



INTERNATIONAL DAY OF THE VICTIMS OF ENFORCED DISAPPEARANCES

Anghkhana Neelapaijit, Asia and Pacific expert and member of the UN Working Group on Enforced or Involuntary Disappearances, speaks about their work regarding enforced disappearances, the situation in Bangladesh, and their recommendations going forward, in an exclusive interview with Ramisa Rob of The Daily Star.

'The numbers on our list might only be the tip of the iceberg'

What is the UN WGEID's process of investigating and reporting on victims of enforced disappearances in Bangladesh?

We work strictly under the UN humanitarian mandate and, as a working group, we function like a channel between victims of enforced disappearances, their families, and government bodies. We examine the cases that come to us directly when family members of victims, or lawyers and sources connected to victims, file a complaint with us via our email. The procedure mandates that all victims and family members provide their consent for us to conduct the transmission to the government body. This has been the process we have deployed for the report in Bangladesh as well as other nations. When the government provides us with information regarding the fate and whereabouts of the victims – for example, if some have already passed away, or they are detained – we relay that information to the families. However, we don't close cases if victims' families have any doubt on the fate and whereabouts of the victims that are still unknown after the response from governments.

Regarding the Working Group Method of Work, if sources provide new or updated information on a case that has been previously clarified, archived or discontinued, the Working Group may decide to transmit the case to the State anew and request them to comment. A case can also be reopened if the State's reply referred to a different person, and does not correspond to the reported situation or has not reached the source within the six-month period. In such instances, the case in question will be relisted among those outstanding.

Previously, in response to the UN WGEID report, the Bangladesh government had responded that it is "unlawful to arbitrarily consider a missing person's case as enforced disappearance." What is your response to that? How do you define enforced disappearances?

Regarding such cases, we follow the specific definition stated in Article II of the International Convention for Protection of All Persons from Enforced Disappearance and the preamble of the 1992 Declaration. Their definition states that "enforced disappearance" is "considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, 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."

It is a very comprehensive and specific definition and I want to stress on the "deprivation of liberty," which demarcates cases of enforced disappearances from any other missing person's case. It means nobody knows where they are but their families suspect they are in danger, under

arrest or detained by State officials. When the "fate and whereabouts" is cleared from the case, meaning the families can access victims, then the victim is not considered "disappeared" anymore. Governments can say it is unlawful but we followed the Convention's definition.

In September 2022, the UN WGEID reported five new cases, two of which were considered "time sensitive" or "urgent procedures." Can you clarify what that means?

So, urgent procedures or "time sensitive" cases of enforced disappearance are ones that have occurred within the three months prior to the receipt of a report by the Working Group. These cases are transmitted to the State concerned through the most direct and rapid means possible. Cases that have occurred prior to the three-month limit, but not more than one year before the date of their receipt by the Secretariat, provided that they had a connection with a case that occurred within the three-month period, may be transmitted between sessions by letter upon authorisation by the Chair-Rapporteur. The Working Group notifies sources that an urgent action has



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been sent to the State concerned, thus helping relatives or the sources to enter into communication with the relevant authorities.

Has the situation improved in Bangladesh and are there any outstanding cases currently?

Enforced disappearances in Bangladesh increased since 2018. The outstanding cases today, from my knowledge, have actually decreased to around 70 cases. The Bangladesh government has worked with us to clear the cases and we hope they will continue doing so. There have also been new cases filed this year. It's also important to note that sometimes cases close and can reopen when the victims get re-arrested or when there's new information. The numbers of cases also vary from nation to nation in Asia. For example, in Thailand there are around 76 cases while in the Philippines and Indonesia there are 590 and 178 cases, respectively.

Most importantly, we should keep in mind that the numbers might be only the

tip of the iceberg. They are ones that have been reported and filed to us. Oftentimes, victims' families don't even file cases fearing retaliation or some are unaware of this channel through complaint forms. We believe the real picture of the situation anywhere is not reflected by the number of cases.

What are your recommendations for Bangladesh going forward?

First, we hope the Bangladesh government continues to work with the Working Group's procedures to clarify the outstanding cases. Secondly, we have urged the Bangladesh government to allow us to conduct a country visit for the past ten years. We have sent requests since 2013, but they have not accepted it yet. A country visit would allow us to understand more about the legal system, the real situation – to meet with victims' families, and all stakeholders, and conduct thorough investigations independently and impartially. The Working Group can then give thorough recommendations to the Bangladesh government. We hope that after our forthcoming report, the Bangladesh government will allow us to do a country visit.

Thirdly, we remain concerned regarding the suppression of NGOs, lawyers, or other organisations who act on behalf of the victims such as Odhikar. It's also not just Odhikar that has faced this harassment; it is commonplace in many nations. We recommend the Bangladesh government to strengthen the measures to punish perpetrators and reinforce effective measures to prevent the harassment of organisations that report on human rights.

