

# FOCUS

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### Editorial

#### Missing

There are likely thousands of people who went missing in some parts of Asia over the years. Families are still waiting for information about their missing loved ones, with a weak hope that their governments would extend help.

People suspect the involvement of state agents in most of these cases, making the missing persons victims of enforced disappearance.

Are the concerned governments willing to find out how these people disappeared and where they are at the moment? If they had been killed, would their bodies be found and given back to their families? In case they are still alive, will they be able to return home and rejoin their families?

Are the current remedy or justice mechanisms capable of holding accountable those responsible for the enforced disappearances?

Is it realistic to expect the concerned governments to muster the political will to formally recognize the existence of enforced disappearances, do whatever is necessary to give justice to the victims, and take appropriate measures to prevent their occurrence in the future?

Many questions exist, and answers remain elusive.

# From a Dark and Brutal History: Enforced Disappearances in Timor-Leste

Sisto dos Santos

Timor-Leste has a dark and brutal history. After four hundred and fifty years of Portuguese colonization and the Japanese military invasion during World War II, Timor-Leste achieved just eleven days of unilaterally declared independence before it was invaded by Indonesia on 7 December 1975. This came to be known to, and commemorated by, most Timorese as “Invasion Day.”

During the occupation period from 1975 until its brutal end in 1999, between 186,000 and 250,000 people were killed or went missing caused by the human rights violations committed or ordered by the Indonesian military. The fate of another eight hundred fifty-three people is still unknown.

The circumstances of disappearances include the following:

- The Indonesian military forcibly took people who, until now, have never returned;
- The Indonesian military forcibly moved the population and people disappeared in the process;
- The Indonesian military captured and detained people who were never released.

These actions were most often associated with massacres such as the 1983 massacre in Craras village, now referred to as the “widows village,” and the 1991 Santa Cruz massacre. In addition, as many as four thousand five hundred children aged between eight and fourteen years were abducted by the Indonesian military and brought to Indonesia as part of *Tenaga Bantuan Operasi*, a labor support operation. Many of these children—their whereabouts unknown and links to their families severed—remain in Indonesia to this day.

While no new cases of enforced disappearance occur recently, the impacts of the past cases are still very much part of many peoples’ everyday realities. Hence, the families of the disappeared, most of whom remain in the dark about the whereabouts of their loved ones, continue to cry out for truth and justice and seek information about their disappeared relatives. Oftentimes, the families struggle to meet their basic necessities; and for most, each day is a new fight for survival. This situation further aggravates their oppression and suffering. Socially, they have lost an important connection with their loved ones that makes them feel that their lives are empty. This affects their cultural identity

because when Timorese people lose a person in their family, they lose a part of their social and cultural history. Without confirmation of their loved one’s whereabouts, families are unable to say goodbye and hold candlelight remembrance ceremonies – acts which are essential in their grieving process. This prevents the missing person’s presence or spirit from moving on and leaves the victims’ families in a kind of limbo with this shadow over their lives and homes. Many relatives of the disappeared are left in despair not knowing if justice would ever be achieved.

## Attempts at Finding Justice

In the aftermath of independence, the government established several mechanisms in a bid to understand and address the violations and suffering of the people. In 2002, the Commission for Reception, Truth, and Reconciliation (CAVR – *Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste*) was created to uncover the truth. During its three years of operation, CAVR interviewed more than ten thousand people including victims, combatants, and witnesses of the conflict and human rights violations. This process created a strong expectation that justice would

be achieved—i.e., the perpetrators would be held accountable and the victims would regain their dignity. As a result, the victims demonstrated enthusiasm and enormous courage in sharing their stories with the public, regardless of the circumstance of the crime.

The 2005 CAVR report was a step forward with many positive recommendations, including one particularly relating to the missing children. The CAVR recommended that Indonesia and Timor-Leste should continue to uphold the Memorandum of Understanding (MOU) signed in December 2004. Facilitated by the United Nations High Commissioner for Refugees (UNHCR), the MOU guarantees children's right to freely access information about their families in order for the children to determine their future without any intimidation. According to the MOU, both countries must help vulnerable people living in rural areas and children who were separated from their families and who are now likely in their adulthood, find information as to the whereabouts of each other, and give assistance to reunite them.

In 2003, the United Nations (UN) Special Panel for Serious Crimes issued an indictment against retired General Wiranto. The Timorese considered the indictment a particularly significant moment because then General Wiranto was the top Indonesian official responsible for security before and after the popular consultation referendum was held in 1999. However, because of formal procedures and a lack of political will from

the governments of Timor-Leste and Indonesia as well as the UN Security Council, Wiranto was never arrested and this indictment was never pursued. Without UN's political will and an effective mechanism in Timor-Leste to address crimes against humanity, an environment of impunity persists in Timor-Leste and Indonesia.

