



Advocacy Meeting on the Accession to the International Convention for the Protection of All persons from Enforced Disappearance

10 December 2011, Dhaka

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.*

Enforced disappearances are not a new phenomenon in the history of Bangladesh. 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 them was the disappearance of film maker Zahir Raihan, just after the liberation of Bangladesh and Kalpana Chakma in 1996. However, there are many more cases – reported and unreported.

As part of Odhikar's campaign against enforced disappearances, the Organisation organised a National Advocacy Meeting, in collaboration with the Embassy of Switzerland, International Federation for Human Rights (FIDH) and Asian Federation Against Involuntary Disappearances (AFAD). The meeting is part of Odhikar's campaign for the accession to the International Convention for the Protection of All Persons from Enforced Disappearance and was held at Spectra Convention Centre, Dhaka on 10 December 2011. The goal of the programme was to initiate awareness and dialogue at local and national level for the ratification and implementation of the International Convention for the Protection of All Persons from Enforced Disappearance by the Government. The inaugural of meeting was presided over by Odhikar President, DR. Cr Abrar where Justice M Imman Ali, Judge of the Appellate Division of the Supreme Court was the Chief Guest while former Law Minister, Abdul Matin Khashru, MP; Ambassador Dr. Urs Herren of Switzerland; AFAD Chairperson, Mugiyanto; and Head of the Asia Desk of FIDH, David Knaute were present as the Special Guests.



Dr. Saira Rahman Khan, Founder Member, Odhikar

Dr. Saira Rahman Khan delivered the inaugural speech. She defined and discussed the meeting of Enforced Disappearance, according to the Convention; and gave some case studies that had been investigated by Odhikar. She also briefly discussed the national and international laws relating to such crime. In conclusion, she described Odhikar’s programme on the campaign.

Quoting Odhikar statistics, she said there have been reports of disappearance of at least 22 people in the last 11 months from January. Of them, 11 were picked up allegedly by RAB, two by police, six by personnel of the detective branch (DB) of police, and three by unidentified men. In 2010, at least 18 people went missing. Fourteen of them were picked up allegedly by RAB, two by police and two others by DB personnel.

Dr. Khan said that Criminal Law in Bangladesh has no provisions for the crime of enforced disappearance, just as it has none for the crime of torture. However, 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. Criminal procedure also has it that government sanction is required prior to suing a public servant.

She commented that 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. She said that 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.

Regarding Odhikar's programme, Dr. Khan said that from January 2010, Odhikar has been carrying out fact findings, collecting data and creating awareness about the crime of enforced disappearances. In May 2011, with the support of the Embassy of Switzerland, it has been able to expand its reach and has already held an orientation programme for journalists and discussion meetings with members of civil society, government officials and parliament members in Rajshahi, Chittagong and Khulna. It has also published a poster to help in creating awareness and is documenting reported incidents of disappearances, as well as carrying out fact finding missions.

She concluded that from the above meetings and discussions, and from Odhikar's own research and experience with the campaign to ratify the Rome Statute, the organisations recommends that the Government of Bangladesh accede to the International Convention for the Protection of All Persons from Enforced Disappearance, and include the crime of enforced disappearance into its criminal law.

David Knaute, Head of Asia Desk, International Federation for Human Rights (FIDH)



David Knaute appreciated the organisation of the advocacy meeting on Human Rights Day. He said the FIDH fully supports Bangladeshi human rights organisations, including Odhikar, in their campaign for the ratification by Bangladesh of the International Convention for the Protection of all Persons from Enforced Disappearance. He talked about the Convention and the issue of enforced disappearance and the unreported cases. He shared some of the FIDH campaign programmes in 2011:

As the representative of an international federation working closely with 164 local human rights organisations, he said it was essential to begin by sharing some of the campaigns run by FIDH with some of its partners in relation to enforced disappearance:

- In Iran, in the first months of 2011, the FIDH expressed concerns regarding the continued disappearance of opposition leaders and the extremely brutal suppression of peaceful protests, and the FIDH filed a complaint with the UN Working Group on Enforced or Involuntary Disappearances which eventually contributed to convince the international community to pass a strong resolution in the Human Rights Council, including the appointment of a special rapporteur on the situation of human rights in Iran.
- In the Republic of Congo, together with a local partner and groups of victims, the FIDH supported the conclusions of the UN Working Group following its visit to Congo in September 2011 that the rights to truth, justice and reparation were not yet met more than 12 years after more than 300 persons disappeared after being arrested by law-enforcement authorities; The right to the truth in relation to enforced disappearances means the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, and the circumstances of the disappearances, and the identity of the perpetrator;
- Last October, the FIDH sent a mission to Chile to request from the authorities to enforce an arrest warrant against State agents responsible for the enforced disappearance of innocent citizens under the Pinochet regime in the 1980s.

David Knaute stressed that Bangladesh has a good record of signing/ratifying several international human rights documents such as CEDAW, the Convention for the Rights of the Child, the Convention against Torture, the UN Convention on the Protection of the Rights of Migrant Workers and their Family Members, etc. Bangladesh also acceded to the International Covenant on Civil and Political

Rights (ICCPR) in September 2000. Bangladesh, finally, is a long-standing member of the Human Rights Council, which requires upholding human rights to the highest standards.