Last, but not the least, we hope the Bangladesh government will take the crucial step of ratifying the International Convention for Protection of All Persons from Enforced Disappearances (ICPPED). By doing so, Bangladesh will become a State party to the convention. The UN committee will then be able to investigate the country's situation. This step will ensure that there is separate investigation and rehabilitation, and measures for effective remedies including psychological remedy. The ratification will also ensure that the country enacts an organic law that complies with the ICPPED to protect victims of enforced disappearances. This is important for countries like Bangladesh, where there are no organic laws specifically protecting victims of enforced disappearances.

Since 2018, numerous recommendations by the Universal Periodic Review (UPR) have urged Bangladesh to ratify the Convention. The ratification would be a very important step for Bangladesh to demonstrate commitment to eradicate enforced disappearances and strengthen the legislative framework on enforced disappearances, in terms of prevention and protection. We hope in the next UPR review later this year, Bangladesh will accept the recommendations to end this crime against humanity and commit to protecting all people in Bangladesh.

Dr Kamal Uddin Ahmed, chairman of the National Human Rights Commission (NHRC), talks about how the commission has dealt with the cases of enforced disappearance and human rights in general in Bangladesh over the past decade, in an exclusive interview with Naznin Tithi of The Daily Star.

'NHRC can't directly investigate cases involving law enforcers'

How many cases of enforced disappearances has the NHRC investigated in the last 10 years?

From 2012 to 2022, we received complaints about 119 incidents, of which we registered 108. Some cases we registered on our own based on media reports. There were cases that were resolved following proper procedure. In 28 cases, those who had disappeared came back after a year or so. In some cases, the alleged victims of disappearance were later found to have been arrested and in jail.

For instance, recently we were notified of a person in Jashore who had gone missing. His two wives arranged a press conference where they alleged that he had been made disappeared. We immediately took action and asked the police about his whereabouts. Police then informed us that he was actually in their custody. We learnt that he was a member of Hizb ut-Tahrir and was arrested by the police. The person had another address in Dhaka's Khilgaon area, which his wives were not aware of, so they thought he had gone missing.

There are some cases that are currently under investigation. While we assign different state agencies to investigate the cases, we also have our own investigation team. But we lack technical capacity when it comes to conducting forensic tests, etc. And in some cases, we assign more than one agency to investigate the allegations, while our own investigation team also carries out its own probe. That's how the NHRC is working at present with its limited capacity.

How many cases of enforced disappearances or custodial deaths have you investigated this year? According to Ain o Salish Kendra (ASK), at least seven individuals have allegedly died at the hands of law enforcement agencies while six people were victims of enforced disappearance between January and July this year.

There were complaints about three cases of enforced disappearance this year. The commission took suo motu notice of one other case based on media reports. In June this year, there was a report of an incident of enforced disappearance and death allegedly by the Detective Branch of police. A person named Alal Uddin was allegedly picked up by the state agency and there was no news of him for some days. We learnt of the case from a television report. When we sent a notice to the police, they told us that he had been taken to hospital where he had died of a heart attack. Their explanation was not satisfactory. I personally planned to go to the victim's family, but then learnt that his family had moved elsewhere out of fear of police. Although the family showed no interest in further investigation, we proceeded with it. We asked the senior secretary to the Public Security Division to probe the case. They are supposed to submit their report on September 19. We also took a strong position on the death

of Sultana Jasmine in Rab custody in Naogaon earlier this year.

I would like to mention here that we do not only look into the cases of enforced disappearances, extrajudicial killings, and custodial deaths; we also investigate other human rights issues across the country. But the media always focuses on these incidents, while other human rights issues do not always get the required importance. For instance, on August 27, *The Daily Star* reported that a 28-year-old man from the marginalised Rabidasa community in Kurigram's Phulbari upazila had been beaten up by some goons allegedly hired by his neighbour, over a land dispute. They threatened to kill him and evict his family if they did not withdraw a case filed against the neighbour. Upon reading the report, we took action to support this man.

Of course, the NHRC should stand beside the victims in incidents of human rights violations. But don't you think when the law enforcement agencies, who are supposed to protect the people, carry out such crimes, that becomes more concerning? There are allegations that the NHRC does not talk much about such incidents.

I am not going to disagree with you. But other issues should also get importance. When journalist Golam Rabbani Nadim was killed, we went to his house, and I ensured myself that the police registered the case against his killers and arrested them. Police arrested 13 people in this case. When the Telugu people were evicted, I went there and ordered my team to investigate the incident. When the houses of Mro people were set ablaze by miscreants, I immediately went there and ordered an investigation and rehabilitation of the affected people.

The commission often says that it does not have the legal power to investigate cases against law enforcement agencies. But human rights activists believe that it can, as per the National Human Rights Commission Act, 2009. What's your view on this?

According to the act, we cannot directly investigate cases where law enforcers are involved. Although we ourselves cannot carry out such investigations, we can assign other agencies to do so. For instance, if the DB is involved in any such crime, we ask the PBI or CID to investigate. And we can also seek reports from the government on this.

Do you think the NHRC Act should be amended so that the commission itself can hold independent investigations into such cases?

We have recommended an amendment to Section 18 of the NHRC Act, which currently does not give the commission the direct power to investigate allegations against law enforcement agencies. It is now with the law ministry.



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