Shortly after, Indonesia established the almost farcical *Ad Hoc* Human Rights Tribunal for Timor-Leste, which proved to be little more than a thinly veiled attempt by Indonesia to demonstrate to the international community that it was serious in addressing human rights violations. In 2005, the Governments of Indonesia and Timor-Leste created the Commission of Truth and Friendship (CTF). The CTF, however, focused more on establishing good relations between the two countries rather than prioritizing accountability. Therefore, while recognizing the existence of these human rights violations, its failure to identify the perpetrators once again denied justice to the victims. The final reports of both CAVR and CTF, which were handed to the National Parliament, recommended the need to gather information about the whereabouts of the disappeared. Since then, minimal concrete action has been taken to implement these reports' recommendations. Then in 2009, Timor-Leste's *Provedoria dos Direitos Humanos e Justiça* (PDHJ – Ombudsman for Human Rights and Justice) and Indonesia's Komisi Nasional Hak Asasi

Manusia (Komnas HAM – National Commission on Human Rights) signed another MOU on the issue of enforced disappearances and the security along the border between East and West Timor. Without serious follow-up, the MOU expired.

The presidential and parliamentary elections of 2012 once again brought new hope for justice to the victims and their families—a hope that finally an end to their long-standing pain and suffering was possible. During his election campaign for the presidency, Taur Matan Ruak often referred to the lamentation of the widows and orphans as his reason for running for the public office and declared that he wanted to play his part in putting an end to their tears. It was this connection to the people that led to his election as the fifth President of the Democratic Republic of Timor-Leste.

As President, Taur Matan Ruak holds substantial power to push forward the legislative process to dignify the victims; but this will not be an easy process. Politics and government machinery present considerable impediments to real progress. The open criticism of the veterans' pension scheme by the President, a former veteran and head of the National Defence Force (FFDTL), was viewed as a positive sign. This pension scheme has resulted in social injustice and inequality, especially for human rights crime victims who similarly sacrificed for the freedom of Timor-Leste.

However, his criticism on the attitude of greed and hunger for money among veterans was a clear signal that human rights organizations must emphasize in their advocacy that the victims' reparation was about giving dignity, not mere financial compensation to the victims, with the hope of improving their situation.

After more than six months, hope began to wane. Little tangible action had been taken to change or improve the situation of the victims. Their remaining hopes rest on a set of draft laws outlining the establishment of a Memorial Institute and a reparation system. While generally accepted by the members of the Parliament, it has not yet undergone the detailed article-by-article deliberation required before enactment.

### **Supporting the Victims and their Families**

In order for decision-makers and the public not to forget these horrific crimes and for these crimes never to be repeated, it is important that victims and families form a unified voice in advocating for justice. The *HAK Association* or *HAK (Hukum Hak Asasi dan Keadilan – Law, Human Rights and Justice)* has been organizing the victims of all past crimes since 2001 toward this end.

In 2009, together with the International Center for Transitional Justice (ICTJ), the HAK held a national congress of victims. The congress established the National Association of Victims with sub-associations in every district of

Timor-Leste. The National Association of Victims aims to support victims in their advocacy efforts and help meet their everyday needs.

One success story is that of Eliza dos Santos from Liquiça, whose husband is still missing. For Eliza, every day was a struggle during the time when the HAK first met her. Now, she serves as coordinator of the National Association of Victims in her district and leads in organizing public discussions and memorials, and in lobbying the parliament and religious leaders.

The HAK has been holding various activities to support the victims: discussions with affected families, commemoration of the massacre days, filing petitions to the government, issuing statements, and organizing demonstrations to make the voices of the families heard. The HAK has also been working to identify vulnerable victims. The HAK and other partners have been organizing the victims, building their skills, seeking educational opportunities, and establishing livelihood projects such as sewing, selling of local products, and other enterprises.

Commemoration days provide an important opportunity for families to remember their loved ones and preserve their memories though their deaths have not been confirmed yet. In 2012, the HAK organized the victims and the families to commemorate the following massacre days, during which many people disappeared and were never found: the Marabia-Dili massacre of 1980—a

tragedy which resulted in seventy-two disappearances; Craras-Viqueque massacre of 1983; Maliana massacre of August 1999; Tumin-Oecusse massacre of August 1999; Santa Cruz massacre of November 1991; Oedaberek-Manufahi massacre of 1975; and, Invasion Day massacre on 7 December 1975.

The HAK, together with other partner organizations, has been documenting cases of enforced disappearances with the aim of producing the story of the disappearances told from the perspective of the victims and their families. The information collection, including details about the families of the disappeared, also aims to determine the level of involvement of state authorities in the disappearance cases. To date, the HAK has collected information on ninety-two disappeared persons from seven massacre sites, including Marabia-Dili, Liquica Church, Ainaro, Craras in Viqueque, Mehara in Lautem, Polres Maliana in Bobonaro and Aileu.

These advocacy activities contribute to increased community enthusiasm and awareness on the need and difficulties in seeking the return of the disappeared. They are important in pressing the Parliament on the enactment of a law on the proposed Memorial Institute that would oblige the State to find out the whereabouts of those who disappeared during the Indonesian occupation. Such law would make the State responsible for the fulfillment of the victims' right to reparation and the investigation of the

cases to determine how the disappearances occurred and who were the perpetrators.