However, when it comes to looking at actual law enforcement, he observed many serious shortcomings that still needed to be addressed. In a number of the international human rights treaties ratified by Bangladesh, he observed that the government has registered some declarations and reservations to particular articles of the treaties.

He commented that with such shortcomings, it is better to understand better the context in which Bangladesh fails to ratify the International Convention for the Protection of all Persons from Enforced Disappearance. The government may once again argue that Bangladeshi legislation provides for safeguards from various offences that are linked with enforced disappearance or are closely related to it, such as abduction, kidnapping, unlawful detention, illegal deprivation of liberty, trafficking, illegal constraint and abuse of power.

He recommended that Bangladesh thoroughly investigate each reported incident of disappearance speedily and efficiently and put in place a directive that security forces operate within the Constitution and the laws. He said complaint mechanisms must be clearly established and freed from any kind of refusal, resistance, threats and intimidation. Bangladesh has obligations under the ICCPR and the CAT to prevent cases of enforced disappearance. The Rome Statute of the International Criminal Court, which Bangladesh ratified in March 2010, also refers to the systematic use of enforced disappearance as a crime against humanity.

He concluded that all these factors make it a matter of urgency for Bangladesh to sign, then ratify the International Convention for the Protection of all Persons from Enforced Disappearance.

Mugiyanto, Chairperson, Asian Federation Against Involuntary Disappearances



Mugiyanto introduced his organisation AFAD based in the Philippines. He talked about the issue of enforced disappearance. He said that though there are many Conventions still some countries consider enforced disappearances not a phenomena. He said that his purpose of coming to Bangladesh was to convince all parties concerned to protest against enforced disappearance. He said AFAD, though predominantly South East Asian, was trying to involve more Asian countries as only three countries have ratified the Convention from Asia. The Convention is more relevant in Asian countries than Latin America even though some countries think that this Convention

is only for Latin American issues.

Mugiyanto said that the International Convention on the Protection of All Persons from Enforced Disappearance (CED) became the latest international treaty on human rights in 2006. Different from other international Conventions, the Convention on Enforced Disappearances is a result of a long struggle initiated by the families of enforced disappearances, mostly those from Latin American countries such as Argentina, Chile, Brazil, Guatemala and others. He said that they were the first to campaign at the international level with the support of international NGOs and draw international attention on the existing practices of enforced disappearances in their countries and call on the international community, particularly the United Nations to address the problems.

He commented that the lack of political commitment of most Asian governments, and the absence of national and regional mechanism in combating enforced disappearances have made Asia a fertile ground for the practice of enforced disappearances.

He observed that enforced disappearances are continuously practiced by governments in many countries in Asia on different pretexts, such as national security and stability, war against terrorism, war against separatism, war against communism and others. This ongoing practice brings about masses of cases reported to the United Nations Working Group on Enforced or Involuntary Disappearances that make Asia a contributor to most of the cases reported by the Working Group.

He said that on the other hand, there is an absence in national and regional levels for legislation able to tackle these massive crimes. No single country in Asia has criminalized enforced disappearances. This situation has resulted in a massive number of neglected victims, unable to access their rights to truth, justice, and reparation.

He said that Odhikar reported several cases of enforced disappearances in 2010 and 2011 and has carried out fact finding missions on some incidents of enforced disappearance. Due to intensive national and international campaigns against extra-judicial killings; he added, some decisions were passed by the High Court Division of the Supreme Court. He observed that based on the reports by AFAD member Odhikar, Bangladesh should and will ratify the Convention on Enforced Disappearances although it might not be in a very near future.

His Excellency Dr. Urs Herren, Ambassador, Embassy of Switzerland

Ambassador Dr. Urs Herren said that it was particularly appropriate to hold this meeting, on the occasion of International Human Rights Day. This meeting marked the end of a nationwide campaign which has been conducted by Odhikar, with the support of the Swiss Embassy.



He commented that enforced disappearance is a grave form of human rights violation. It is a deprivation of life and freedom and a furtive manner of taking away a person without a trace. It is a grave violation not only to the victims, but also to the family and friends of the victim, as the traumatic effect extend to them. He added that the traumatic effect is further exacerbated in the context of poverty which many families experience in Bangladesh, as the disappearance of a family member often constitute an additional economic hardship for the family.

He observed that disappearances have unfortunately been the sad complement of wars, armed conflicts, violence and tensions, and system with no or little control on law enforcement agencies and dysfunctional judiciary system. Countries particularly affected by this phenomenon, like South American countries, have seen the emergence of NGO, movements and in particular groups of relatives of the victims, which have started campaigns in order to know the truth about their relatives but also to bring to book the perpetrators. It for instance encouraging to see that in Argentina, almost 40 years after disappearances had been a systematic weapon against the opposition, perpetrators are still now brought to justice. The insistence of these groups, which have been fighting against all odds, helped to finally bring Enforced Disappearance within a legally accepted and international recognized framework, the Convention for the Protection of All Persons from Enforced Disappearance.

