Disappearance [http://un.by/en/hr/releases/04-09-06-13.html].

The AHRC has frequently pointed to the lowering of international legal principles since the initiation of the ‘war on terror’. Led by the rhetoric of the United States of America, many Asian countries have also enacted repressive national security legislation and made room for practices heretofore considered illegal and against the interests of protecting human rights and dignity. New patterns of enforced disappearance are among such practices [For further discussion see: AHRC AS-50-2003, 10 December 2003].

It is under these circumstances that the AHRC joins in the welcome to the new International Convention for the Protection of All Persons from Enforced Disappearance. The treaty was approved by the new UN Human Rights Council at its first session in June 2006, and is awaiting adoption by member states at the 2006 session of the General Assembly. After 25 years of campaigning by families of disappeared persons, the new Convention
contains an absolute prohibition on forced disappearances in both peace and war time. It also establishes an international mechanism to supervise states’ compliance with their obligations and an urgent appeals procedure that can be used where forced disappearance is suspected. These and other aspects of the treaty are discussed in the following section.

B. Convention

Definition of disappearance

Article 2

For the purposes of this Convention, enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty committed 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 person, which place such a person outside the protection of the law.

Criminal offence and punishment

Article 4

Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.

Article 5

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

Article 7

1. Each State Party shall make the offence of forced disappearance punishable by appropriate penalties which take into account its extreme seriousness.

Prevention of disappearances

Article 2

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.
Article 6

1. Each State Party shall take the necessary measures to hold criminally responsible at least:

   (a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance...

2. No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance.

Article 17

1. No one shall be held in secret detention.

Article 23

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention...

2. Each State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.

Remedies

Article 8

2. Each State Party shall guarantee the right of victims of enforced disappearances to an effective remedy during the term of limitation.

Article 11

3. Any person against whom proceedings are brought in connection with an offence of enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings. Any person tried for an offence of enforced disappearance shall benefit from a fair trial before a competent, independent and impartial court or tribunal established by law.

Article 12

1. Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the
allegation promptly and impartially and, where appropriate, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill treatment or intimidation as a consequence of the complaint or any evidence given.

2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 shall undertake an investigation, even if there has been no formal complaint.

Article 24

1. For the purposes of this Convention, “victim” means the disappeared person and any individual who has suffered harm as a 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...

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 covers material and psychological harm and, where appropriate, other means of reparation such as:

   (a) Restitution;
   (b) Rehabilitation;
   (c) Satisfaction, including restoration of dignity and reputation;
   (d) Guarantees of non-repetition.

Execution

Article 26

1. A Committee on Enforced Disappearances (hereafter referred to as the Committee) shall be established to carry out the functions provided for under this Convention...

Article 30

1. A request that a disappeared person should be sought and found on an urgent basis may be submitted to the Committee by relatives of the disappeared person or their legal representatives, their counsel or any person authorized by them, as well as by any other person having a legitimate interest.
C. Implementation

Legal aspects

In order for this convention to be successful, it is essential that all those countries that ratify it enact corresponding domestic legislation. Without this, there is no way for the conventions’ provisions to be taken seriously.

Domestic legislation must also ensure that there are credible institutions of investigation. In the majority of Asian countries, criminal investigation is largely carried out by the police, in a shoddy manner. There are no independent bodies with the resources or authority to conduct proper investigations. (See Lesson Series 41 on a detailed study of the police in Asia). Without such institutions however, there is no way to fulfil the obligations undertaken by ratifying the convention; not only must laws be enacted, but institutions and personnel to enforce those laws must also exist. (The previous Lesson Series on witness protection showed that Thailand’s Witness Protection Act was of little use when its Witness Protection Office had such limited resources and mandate.)

There should also be in place certain rapid actions to deal with enforced disappearances. Civil society groups must take responsibility to promptly and effectively document cases and send the information to human rights bodies and relevant government agencies. The government, upon receiving such information, should immediately condemn such actions through public statements, and ensure that efficient investigations are conducted urgently.

Reparation is an important aspect of providing remedies. For this reason, it must also be codified in law, with the relevant procedures set out to decide on suitable amounts of reparation, taking into account financial and other concerns. At present, reparation for human rights abuses in the majority of Asian countries is awarded arbitrarily, and tends to be a paltry amount.