The HAK and its partners continue to pressure political leaders to pay attention to the victims and to finalize the report of the CAVR. From 2008 to 2009, the HAK was part of the steering committee that drafted the legislative bills on the Memorial Institute and victim reparations. The HAK, with its partners, continue to lobby the Members of Parliament, as well as officers of political parties and veterans, to ensure their understanding of the importance of the pending bills. The HAK has also approached religious leaders, particularly Catholic church bishops, in an effort to encourage them to work towards convincing Members of Parliament, the Government, and Prime Minister Xanana Gusmao, to prioritize and approve these legislative proposals.

A supportive statement from the General Commander of the National Defence Force (F-FDTL) issued on 25 June 2012 provided indication of a slight shift in key political support. However, given the international nature of the issue, justice will remain elusive despite action at the domestic level without bilateral cooperation and political will.

The HAK and its partners in Indonesia, particularly ICTJ-Jakarta, *Ikatan Keluarga Orang Hilang Indonesia* (Indonesian Association of Families of the Disappeared [IKOHI]), and Commission for the Disappeared Victims of

Violence (KontraS), have been working together to lobby and pressure the Indonesian Ministry of Foreign Affairs to uphold the MOU between the PDHJ and Komnas HAM in addressing border security and enforced disappearances.

Upon the invitation of the government, Chair-Rapporteur Jeremy Sarkin and member Jasminka Dzumhur of the United Nations Working Group on Enforced or Involuntary Disappearances (UN WGEID) visited Timor-Leste from 7 to 14 June 2011 to review the government's action in addressing enforced disappearances and the collection of data needed to clarify the outstanding cases in the country. The UN WGEID team met various government officials including the then President José Ramos-Horta. The visit report recommended the enactment of the proposed law on a "framework for the national reparations programme and the draft bill establishing the public Memory Institute" and reiterated the implementation of the CAVR recommendations.<sup>1</sup>

The HAK, together with members of The Timor-Leste National Alliance for an International Tribunal or ANTI, delivered a letter to His Excellency Ban Ki-Moon, United Nations Secretary-General during his Timor-Leste visit in August 2012. The letter contained a specific appeal related to achieving justice for past crimes and bringing to account the perpetrators, who until now, have not faced any credible legal process that

would bring justice for victims in Timor-Leste.

Importantly, from this work on past crimes, the HAK has been able to forge three additional civil society partnerships with the Judicial System Monitoring Programme (JSMP), Lao Hamutuk, and ACbit in addressing the problem of enforced disappearance. Given the linkage with these organizations, the strength of civil society's collective voice is increased and the possibility of progress is made more tangible.

The HAK was optimistic that the law on the Memorial Institute would be enacted in 2013. But the bill is still pending at the Parliament till the first quarter of 2014. The stance of the Parliament has always been more in favor of the veterans rather than the victims. Now that the law on veterans' pensions has been passed, it is time that victims' needs are addressed. The passage of draft law on the Memorial Institute will present a new opportunity to genuinely pursue the issue of enforced disappearances, while getting reparations for the victims may take a while longer.

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## Balochistan's Missing Persons\*

Kiran Nazish

In Balochistan, a resource-rich province of Pakistan, thousands of innocent civilians, suspected militants and activists are missing. Locals say the missing individuals have been abducted by Pakistan's military and associated forces as a way to suppress and subjugate the Baloch people. There is disagreement on the actual number of missing persons. An association for peaceful protest formed by some of the families of those missing, called the International Voice for Baloch Missing Persons (IVBMP), says that up to eighteen thousand Baloch are currently unaccounted for, of whom more than two thousand were killed between 2001 to 2013. That figure is much higher than data from other non-governmental organizations and human rights organizations, but the IVBMP says it will be publishing details of all its data early next year.

In October 2013, in an effort to draw international attention to the humanitarian crisis, the IVBMP began a long march from Quetta to Islamabad. About twenty families of persons believed abducted and killed by the Pakistan military, mostly women, are taking part. Unfortunately, the march has received scant coverage from media, either within Pakistan or internationally.

*The Diplomat* has spoken to dozens of victims and interviewed IVBMP members

during their march near Quetta and Karachi.

IVBMP was formed to speak out about missing sons and brothers, urging the media and government to investigate. It has coordinators in every district in Balochistan, who report and record every abduction, torture and murder. They then send the data to human rights groups, media and the United Nations.

Although the abductions started in the 1970s, Mama Qadeer Baloch says, "Things got worse in 2001, when General Pervez Musharraf came to power. He started a much [...] speedier policy against Baloch activists and also martyred a respected and beloved Baloch leader, Nawab Akbar Bugti." Qadeer says that abductions, hatred and political murders all increased around this time.

Later, under then President Asif Ali Zardari, bloodied, mutilated bodies were dumped in different parts of Balochistan, claims Qadeer.

He recalls that during Zardari's term, then Interior Minister Rehman Malik visited Balochistan and warned of a crackdown. Qadeer continues, "Frontier Corps (FC) uniformed men, come, pick up our sons. And the ISI [Inter-Services Intelligence] and MI [Military Intelligence] also come in civil clothing, raid our homes, pick up our boys from colleges, schools and neighbourhood.