He said that Switzerland is very pleased to support this nation-wide awareness raising campaign implemented by Odhikar, to make this Convention and this problem better known. He observed that advocacy meetings like these play vital roles in highlighting issues of concern and eventually contribute to build a better society, one which will respect the rights of all human being. Of course, additional to advocacy it is crucial that HR organisations continue to document and pursue cases not only with all possible insistence but with the best possible accuracy. This is particular important in this part of the world, where disappearance is not (only) an issue of the past, but rather a very much present problematic and there are indication that this is also a growing issue here in Bangladesh.

He said his Government commends Bangladesh for the commitment to the respect of human rights and its multilateral engagement; as it did in the past with other Conventions, Bangladesh could be a gain a pioneer in South Asia leading the way in the accession to the Convention and its implementation.

Abdul Matin Khasru, MP and former Law Minister of Bangladesh

Abdul Matin Khasru, MP (Awami League), said that Odhikar brought an important issue of enforced disappearances before a new audience. He said that we all admit that it is the duty of the State to protect the life of its citizens under the Constitution and international law (conventions).



He said that a device mechanism to fight Enforced Disappearances is needed. He added that enforced disappearance has got both national and global dimensions. He also said that we should campaign against this. He mentioned the history of Bangladesh and specially 14th December 1971 where the incidents of enforced disappearances happened. He said that the offenders must be caught and punished accordingly. He also mentioned the Guantanamo issue and that it is the liability of whole human civilization to work against this crime. He talked about individual liability and command responsibility.

He concluded that regardless of the political party, all offenders should be punished. He said only signing a Convention is not enough. It should followed by the ratification and implementation in national laws.

Justice M Imman Ali, Honorable Judge, Supreme Court of Bangladesh



Justice M Imman Ali started with the definition of Human Rights. He said that the incidents of enforced disappearance persisted since 1971 and has continued during all regimes. It does not only exist in Bangladesh, but all over the world. He mentioned Articles of the Bangladesh Constitution and cases where the ‘right to life’ and ‘right of individual’ is guaranteed. Terming enforced disappearance unconstitutional according Articles 31, 9 and 33 of the Constitution, Justice Imman Ali stated that human rights and fundamental rights of a citizen are violated though such crime. The State has the responsibility to protect right to life and ensure security of all its citizens. As per law, any arrestee should be produced before Court within 24 hours, but there were cases where the law enforcement agencies do not practice this, or do not admit to violating the law.

He said that Bangladesh is yet to sign this international convention. India has signed but not ratified it. He said that as US, India, Pakistan has not ratified the Convention yet, the Government of Bangladesh may think it is too early to consider it. He emphasized the significance of accession to the Convention on Enforce Disappearance. According to various Articles of the Bangladesh Constitution, the Government is oblige to prevent such crimes perpetrated by identifiable agents and the State should step.

Dr. C.R. Abrar, President of Odhikar

President of Odhikar, Dr. C.R. Abrar gave thanks to all guests for their participation and highlighted the role of Odhikar throughout the years, regardless the party in power. He also talked about the necessity of ratifying the Convention. He invited all to join hands with Odhikar in working against the crime of enforced disappearances and in all human rights issues.



First Working Session

The first working session was presided over by Adilur Rahman Khan, Secretary of Odhikar. He welcomed all speakers of this session. Acting Secretary General of BNP, Mirza Fakhurul Islam Alamgir; Acting Editor of the daily Amar Desh, Mahmudur Rahman; Joint Editor of the daily Prothom Alo, Abdul Quaiyum; Professor of Dhaka University, Dr. Tasneem Siddiqui; and Sumi Das, the wife of Tapan Das, who has disappeared, spoke in this session.



Farhad Mazhar, Advisor of Odhikar, presented a paper on *Protect all persons from 'enforced disappearance'* in the first working session of the advocacy meeting. In his paper he said that people are abducted and disappearing and some are recovered as dead bodies after they were abducted. In many cases, relatives of the disappeared allege that law enforcing agencies have picked up the victim. On the other hand, the law enforcing agencies deny any knowledge about the disappeared. They refute allegation that the victim had been picked up by agents or people posing as agents of police or RAB.

He said as human rights defenders, are documenting, reporting, campaigning and protesting against this international crime. This also implies that Bangladesh could become vulnerable to external humanitarian intervention. He said that to combat this nightmare in addition to reporting, campaigning and protesting, it is essential that we engage in massive public campaign to make people aware of the heinous nature of the crime and demand that it is stopped immediately. He said that we should also appeal and convince the Government of Bangladesh to accede and ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED). He commented that this is only the minimum step by which we could begin addressing the pathological decadence of the present state of Bangladesh, the failure of the Judiciary to deliver justice and the violent mainstream political culture.



He said that it is important to understand that the human rights movement is not independent from the democratic, political aspirations of the people. Democracy is not simply an electoral process to ensure transfer of power from one party to another to exploit the people every five years. Democracy is first and essentially about the form of the state where election is an exercise to solicit the will of the people to constitute as a political community, draft a popular constitution and elect people on the basis of this democratic constitution to govern and run state affairs. If the human rights movement is not an integral aspect of peoples' aspirations to constitute into a democratic state-form for Bangladesh, it's campaigns may end up being, knowingly or unknowingly, an alibi for external intervention.

