

## Out of Sight but not Out of Mind

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August 30 is the International Day of the Victims of Enforced Disappearance. The crime of enforced disappearance may be considered a way to create terror in society, when victims are picked up and never seen again; and where victim families are left in a maelstrom of fear, uncertainty and, in many cases economic crises. The international community has condemned this form of human rights violation through resolution 65/209 ; where the UN General Assembly expressed its deep concern regarding the increase in enforced or involuntary disappearances in various regions of the world, including arrest, detention and abduction, when these are part of or amount to enforced disappearances. Through this resolution the Assembly also adopted the International Convention for the Protection of All Persons from Enforced Disappearance.

According to An Vranckx, in her 2006 ‘A Long Road towards Universal Protection against Enforced Disappearance’, modern history ‘*ascribes the invention of enforced disappearance to Adolph Hitler. Whereas Stalin and dictators before him locked away nationals in far-off camps without much of a law, Hitler’s 1941 Nacht und Nebel Erlass provided quite openly for deportation of inhabitants of territories occupied by the Reich believed to endanger German security. The Erlass, moreover, explicitly restricted information about the deported. The remains of those who were deported would only be found after the end of the Second World War in, and around, concentration camps*’. Later on, as history shows, some Latin American regimes used enforced disappearances to remove political opponents. This was also practiced in Haiti, Brazil and Guatemala in the 1960s and in other countries in later decades. Even today enforced disappearances occur – with reports and case studies from Nepal, India, and Pakistan as well as from other countries across the world.

Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, defines the term ‘enforced disappearance’ as :

- *the arrest, detention, abduction or any other form of deprivation of liberty*
- *by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State,*
- *followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person,*
- *which places such a person outside the protection of the law.*

Basically, this means that enforced disappearances are detentions for which authorities deny responsibility and deny all information that could help families to begin legal proceedings. Refusing to give information and the confusion regarding the identity of the captors, guarantees that enforced disappearances proceed in impunity. From our own knowledge,

gleaned from investigation reports, newspapers and the electronic media, a person is, according to witnesses, taken away by men either claiming to be police or from some other law enforcement agency and he is not seen again. Family members rush to the local police station or police camp, where officers have no knowledge of the incident and deny any involvement. This adds to the confusion and panic suffered by the families.

Enforced disappearances are not a new phenomenon in the history of Bangladesh either. During the Liberation War, many notable intellectuals were abducted and their whereabouts remained unknown till their bodies were found. After Liberation, the crime continues under various regimes. Notable among the victims are film maker Zahir Raihan, just after the liberation of Bangladesh, radical leftist leader Siraj Sikdar in 1975 and Kalpana Chakma in 1996. However, there are many more cases – reported and unreported. In Bangladesh today, the human rights violation of enforced disappearances continues. When a person is arrested or picked up by people claiming to be from a law enforcement agency, the common fear is that he may be tortured – or disappear. According to statistics from the human rights organisation, Odhikar, between January 2009 and 28 August 2014, 148 persons have disappeared. According to witnesses and family members, they were picked up by persons either claiming to be law enforcers or wearing uniforms.

Despite flatly denying that torture occurs, the Government has taken a bold step and introduced an Act to punish perpetrators of the human rights violation of ‘torture’. However, Criminal Law in Bangladesh has yet to introduce provisions for the crime of enforced disappearance. There are penal provisions for crimes such as abduction, wrongful confinement, and grievous hurt. The Code of Criminal Procedure lays down all the paths to be taken to ensure a proper investigation and prosecution. There is, however, a hitch. Apart from poor implementation, criminal procedure also has it that government sanction is required prior to suing a public servant. Despite this, prior to the enactment of an anti-torture law, there are a few cases where the Court has deemed that grievously hurting an arrestee, is not a part of a police officer’s ‘duty’ and thus the offending law enforcement officer was duly punished, even though no sanction was given. If only all cases of law enforcement abuse were treated by the Courts in the same manner!

One must keep in mind that ‘abduction’ is a criminal offence, defined clearly in the Penal Code. ‘Enforced disappearance’ is not only a crime but also a gross violation of human rights – a crime perpetrated by the State. When a government is in denial and claims that ‘abductions’ and not ‘disappearances’ occur – it is, in actuality, protecting its law enforcement and attempting to veer away from international condemnation. As a result, when it comes to investigation of these so-called ‘abductions’, the authorities drag their feet. One must also realize that it is the duty of law enforcement to effectively investigate and use all means to rescue the victim, regardless of whether it was a crime of abduction or enforced

disappearance. Furthermore, if a government denies that law enforcement was not involved, is it not only in the best interest of the latter to investigate and clear its name?

The Government of Bangladesh has ratified the Convention against Torture, but has yet to accede to the International Convention for the Protection of All Persons from Enforced Disappearance. Article 4 of the Convention states: “Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law”. Article 3 obliges member states to take measures to investigate acts of enforced disappearance, committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice. So it does not matter who perpetrated the crime of enforced disappearance – it is the State responsibility to investigate and bring to justice all perpetrators. Clause 2 of Article 6 also states that no order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance.

We must not forget the other victims of enforced disappearance – the families of those who have disappeared. In many cases, the disappeared is the sole earning member of a family that is left in economic crisis. Furthermore, there are reports that families are threatened by perpetrators or their ‘representatives’ not to talk about the matter, not to report the crime, to stop criminal proceedings or even to pay large sums of money in order to get information. As a result, one crime of enforced disappearance may give birth to several other crimes, keeping the victim families in a state of perpetual fear.

Enforced disappearances and torture are both violations of human rights and criminal offences. It is imperative that, like torture, there needs to be legal provisions to prevent enforced disappearances and punish the perpetrators. Those monitoring the application of the 2013 anti-torture legislation may be sorely disappointed at the lack of implementation of this Law. This will possibly also be the case if a law against enforced disappearances is enacted. However, the fact that there is or will be a law, gives victims the scope to prosecute. Without such legislation, there will be no justice and this violation will continue with impunity.

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