Whenever they fear our students will fight back, they bring in the FC's uniformed forces to control the situation. They have treated our educated lot the most horribly. This includes doctors, thinkers, lawyers, professors, and especially journalists."

Qadeer's son, Jaleel Reki Baloch, 23 was killed three years after he was taken. He was abducted from the front door of his home in Quetta, on 13 February 2009, after returning from Friday prayers with friends. Eyewitnesses told *The Diplomat* that there were four unmarked cars with two FC pickup trucks. Nearby shopkeepers, Reki's friends, cobblers, vegetable vendors and other people in the neighborhood all witnessed the abduction, which they claim was done by the ISI. Reki was a political activist working towards a Baloch movement for liberation. His abduction and killing present an example to many other Baloch activists, and many locals say that they asked their sons to leave such political groups when they saw his mutilated corpse return home three years later.

Reki's body was riddled with bullets. Holes had been drilled into his bones and joints. Burn marks were strewn across his back. Eyewitnesses accused the ISI, as did the then chief

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# Asylum Seekers, Refugees and Human Rights: The Case of Australia

Australian Human Rights Commission\*

For over twenty years successive Australian governments have adopted various policies aimed at deterring asylum seekers from arriving by boat. During this period mandatory immigration detention and offshore processing have been key policies in attempts to reduce the number of boat arrivals.

Australia's mandatory immigration detention system was introduced in 1992. Amendments to the *Migration Act 1958* (Cth) (Migration Act) in 1992 required the detention of certain 'designated persons' and prevented any judicial review of detention.<sup>1</sup> These amendments did, however, impose a two hundred seventy-three day time limit on immigration detention.<sup>2</sup>

In 1994 the mandatory detention regime was expanded to apply to all non-citizens in Australia without a valid visa, and the two hundred seventy-three day time limit was removed.<sup>3</sup> At this time a system of bridging visas was introduced to allow persons to be released from immigration detention in certain circumstances.<sup>4</sup>

The next major change in Australia's policies regarding asylum seekers occurred in 2001, prompted by what became known as the 'Tampa crisis'.<sup>5</sup> In September 2001 the

Australian Government introduced a suite of legislative measures known as the 'Pacific Solution'.<sup>6</sup> Under this policy, asylum seekers who arrived by boat were transferred to offshore processing centers on Nauru and Manus Island in Papua New Guinea (PNG) where they were detained while their asylum claims were processed.

In 2008 the Pacific Solution was dismantled by the Australian Government and the remaining asylum seekers detained on Nauru were resettled in Australia.

In September 2012 the Australian Government reinstated third country processing for asylum seekers who arrive unauthorized by boat after 13 August 2012. This followed the release of the report of the Expert Panel on Asylum Seekers, which recommended the recommencement of regional processing as part of a package of measures to deter asylum seekers from making boat journeys to Australia.<sup>7</sup> After designating Nauru and PNG as 'regional processing countries',<sup>8</sup> in September 2012 the Australian Government began transferring asylum seekers to Nauru, and in November 2012 to Manus Island.

On 19 July 2013 the Australian Government announced a Regional Settlement Arrangement (RSA) with the Government of PNG.<sup>9</sup> Under the RSA asylum seekers arriving unauthorized by boat after 19 July 2013 will be transferred to PNG for processing and resettlement (if found to be refugees). If found not to be refugees they will be returned to their country of origin or a country where they have a right of residence.

On 3 August 2013 the Australian Government also signed a new Memorandum of Understanding with Nauru which provides that the Nauruan Government will enable individuals whom it has determined are in need of international protection to settle in Nauru, 'subject to agreement between Participants on arrangements and numbers'.<sup>10</sup>

## Global and Domestic Context

In 2012, 17,202 people arrived by boat to Australia.<sup>11</sup> From January 2013 to 30 June 2013 a further 13,108 people arrived.<sup>12</sup>

Despite the recent increase in boat arrivals, Australia still receives very small numbers of asylum seekers, by international standards.

As at 31 December 2012, there were 45.2 million people in

the world who had been forcibly displaced from their homes as a result of persecution, conflict, generalized violence and human rights violations – the highest number in eighteen years.<sup>13</sup> During 2012 an average of 23,000 people per day were forced to abandon their homes due to conflict and persecution.<sup>14</sup>

The United Nations High Commissioner for Refugees (UNHCR) has reported that at the end of 2012 globally there were 15.4 million refugees.<sup>15</sup> The escalating crisis in Syria was one of the key drivers of the increase in the refugee population in 2012. Last year the conflict in Syria forced 647,000 people to seek refuge in Egypt, Iraq, Jordan, Lebanon, Turkey and other countries in the region.<sup>16</sup>

In 2012 Australia received 15,963 applications for asylum,<sup>17</sup> which constituted 2.2 percent of the total number of applications for asylum submitted worldwide.<sup>18</sup> The number of persons seeking asylum in 2012 equated to less than 7 percent of Australia's immigration intake,<sup>19</sup> and 4 percent of the overall growth in Australia's population in that year.<sup>20</sup>

In 2012 the majority of the people who arrived by boat in Australia and lodged asylum applications were from Afghanistan.<sup>21</sup> The top five source countries for asylum seekers who arrived by boat and made asylum applications are Afghanistan, Sri Lanka, Iran, Pakistan and Iraq.