Farhad Mazhar said that the key question for the human rights defenders of Bangladesh, since the adoption of the ICPAPED Convention by the UN General Assembly has been to design an effective campaign strategy to enhance public awareness so that the Government of Bangladesh accedes to and consequently ratifies the Convention. If and when this happens, the domestic law of Bangladesh will have to eventually synchronize with the norms suggested by the Convention.

He commented that the criminal prohibition of enforced disappearance is not new, and that it was derived from the laws of war as interpreted by the Nuremberg Tribunals. He said that the international crime of enforced disappearance evolved out of human rights instruments and declarations created in response to disappearances perpetrated in Latin America during the 1960s, 1970s, and 1980s. The key documents around in the criminalization of enforced disappearances are the 1992 Declaration on the Protection of All Persons from Enforced Disappearance, the 1994 Inter-American Convention on Forced Disappearance of Persons, and Rome Statute of the International Criminal Court.

Farhad Mazhar said that the prohibition of enforced disappearance by the laws of war served the humanitarian function of protecting "family rights" during armed conflict. It also protects non-combatants and promotes key international values by constraining the conduct of belligerents. The protected object is the family and the international value is familial integrity. The Nuremberg Tribunals found that the continuing uncertainty of enforced disappearance violated "family rights," including the right to know the fate of a loved one. However, enforced disappearance was initially prohibited as criminal within a narrow context such as armed conflict, although this limited prohibition has subsequently been expanded to apply to additional contexts. The Rome Statue included 'enforced disappearance' under crimes against humanity to be tried within the jurisdiction of the court. The significance of the 2006 International Convention on the Protection of All Persons from Enforced Disappearance lies not only in its wider scope and context but also in criminalizing those disappearances which do not amount to war.

He said that the significance of ‘enforced disappearance’ as enshrined in 2006 convention cannot be understood without the context of global war on terror led by USA. People have disappeared from many countries including Bangladesh and many ended up in clandestine detention programmes run by CIA¹.

In blatant violation of international law, the US administration authorized interrogation methods and detention conditions which are in themselves or in combination violated the international prohibition of torture and other cruel, inhuman or degrading treatment. In addition USA has subjected detainees to secret detention, inter-state transfers without due process, enforced disappearance, and indefinite detention without charge or trial. Such acts was sanctioned at the highest levels have been labeled “lawful” by the President and members of his administration².

From our experience in Odhikar, the question of ‘rights’ cannot be addressed merely as an abstract moral notion extricating from the process of constituting the state on firm democratic principle. The rights and liberties of the human beings and citizens are political project and constitutive of democracy as we can easily witness in the American ‘Declaration of Independence’ and the ‘Declaration of Rights of Men and Citizens’.

In conclusion, Farhad Mazhar said that human rights as constitutive of democracy implies the struggle to constitute and reconstitute the people and persons as legal subjects defined by the principle of freedom, rights and responsibilities against the global and national process of placing him or her outside the protection of the law. Once we can grasp the human rights movement, particularly against enforced disappearance, as the immanent constitution of democracy we will be able to take a giant step in understanding our task as well as objective. He said that the task in Bangladesh is to resist any form of attempt to place a person outside the legal protection of democratic norms and laws and our objective is to constitute Bangladesh state on a democratic principle based on a new constitution.

Testimony of a family member

Sumi Das is the wife of Tapan Das. She said that at around 8 pm on 3 August 2011, her husband was arrested by some people who identified themselves as Detective Branch (DB) police from KB Road of the Mil Barrack area, Gendaria. Since then, his whereabouts is unknown. Hearing the news that the Detective Branch (DB) police had taken her husband in a microbus, she searched for him in different places. She also said that although a GD (General Diary) was filed regarding the abduction, the police changed it to a missing person’s case even though they were told that the BD police were involved. After her husband disappeared, she called his cell phone three times, but did not get any response. She tried again later but found the cell phone switched off. She has 3 sons. She needs help to find her husband. Tapan Das was a cutting master in a tailor shop and he had no known enemies.



¹ INT’L COMM. OF THE RED CROSS, ICRC REPORT ON THE TREATMENT OF FOURTEEN “HIGH VALUE DETAINEES” IN CIA CUSTODY 24 (2007), *available at* <http://www.nybooks.com/icrc-report.pdf>. This report marked “strictly confidential” was submitted to John Rizzo, Acting General Counsel of the CIA, and later leaked to media.

² See ‘USA. Torture, Enforced Disappearance and impunity’ by Amnesty International. <http://www.amnesty.org/en/library/info/AMR51/036/2008/en> (accessd on 8 December 20100)

Abdul Quayum, Joint Editor of the daily Prothom Alo



Abdul Quayum said that human right is the most important issue in a democratic state. Enforced Disappearance is a crime against humanity. He said that we need to mobilise people against such crimes. Rights of the people have to be appraised in a democratic State. Human rights are trampled when there is no security and right to life. He said that we are living an insecure life and it was very painful to hear that, when Sumi Das called her husband's cell phone, nobody received her call. This kind of suffering traumatizes the victim's family. He stated that killings are now taking place due to political motivation; if someone is disappeared for being involved in the Opposition, this indicates that the rights of the citizens are violated by the State. This is high time to give importance to the issues of extrajudicial killing and enforced disappearance. He added that the human rights situation of our country is terrible due to the confrontational relation between the major two parties and lack of political willingness to improve it.