Social aspects

As was mentioned in Lesson 1, a legal system on its own is not enough to protect against abuses or provide redress. Together with legal remedies there must be societal remedies as well. Two components to such remedies would be commemoration and prevention. Both of these are related to the concept of reparation, which is not just about financial compensation, as noted in article 24 (5) of the new convention.

Commemoration

It is important for society to recognize the wrong that was done to certain individuals, not only for the rehabilitation of the victims and their families, but also to remind society of how it failed in protecting them. Preserving the memories of these persons and the events that occurred is thus essential. This is particularly important in the cases of disappeared persons, whose families have no physical remains of their loved ones,
which is very traumatic.

To respond to this trauma, the AHRC created a ‘cyberspace graveyard’ for the victims of disappearances throughout Asia in December 1998. For these persons who have no graves, an online graveyard was set up with their names, photos and whatever details possible: www.disappearances.org/. The right of burial is a primary right of all human beings. When bodies are thrown in rivers or burned by the roadside without the knowledge of their families, a gross act of indecency is committed.

To commemorate and mourn the disappeared persons in Sri Lanka, on 4 February 2000 the Monument for the Disappeared Persons at Seeduwa, Sri Lanka was officially inaugurated.

This Monument for the Disappeared calls on the sympathy of the people, and enables members of victims’ families to gain confidence and come out of their fear and seclusion. People now gather at the Monument to commemorate the loss of their loved ones; every year, religious events are held there, with close cooperation and understanding among different groups...

The Monument for the Disappeared speaks to how it is important to break silence and get public recognition of an issue. A monument is a very good way to do this, because it captures public imagination, and is much better than someone writing a book, for example. A monument symbolises not only remembrance of an event, but frustration at the failure of justice ['Bringing the Convention against Torture to India’, article2, vol. 3, no. 2, April 2004, p. 29].

In fact, the Sri Lankan disappearances monument was inspired by a similar monument in Kwangju, South Korea built for the victims of the May 18 uprising.

In May 1999, for the first time, family members of the victims of democratic movements and enforced disappearances from Sri Lanka, Thailand, Philippines and East Timor visited Kwangju and met the family members of the victims of the Kwangju uprising. They took part in commemorative activities with the Kwangju mothers and fathers who had lost their children, forging a new link between the victims of the Kwangju uprising and the victims of other tragedies in Asia.

These visits by family members of the victims of disappearances from various Asian countries to Kwangju continue to this date. Inspired by the Kwangju spirit and the monument erected for the Kwangju victims, Sri Lankan activist Jayanthi Dandeniya who lost her fiancé and two brothers during state-sponsored disappearances in Sri Lanka in the late 1990s, initiated the construction of a monument for the disappeared in Sri Lanka. The inauguration ceremony of this monument in February 2000 was attended by Chung Su-man, the chairperson of the May 18 Uprising Bereaved Families Association. From then onwards persons from Kwangju annually attend the commemoration activities at the monument in Sri Lanka, in some instances even sponsoring the event (See Lesson Series 36 & 37 for detailed information on the uprising, the civil society response and its implications for South Korea and the rest of Asia).
Until today, there continue to be numerous events and activities organized in Kwangju to commemorate the uprising and the brave victims who gave their lives to the cause of democracy. These include annual events targeted at teaching school children the value of human rights, peace and democracy, such as speech and art competitions as well as a peace pilgrimage (to Kwangju). There are also education programs for teachers about the Kwangju uprising. Similarly, the May 18 Academy was established to conduct trainings and workshops for human rights activists from Kwangju and other areas. Koreans living abroad have also been invited by the May 18 Memorial Foundation to visit Kwangju and participate in workshops on the Kwangju uprising and democracy in Korea. Other organizations in Kwangju including the May 18 Memorial Foundation and Kwangju Citizens’ Solidarity have been sending Kwangju youth to various Asian countries as interns to share the Kwangju spirit and to learn from the experiences of other countries.

It is only with such commemoration that prevention of such abuses is possible. It is only when the victims are remembered that society can say ‘this will never happen again’ in our future.

Questions For Discussion

1. What are the strengths and weaknesses of the International Convention for the Protection of all Persons from Enforced Disappearance? Are there any points you feel have been left out?
2. Discuss how you could organize a campaign in your country to pressure the government to ratify the convention. You may think of including the following groups in your efforts:
   a. Families and victims of disappearances
   b. Religious and faith based groups
   c. Intellectuals and professionals
3. Discuss activities to commemorate disappearances in your society.