### Mandatory Immigration Detention

It is mandatory under the Migration Act for every non-citizen who is in Australia without a valid visa to be detained, regardless of his or her individual circumstances.<sup>22</sup> Once detained, unlawful non-citizens must remain in detention until they are either granted a visa or removed from Australia.<sup>23</sup>

The majority of unlawful non-citizens are detained in closed immigration detention facilities. Of the 9,375 people in immigration detention on 5 September 2013, 6,579 (or 70 percent) of these people were held in secure immigration detention facilities.<sup>24</sup> The remaining 2,796 were in community detention.<sup>25</sup>

Of the people being held in closed immigration detention facilities in Australia as at 31 August 2013:

- 6,136 people (75 percent) had been detained for three months or less
- 1,881 people (23 percent) had been detained between three and twelve months
- 189 people (2 percent) had been detained for longer than one year.<sup>26</sup>

As at 13 September 2013 there were twenty-five secure immigration detention facilities operating in Australia, including four on Christmas Island.<sup>27</sup> A map produced by the Department showing the location of all these facilities is at Appendix 3 of the full version of the report.<sup>28</sup>

There are four different categories used to classify immigration detention facilities:

- Immigration Detention Centre (IDC): high security detention facility
- Immigration Residential Housing (IRH): secure detention in a domestic environment
- Immigration Transit Accommodation (ITA): closed detention facility which has less intrusive security measures than an IDC
- Alternative Place of Detention (APOD): place designated by the Department for detaining unlawful non-citizens who are assessed as posing minimal risk to the Australian community.

### Human Rights Issues

The Commission has raised concerns over many years that the system of mandatory detention leads to breaches of Australia's international human rights obligations. For instance, Australia has binding obligations under article 9(1) of the *International Covenant on Civil and Political Rights* (ICCPR)<sup>29</sup> and article 37(b) of the *Convention on the Rights of the Child* (CRC)<sup>30</sup> to ensure that no one is subjected to arbitrary detention.

The Commission's concerns about Australia's system of mandatory detention are shared internationally.<sup>31</sup> The United Nations (UN) Human Rights Committee has repeatedly found Australia to be in breach



of its international obligations under article 9(1) of the ICCPR.<sup>32</sup>

According to the UN Human Rights Committee, the prohibition on arbitrary detention includes detention which, although lawful under domestic law, is unjust or disproportionate.<sup>33</sup> Therefore, in order for the detention of a person not to be arbitrary, it must be a reasonable and necessary measure in all the circumstances.<sup>34</sup>

Under Australia's system of mandatory detention, the detention of an unlawful non-citizen is not based on an individual assessment that the particular person needs to be detained. Persons who are detained cannot seek judicial review of whether or not their detention is necessary. Under the Migration Act there is no time limit on how long a person can be detained.

These aspects of Australia's immigration detention regime can result in people being subjected to prolonged and indefinite detention, in breach of Australia's international obligations.

The Commission has repeatedly raised concerns about the significant human impacts of mandatory immigration detention, including the deterioration of the mental health of detainees.

The Commission has long recommended that, instead of requiring the mandatory immigration detention of broad groups of people, a person should only be detained if it is shown to be necessary in their individual case. Further, time

limits for detention and access to judicial oversight of detention should be introduced to ensure that if a person is detained, they are not detained for any longer than is necessary.

A further concern is that the conditions for and treatment of people in immigration detention must comply with Australia's international human rights obligations. Key among these is the obligation under article 10 of the ICCPR to ensure that all persons who are detained are treated with humanity and respect for their inherent dignity. Guidelines for the implementation of this obligation and other human rights standards are contained in the Commission's publication *Human rights standards for immigration detention*.<sup>35</sup>

The Commission has conducted several visits to immigration detention centers to monitor conditions of detention.<sup>36</sup> The Commission has raised concerns about the conditions in many of Australia's immigration detention facilities and has found that many are not appropriate places in which to hold people, especially for prolonged periods of time.

Australia's mandatory detention system has also attracted criticism due to its cost. In 2011–2012 immigration detention cost the Australian taxpayers 1.235 billion Australian dollars.<sup>37</sup> It has also been questioned whether mandatory detention effectively deters people from seeking asylum.<sup>38</sup>

## Concluding Note

President of the Commission Professor Gillian Triggs states:<sup>39</sup>

Australia has resettled around 800,000 refugees since World War II, building one of the world's most successful multicultural societies. Today, Australia continues to have a generous resettlement programme and, along with the United States and Canada, has ranked consistently among the world's top three resettlement countries.

While we have seen a significant increase in asylum seekers seeking protection in Australia in recent times, Australia's share of asylum applications remains a very small fraction of the global total (about 2.2%). I urge the Australian Government to ensure that all asylum seekers and refugees are treated humanely regardless of their mode of arrival, and to continue to uphold our proud history of providing protection to some of the world's most persecuted and vulnerable people.