He observed that from 1990's, no government accepted the results of any national election. However, some changes were seen after 1/11. This is the poor spirit of our democracy. He concluded that the politicians need to think about all the people of Bangladesh, not only of their political party members.

Mahmudur Rahman, Acting Editor Amar Desh



Mahmudur Rahamn referred to three reports on secret killings published in the daily Amar Desh. He said, "I was tortured by law enforcers in remand for 14 days for writing against corruption and human rights violation. 49 cases were filed against me and I had to spend 291 days in jail. When I was in Task Force Interrogation (TFI) cell, I was tortured by the State agency. I presented this matter before the Court. I told this story to the Magistrates Court, the High Court but the Courts did not take any measures. They did not even question the Attorney General regarding the torture inflicted on me". He said that the BNP leader Chowdhury Alam was 'disappeared' but the Court did not issue a rule and the State did not take any steps. Till date, his fate or whereabouts are unknown.

He stated that all incidents of disappearances and death are extrajudicial killings. International law says no one shall be subjected to enforced disappearance. This is a crime against humanity. Such crimes continue in Bangladesh like the crimes committed in Latin American countries during the 60's and 70's. He said, the present Government does not respect human rights, neither did the previous BNP led Government. He said that we could blame the BNP for extrajudicial killings in the name of 'Operation Clean Heart'. Many people were killed in crossfire during that period. They also passed a dangerous law in 2005 or early 2006. That law was enacted by BNP Government, as was the creation of RAB in 2004.

Mahmudur Rahman said, we want democracy restored for the people. The crime of disappearance began soon after the liberation war. Crossfire is not a solution to control law and order. Law and order cannot be improved by eliminating people through crossfire.

In conclusion, he said that if NGOs like Odhikar focus more on this issue then the development will happen very soon. He hoped Odhikar continues its work. If we want to a democratic and civilized society then we have to be brave and fight back for establishing our rights, he concluded.

Dr. Tasneem Siddiqui, Professor, Department of Political Science, Dhaka University



Dr. Tasneem Siddiqui said, enforced disappearance is a crime against humanity which was started in 1971 and could not be stopped after the liberation war. She said she was in class 7 when the Liberation War was held and her uncle was disappeared during that time. She said that the incidents of disappearance are on the rise in recent years in Bangladesh. Many people say that extrajudicial killings occurred in order to improve law and order situation. Those people were abducted and their bodies are found in the vegetation or banks of the rivers. She also said that apart from political enmity, people become victims of enforced disappearance due to land and property related disputes. She said that human rights are deteriorating due to lack of implementation of law and poor criminal justice system in Bangladesh. It is an obstacle to stabilize the rule of law in Bangladesh. Political oppression has turned to disappearance day by day. There are lot of factors involved with this crime. For land grabbing issue, a vested quarter take state and political help for committing such crime. On 23 December 2010, the Convention on Enforce Disappearance came into force. This is very important to ratify the Convention. All need to be considered as a Bangladeshi rather than BNP, Awami League or other parties.

Mirza Fakhru Islam Alamgir, Acting Secretary General, Bangladesh Nationalist Party



Mirza Fakhru Islam Alamgir said that enforce disappearance and extrajudicial killings are not a new problem and the practice of destroying the Opposition started after the liberation war. When a student expresses his political ideology, that student was disappeared and after some days the body is found. He said that the government is committing enforced disappearances and extrajudicial killings to destroy the Opposition and it is the responsibility of the State to stop such violations. He said when the state continuously violates human rights it can only be called a fascist government.

Mirza Fakhru Islam Alamgir said that his Party (BNP) does not support crossfire. Enforced disappearances cannot be tolerated in a democratic society. He told the meeting that his party never supported any extra-judicial killings or enforced disappearances. He personally believes that the killing of Comrade Mofakharul Islam Chowdhury³ and Dr. Mizanur Rahman Tutu⁴ was injustice.

He observed that presently disappearances occur due to political reasons. He said that the BNP wanted to talk with the Home Minister regarding the disappeared activists of BNP, including

³ Mofakharul Islam Chowdhury, the leader of the Purba Banglar Communist Party (ML), was arrested from his shelter on December 17, 2004 and killed in a "crossfire." by RAB.

⁴ Dr. Mizanur Rahman Tutu, the leader of the Purba Banglar Communist Party (ML) was shot dead by the police on July 27, 2008 in Naogaon.

Chowdhury Alam, but she did not agree to meet them. Awami League came in power by undertaking zero tolerance regarding extrajudicial killing and torture; but after assuming power they are doing everything to eliminate their political opponents. He commented that this government is not only committing enforced disappearance but also taken away people's right to protest against injustice. The BNP leader, however, admitted that there had been crossfire incidents during the last BNP government's tenure between 2001 and 2006, but none of them were political, he claimed.