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\* This article is a slightly edited excerpt from the report entitled *Asylum Seekers, Refugees and Human Rights: Snapshot Report*

2013, issued by the Australian Human Rights Commission. The full report can be downloaded at [www.humanrights.gov.au/publications/asylum-seekers-refugees-and-human-rights-snapshot-report](http://www.humanrights.gov.au/publications/asylum-seekers-refugees-and-human-rights-snapshot-report).

## Endnotes

- 1 *Migration Act 1958* (Cth), s 183.
- 2 See *Migration Amendment Act 1992* (Cth), s 3, which inserted (then) s 54Q(2)(b) into the *Migration Act 1958* (Cth).
- 3 See *Migration Reform Act 1992* (Cth), s 13. Note that s 2 of the *Migration Laws Amendment Act 1993* (Cth) deferred the commencement of certain amendments contained in the *Migration Reform Act 1992* (Cth) until 1 September 1994.
- 4 See *Migration Reform Act 1992* (Cth), s 10.
- 5 For a description of the Tampa crisis see, for example, M. Crock, B. Saul and A. Dastyari, *Future Seekers II: Refugees and Irregular Migration in Australia* (2006), pages 113-117.
- 6 See *Migration Amendment (Excision from Migration Zone) Act 2001* (Cth) and *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001* (Cth).
- 7 A. Houston, P. Aristotle and M. L'Estrange, *Report of the Expert Panel on Asylum Seekers*, Australian Government (2012). At <http://expertpanelonasylumseekers.dpmc.gov.au/report> (viewed 1 October 2013).
- 8 Under the *Migration Act* certain documents must be tabled with the designations of 'regional processing countries'. Copies of the designation documents tabled by the Minister are available on the Commission's website at [www.humanrights.gov.au/transfer-asylum-seekers-third-countries](http://www.humanrights.gov.au/transfer-asylum-seekers-third-countries).
- 9 Regional Resettlement Arrangement between Australia and Papua New Guinea (19 July 2013). At [www.refworld.org/docid/51f61a504.html](http://www.refworld.org/docid/51f61a504.html) (viewed 1 October 2013). See also Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to, and assessment and settlement in, Papua New Guinea of certain persons, and related issues (6 August 2013). At [www.dfat.gov.au/geo/png/joint-mou-20130806.html](http://www.dfat.gov.au/geo/png/joint-mou-20130806.html) (viewed 1 October 2013).
- 10 Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues (3 August 2013). At [www.dfat.gov.au/issues/people-smuggling-mou.html](http://www.dfat.gov.au/issues/people-smuggling-mou.html) (viewed 1 October 2013).
- 11 See J. Phillips and H. Spinks, *Boat arrivals in Australia since 1976*, Parliamentary Library Research Paper (updated 23 July 2013), Appendix A. At [www.aph.gov.au/about\\_parliament/parliamentary\\_departments/parliamentary\\_library/pubs/bn/2012-2013/boatarrivals](http://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2012-2013/boatarrivals) (viewed 1 October 2013).
- 12 See Phillips and Spinks, above.
- 13 United Nations High Commissioner for Refugees (UNHCR), *UNHCR Global trends 2012, Displacement: The New 21st Century Challenge* (19 June 2013), page 3. At <http://unhcr.org/globaltrends/june2013/> (viewed 1 October 2013).
- 14 UNHCR, above, page 5.
- 15 UNHCR, above, page 3.
- 16 UNHCR, above, page 14.
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# Human Rights in Overseas Business Operations: The Case of Korean Companies

## Korean Transnational Corporation Watch

The Korean Transnational Corporation Watch (KTNC Watch) undertook a field investigation in 2013 regarding human rights and the operations of Korean companies in several countries. Its research teams visited a number of local sites and interviewed workers, Korean company officials, residents in the areas surrounding the company premises, and government officials in the Philippines, Myanmar and Uzbekistan.

### Philippines

Korean companies have been doing business in the Philippines since the 1960s. At present, a large number of Korean companies are in diverse areas of business in the Philippines involving manufacturing, construction, and shipbuilding industries. Korean investment is the second largest foreign direct investment in the Philippines, while Korean companies play a major part in the Philippine business community with many of them belonging to the one thousand biggest firms in the country.

The field investigation in the Philippines covered Korean company operations in special economic zones (EPZs). Of the two EPZs visited, one was the Subic Bay Freeport Zone where a big Korean shipping and

construction company established business in February 2006, and currently employs thousands of workers.

Workers in this Korean company complain of lack of security of tenure in their employment. According to workers interviewed, the company would register them as workers of subcontractors, or dismiss and re-hire them to prevent them from becoming regular employees under the Philippine labor law.

This situation has affected the workers' effort to organize a labor union within the company. The workers of this shipbuilding company have been trying to form a labor union since 2007. Their leaders, however, were either fired or transferred by the company as soon as they undertook the initial labor union activities. The company explains that they were fired because of involvement in robbery or theft, or negligence of duty. However, the workers claim that they were fired or transferred by the company to suppress the formation of a labor union.

The workers also complain about accidents in the workplace. They complain of lack of sufficient safety measures to protect workers from such accidents.