Second Working Session

The second working session was presided over by Dr. C R Abrar, President of Odhikar. In the second working session of the meeting, Mugiyanto⁵ presented a keynote paper on the *Significance of the Convention on Enforced Disappearances in Asia*⁶.

Jatiyo Shomajtantrik Dol leader, Mainuddin Khan Badal, MP; Awami League leader Mahmudur Rahman Manna; New Age Editor, Nurul Kabir; General Secretary of the Revolutionary Workers Party, Saiful Huq; BNP leader Syeda Ashifa Ashrafi Papiya, MP; FIDH Asia Head, David Knaute; and the family members of the disappeared spoke at the meeting.



Mugiyanto said that the yearly reports of the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID) in the last few years are evidence enough to counter some arbitrary assumption that enforced disappearances are phenomena of the past and unique only to Latin and Central American countries. The continuous finding and reporting by the non-government organization and victims' association on the cases in Asia also proves that these heinous crimes are still daily practices, and in some countries the situation is very alarming.

He said that if we look at the history, enforced disappearance was first used by the Nazi in 1941 in the "occupied territories" especially in the extermination of the Jews. It was subsequently employed by the military and dictatorial regimes in Asia and Latin America and later even by formally democratic regimes, including those in Asia. He added that the 9/11 tragedy in New York in 2001 that gave pretext to the war on terrorism agenda launched by the United States provides new grounds for some governments, mostly in Asia and Middle East to commit enforced disappearances against those considered terrorists.

⁵ Mugiyanto is the Chairperson of the Asian Federation Against Involuntary Disappearances (AFAD). He himself is a survivor of disappearances in Indonesia in 1998 when Indonesia was still under the authoritarian rule of General Suharto.

⁶ Attached at the end of the report as Annexure

He observed that a few countries such as the Philippines and Nepal have been in the process adopting the draft bill on enforced disappearances, but the way seems to be not an easy one. Some other countries including Indonesia consider enforced disappearance a crime, but under the definition prescribed in the Rome Statute of the International Criminal Court which is difficult to prove.

He commented that Asia also does not have regional instruments or mechanism to deal with such crimes in form of a convention or a court. What we have in the region which is still in initial step is the ASEAN Intergovernmental Commission on Human Rights (AICHR) which applies only in the Member State of ASEAN in Southeast Asia sub-region.

His observation was that the lack of political commitment of the most Asian governments, and the absence of the national and regional mechanism in combating enforced disappearances have made Asia a fertile ground for the practices of enforced disappearances.

Mugiyanto said that in Bangladesh, one of the leading human rights organisations Odhikar reported several cases of enforced disappearances 2010 and 2011. Odhikar has carried out fact finding missions on some incidents of enforced disappearance. Due to intensive national and international campaigns against extra-judicial killings; some decisions were passed by the High Court Division of the Supreme Court. Based on the reports by AFAD member Odhikar, Bangladesh should and will ratify the Convention on Enforced Disappearances although it might not be in a very near future.

Commenting on human rights campaigns, he said that as a campaign and education material, AFAD published a “Primer to the Convention for the Protection of All Persons from Enforced Disappearances” which helps the public to understand the background of the Convention, what it is and why we particularly in Asia need the Convention. He mentioned some important points.

1. The Convention establishes the non-derogable rights of everyone not to be subjected to enforced disappearance. No circumstance whatsoever, be it a state or threat of war, internal political instability or any other public emergency, may be invoked to justify an enforced disappearance. The Convention holds that enforced disappearance constitutes an offense under criminal law and it considers this widespread or systematic practice of enforced disappearance a crime against humanity. Indeed, enforced disappearance is a crime under international law.

2. The Convention provides for the right of the relatives of the disappeared persons and of the society as a whole to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate and whereabouts of the disappeared person. According to the Convention, each State Party shall codify enforced disappearance as an autonomous offense under its criminal law and punish it by appropriate penalties which take into account its extreme seriousness. State Parties to the Convention shall cooperate in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains. Each State Party shall take appropriate measures in this sense.

In conclusion, Mugiyanto commented that enforced disappearances are continuously practiced by governments in many countries in Asia with different pretexts, such as national security and stability, war against terrorism, war against separatism, war against communism and others. It happens in different forms of government from military regime, authoritarian regime, and sadly it happens also in the so called democratic government. This ongoing practice brings about masses of cases reported to the United Nations Working Group on Enforced or Involuntary Disappearances that make Asia contributes most of the cases reported by the Working Group. There is an absence in national and

regional level for legislation able to tackle these massive crimes. No single country in Asia criminalized enforced disappearances. This situation then resulted in massive of neglected victims unable to access their rights to truth, justice, and reparations. However, some countries show progress in their willingness to dealing with the phenomena by signing and ratifying the Convention on Enforced Disappearances (Japan, Kazakhstan, Iraq, India, Indonesia and others) or in the process of doing so such as Thailand, The Philippines, Nepal, Timor-Leste, South Korea and others.