Interview of officials of the local government and the Tripartite Body<sup>1</sup> (a government-labor-business body that works "under a social pact for the enhancement and preservation of industrial peace in the ECOZONE") of the Subic Bay Freeport Zone confirms the current issues regarding labor relations and occupational safety in the company. In particular, they acknowledge that the issues of having subcontractors and non-recognition of the employees as regular workers have been raised in a number of occasions already. Regarding occupational safety, they say that the local government occasionally requested the company to observe the local labor regulations and laws. However, Korean companies tended to discuss issues with the central government agencies directly and not with the local authorities.

### Myanmar

Nearly fifty Korean companies, mostly in the garment industry, operate in Myanmar. As a consequence of the economic reform and liberalization in the country that included the enactment of the 2011 Labour Organization Law (the law took effect in 2012 and recognized freedom of association),<sup>2</sup> conflicts between labor and

management have increased in Korean companies since 2012.<sup>3</sup>

The research team, with the help of a Myanmar labor non-governmental organization, interviewed eight workers from five Korean companies. The workers provided the following information:

- a) Low wages - the wages of garment workers are low compared to the hours worked; working overtime is de facto structurally forced; and allowance for accommodation does not reach the minimum amount for living expenses.
- b) Long working hours - since the workers are paid so low, they have no choice but to work overtime. In some cases, the company demands workers to sign a contract that requires them to work on Sundays. The legal provision on forty-four hour work schedule is hardly followed.
- c) Lack of break time and poor working condition - in most cases, workers are only able to take a rest for forty-five minutes during lunchtime. When they work until 11 p.m., they get fifteen minutes of dinner and break time.
- d) Child labor - child workers (under fifteen years old) are common in the factories. They work under the same working conditions as adults.
- e) Violation of health rights - the medical insurance system run by the government of Myanmar has only nominal coverage. Female workers are not entitled to menstrual or

maternity leave. They are given one day off when they get married. Their sick leave means wage deduction. Many workers collapse due to long hours of overwork.

- f) Violation of other rights - workers are free to organize a labor union but there are many cases where union leaders and members have been fired or disciplined. In the aftermath of 2012 mass demonstration, working conditions in some factories improved. However, Korean companies tend not to accept any form of labor union except company-dominated union. In the case of a company that produces shoes, members of the union who took part in the strike in 2012 were fired.

### Uzbekistan

Korean companies are involved in the cotton industry of Uzbekistan that produces a million tons of cotton fiber annually. A Korean state-owned enterprise (Consortium) started to be involved in Uzbekistan's cotton industry from 2010 by operating a cellulose factory in the country.

The summary of the information gathered from visits to schools and cotton fields, and from interviews with local activists, provides a picture of the situation in the cotton industry of Uzbekistan as of September 2013:

- 1) Students aged fifteen to eighteen years are being forced to harvest cotton;
- 2) Adult forced labor has intensified;

3) The mobilization of schoolteachers for cotton harvesting seriously impedes the right to education of the students in primary and secondary schools;

4) Paid child labor is also on the rise as adults evade forced labor by hiring children to take their place; and

5) The Uzbek government's surveillance in 2013 of activists monitoring the situation is more severe than in any other year.

The Consortium has denied the existence of forced child labor in the Uzbek cotton fields saying it was prohibited under Uzbek law. However, the relevant laws are not being implemented properly. And the existence of laws does not mean the non-existence of the problem. The results of the field investigation undoubtedly establish the existence of forced child labor in the cotton industry of Uzbekistan.

Such denial of the existence of the forced labor by the Consortium and other Korean companies makes them complicit in the human rights violations in the cotton industry in Uzbekistan. They have failed to perform due diligence in investigating the human rights violations of children and adults, and in preventing and ameliorating such violations and their consequences.

The Consortium's denial of the existence of forced labor in Uzbekistan is likely due to concern about any negative public reaction in Korea on its link to forced labor in Uzbekistan. Not surprisingly, the Consortium does little to

curtail forced labor and refuses to consider an independent monitoring system proposed by the KTNC Watch research team. It explains that it has only four Korean managers in its plant, and would prefer not to intimidate the Uzbek government.

*For further information, please contact: Korean Transnational Corporation Watch (KTNC Watch) through APIL (Advocates for Public Interest Law), # 505, Girl Scout Building, 163 Anguk-dong, Jongno-gu, Seoul, Korea 110-240; ph (822) 3478-0529; e-mail: info@apil.or.kr; www.apil.or.kr.*

**Endnotes**

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**From A Dark and Brutal History**

*(Continued from page 5)*

*For further information, please contact The HAK Association, Rua Gov. Serpa Rosa, T-091, Farol, Dili, Timor-Leste; ph (670) 3313-323; fax (670) 77179655, e-mail: lanarra.del@gmail.com or*

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\* This is an edited version of the report of the same title and author in *Beyond tears and borders: A compilation of country situation reports in nine countries in Asia*, published by the Asian Federation Against Involuntary Disappearances (Manila, 2013).