He said that in the global world where human rights and fights against impunity has been a common language and spirit, each country should makes efforts to its best to move and transform words into reality. Ensuring the protection and fulfillment of human rights should then be our transformed commitment. Only this way we can measure our country as a democratic and civilized country.

Abu Sayed Chowdhury Himu son of Chowdhury Alam



Abu Syed Chowdhury, said on 25 June 2010, Chowdhury Alam was abducted from in front of Metro Garden on 75, Indira road near his house. When we asked the police and RAB, they totally denied this matter but most of the daily papers reported this news. Himu said that, on the evening of 20th June, 2010, his father went to the United Hospital in Gulshan-2 to visit Dhaka City Corporation Mayor Sadek Hossian Khoka, who was admitted there for medical attention. On that day, a man named Billal Hussein from the Detective Division of RAB headquarters, attempted but failed to drag his father into a microbus and abduct him.

At around 5:00 pm on the evening of 25th June, 2010, Khilgaon Police station's Sub Inspector (SI) Tafazzal Hussein came to their Khilgaon residence and asked Himu whether his father was home. When Himu told him that he was not there, the SI informed him that a case had been filed against his father on 20th June, 2010 and he had brought the warrant of arrest. SI Tafazzel Hussein also told him that another case had been filed against his father that morning, 25th June, 2010, at Shahbagh Police Station.

Himu said that his father was abducted by law enforcement officers and in response, on the 4th of July 2010, he filed a Habeas Corpus petition at the High Court Division of the Supreme Court. At that time, Judge H.M Shamshuddin Chowdhury and Judge Sheikh Md. Zakir Hossain, sat at the division bench. The Court, without issuing any rule on the habeas corpus, wanted to give the police a directive. Hearing this, the concerned lawyers decided to withdraw the writ petition.

On 18 July 2010, Himu, again filed a petition about his father having gone missing, at the Division Bench, which comprised of Justice Mamunun Rahman and Justice Syeda Afsar Zahan. Having taken the matter into consideration, on 19th July, 2010, the Court ordered the Police IGP and RAB DG to immediately investigate the matter and take effective steps. The Court also ordered that a report be submitted on Mohammad Chowdhury Alam's abductors. Nothing has happened since then.

Jhorna Khanom wife of Shamim Akhter

Jharna Khanam said that seven to eight people identifying themselves as law enforcers, picked up her husband KM Shamim Akhter, former vice-president of Bangladesh Chhatra Union, from in front of his Purana Paltan residence on September 29, 2011. "I went to the offices of all agencies and ministries concerned, and even to the National Human Rights Commission



Chairman, but all my efforts went in vain. When my two little children ask about their father, I cannot give them any answer”, she said.

Jesmin Akhter, daughter of Habibur Rahman Howlader



Jesmin Akhter told the participants that her father Habibur Rahman Haoladar was picked up by law enforcers on 6 July 2011 in front of their house. After morning prayer her father went out to see the new engine boat in the Katakhal canal, adjacent to the road. At that time two people, approached him. One of them had a gun and he grabbed Habibur Rahman’s right hand. When he asked for their identity, they said that they were from the ‘administration’. Then from the other side of the canal, Bodhu Mollik, a local and two police wearing the uniform of the Armed Police Battalion came over. They all started to punch, kick, and beat Habibur Rahman. One police blindfolded him. By this time, four people, in police uniform and carrying arms came out of a neighbour’s house.

Police were beating Habibur Rahman in front of many people. The joints in his knees were fractured because of excessive beating and started bleeding. During the fight, the police took their badges off their uniforms. “They were members of law enforcement agencies but they acted like robbers.” Jesmine said. Jesmine recognised one of the police officers as the ASI of Morelganj Police Station, Zohirul Islam.

Jesmin Akhter is still clueless about the fate of her father nearly six months after law enforcers reportedly picked him up from his house in Bagerhat. She said that the family tried to stand in front of the Prime Minister’s Office and demand the whereabouts of Habibur Rahman, but the police did allow them to do so.

“Even a death in crossfire is better than disappearance, because the victim's family at least gets the body. But I do not even know whether my father is dead or alive,” Jesmin told the meeting.

David Knaute, Head of Asia Desk, International Federation of Human Rights

David Knaute said that in the list of the UN working group on enforced or involuntary disappearances, the 15 countries with the worst records include Iraq, Sri Lanka, six Latin American countries, but also other Asian countries such as Nepal, Philippines, Timor Leste, India.

The Working Group, which was established in 1980, has so far transmitted more than 50,000 cases to governments of at least 83 States. It will present its annual report in March 2012, with new updates on 95 States. Besides, it will now plan joint meetings with the Committee on Enforced Disappearances established in 2010 together with the enacting of the convention.

He observed that underreporting of disappearances (resulting from many factors, including fear of reprisal and institutionalized systems of impunity) remains a major problem. Tens of thousands of cases on the books of the Working Group still remain non-clarified, many going back decades. In the 30th year since the establishment of the Working Group, much more needs to be done to ensure that the fate or whereabouts of the persons who have disappeared are resolved. Also, the victims encompass not only the persons who actually get disappeared, but also their close friends and relatives whose lives get disrupted. The question of disappearance has a special resonance with women. The serious economic hardships which usually accompany a disappearance are most often borne by them.