**Endnote**

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**Balochistan's Missing Persons**

*(Continued from page 6)*

minister of Balochistan Aslam Raisani, in a statement presented in the High Court. Despite the evidence, the law has not helped his son, complains Qadeer. It is because of this fear and absence of justice that political workers are

now unable to live a normal life in the cities. Anyone involved in the Baloch movement now either lives in the mountains or lives abroad, mostly in Europe, Australia, England or Canada.

*Kiran Nazish is an award-winning Pakistani journalist who has worked for several years as a producer and editor for television, radio and print.*

*For further information, please contact Kiran Nazish at The Diplomat.*

*\* This is an edited excerpt of the article of the same title that appeared in the 6 January 2014 issue of The Diplomat. Full article available at http://thediplomat.com/2014/01/balochistans-missing-persons/.*

## Human Rights Events in the Asia-Pacific

### **ASEAN Civil Society Conference/ ASEAN People's Forum 2014**

The ASEAN Civil Society Conference/ASEAN People's Forum 2014 was held on 21-23 March 2014 in Yangon. This year's conference has the theme: Advancing ASEAN Peoples' Solidarity toward sustainable peace, development, justice and democratization. It has the following objectives: 1) To strengthen diverse regional and national voices to advance ASEAN peoples' solidarity for sustainable peace, development, justice and democratization; 2) To support the role of Myanmar/Burma civil society in the country's democratization, development, peace and national reconciliation; 3) To accelerate inclusive ASEAN people-to-people processes to achieve peace, security, and economic, social, environmental and climate justice for all, including migrant workers and the stateless and marginalized communities; 4) To expand learning and understanding of the different processes and political developments of ASEAN and its members, including peoples' struggles for human rights and self-determination in Myanmar; 5) To assert civil society's role in ASEAN community-building and key processes including the upcoming review of the ASEAN Charter and Community Blueprints and Terms of Reference (TOR) of the ASEAN

Inter-Governmental Commission on Human Rights (AICHR). The conference was attended by more than two thousand participants.

*For further information, contact: ACSC/APF Secretariat, e-mail: apfsecretariat2014@gmail.com; banya7881@gmail.com; http://aseanpeople.org.*

### **Women, Girls and Refugee Rights Workshop**

The Women and Girls at Risk Working Group (WAGAR) of the Asia Pacific Refugee Rights Network (APRRN) is hosting a workshop on 31 March - 4 April 2014 in Chiang Mai for representatives of groups working on refugee rights for them to consider how their work addresses the particular rights violations that happen to refugees due to their sex/gender, and how these needs are being met; and for them to consider what resources are needed to effectively address the obstacles that are preventing groups from addressing the rights and needs of refugees and displaced women.

*For further information, please contact: APRRN Secretariat, 888/12, 3rd Floor, Mahatun Plaza, Ploenchit Road, Lumpini, Pratumwan, Bangkok, Thailand 10330; ph (66 2) 252 6654; mobile (66 8) 91125761; www.aprrn.org; Skype: thazin810.*

### **Human Rights Advocacy, Business and Development: a Training Program for Community Advocates from the Asia-Pacific Region**

The Diplomacy Training Program (DTP) will hold its "Human Rights Advocacy, Business and Development: a Training Program for Community Advocates from the Asia-Pacific Region" for ten days in May-June 2014 in Yangon, Myanmar. This program will build the capacity of human rights defenders and community advocates to promote and protect their human rights in the context of rapid economic development, and the impact of the private sector on the lands and livelihoods of vulnerable groups including indigenous and ethnic minorities/nationalities. The program will explore how existing and emerging international human rights standards and mechanisms can be applied, and integrated into effective advocacy strategies. The training will build practical skills for engaging in effective advocacy with governments and business.

*For further information, please contact: Diplomacy Training Program Ltd., The University of New South Wales, UNSW SYDNEY NSW 2052, ABN 31 003 925 148 Australia; ph (612) 9385 2277; fax (612) 9385 1778; e-mail: dtp@unsw.edu.au; www.dtp.unsw.edu.au.*

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# HURIGHTS OSAKA Calendar

HURIGHTS OSAKA is celebrating its 20th anniversary in 2014. Commemorative activities are planned in December 2014.



**PRINTED MATTER**

**AIR MAIL**

May be opened for inspection by the postal service.

**HURIGHTS OSAKA**, inspired by the Charter of the United Nations and the Universal Declaration of Human Rights, formally opened in December 1994. It has the following goals: 1) to promote human rights in the Asia-Pacific region; 2) to convey Asia-Pacific perspectives on human rights to the international community; 3) to ensure inclusion of human rights principles in Japanese international cooperative activities; and 4) to raise human rights awareness among the people in Japan in meeting its growing internationalization. In order to achieve these goals, HURIGHTS OSAKA has activities such as Information Handling, Research and Study, Education and Training, Publications, and Consultancy Services.

**FOCUS Asia-Pacific** is designed to highlight significant issues and activities relating to human rights in the Asia-Pacific. Relevant information and articles can be sent to HURIGHTS OSAKA for inclusion in the next editions of the newsletter.

FOCUS Asia-Pacific is edited by Osamu Shiraishi, Director of HURIGHTS OSAKA.

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