It is they who are most often at the forefront of the struggle to resolve the disappearances of members of their family, making them susceptible to persecution.

He said that one has to stress that Bangladesh has a good record of signing/ratifying several international human rights documents such as CEDAW, the Convention for the Rights of the Child, the Convention against Torture, the UN Convention on the Protection of the Rights of Migrant Workers and their Family Members, etc. Bangladesh also acceded to the International Covenant on Civil and Political Rights (ICCPR) in September 2000. Bangladesh, finally, is a long-standing member of the Human Rights Council, which requires upholding human rights to the highest standards.

However, when it comes to looking at actual law enforcement, many serious shortcomings still need to be addressed. In a number of the international human rights treaties ratified by Bangladesh, the government has registered some declarations and reservations to particular articles of the treaties. Paramount among these is the reservation to Article 14 paragraph 1 of the Convention Against Torture, on the ground that Bangladesh will apply it “in consonance with the existing laws and legislation of the country”. It has to be noted that there is no definition of ‘torture’ in the domestic legislation of Bangladesh. The Constitution remains rather ambiguous, since while Article 35 (5) prohibits torture, Article 46 allows the Parliament to indemnify human rights violations of state officials, including torture, by enacting legislation. Bangladesh should therefore issue a standing invitation to the Special Rapporteur on Torture in order to begin to address its lack of cooperation with the international community and human rights system concerning the issue of torture and human rights more widely.

He observed that in regard to the Anti-Terrorism Act, the definition of terrorist activities is too vague and is not consistent with the UN High-Level Panel appointed by Kofi Annan, which was mandated to define the act of terrorism in the absence of any existing legal standard. It is not in conformity either with the elements of definition proposed by the UN Special Rapporteur on the protection of human rights while countering terrorism. Since terrorist activities are criminal offences punishable by death penalty or a minimum 20-year imprisonment sentence, their definition must comply with the principle of legality of criminal law enshrined in Article 15 of the ICCPR. The ATA uses vague expressions such as “creating fear amongst the public or a segment of the public” and “solidarity of Bangladesh,” the use of which are not compatible with Article 15 of the ICCPR. The ATA therefore appears to be nothing more than a political tool to prove to the Bangladeshi public and foreign partners that Bangladesh takes a “tough on crime” and strong anti-terrorist position.

He observed that with such shortcomings, we understand better the context in which Bangladesh fails to ratify the International Convention for the Protection of all Persons from Enforced Disappearance. The government may once again argue that Bangladeshi legislation provides for safeguards from various offences that are linked with enforced disappearance or are closely related to it, such as abduction, kidnapping, unlawful detention, illegal deprivation of liberty, trafficking, illegal constraint and abuse of power. However, a plurality of fragmented offences does not mirror the complexity and the particularly serious nature of enforced disappearance. While the mentioned offences may form part of a type of enforced disappearance, none of them are sufficient to cover all the elements of enforced disappearance, and often they do not provide for sanctions that would take into account the particular gravity of the crime, therefore falling short for guaranteeing a comprehensive protection.

He commented that the fact that Bangladesh has allowed in the past widespread and grave human rights to be committed by state agents with total impunity is a sign that enforced disappearances may

actually occur in the country. For instance, in 2002, some 400,000 members of the armed forces were deployed to conduct the “Operation Clean Heart”, an anti-crime and anti-terrorism operation, during which hundreds of individuals have allegedly been subjected to arbitrary arrests, detention, torture, and extrajudicial killings. No one was held accountable for these abuses. Since the inception in 2003 of the Rapid Action Battalion (RAB), there has been a dramatic increase in the number of arbitrary arrests, torture, custodial death and extrajudicial killings or so-called “encounter” or “cross-fire” killings (in reality, many victims were killed following their arrests, 700 since 2004, and more than 200 since 2009).

The RAB (as well as the Detective Branch) claims that the law enforcers are not involved in such abductions. However, there are strong suspicions that they increasingly resort to enforced disappearance, as this practice makes it harder to find those killed, identify the methods used to kill them or those responsible.

Such a suspicion is supported by the fact that when the media and human rights defenders have attempted to document cases of enforced disappearance, they have been seriously intimidated, obstructed and harassed by law-enforcement agencies and government officials. No State should engage in any act of intimidation or reprisals against those persons who contribute to the eradication of such a practice as enforced disappearance.

Therefore, Bangladesh should thoroughly investigate each reported incident of disappearance speedily and efficiently and put in place a directive that security forces operate within the Constitution and the laws. Complaint mechanisms must be clearly established and freed from any kind of refusal, resistance, threats and intimidation. Bangladesh has obligations under the ICCPR and the CAT to prevent cases of enforced disappearance. The Rome statute of the International Criminal Court, which Bangladesh ratified in April 2010, also refers to the systematic use of enforced disappearance as a crime against humanity.

Saiful Huq, General Secretary, Revolutionary Workers Party of Bangladesh

Saiful Huq observed that the propensity of enforced disappearance in recent years is on the rise. It has been seen during all regimes; be it a democratically elected government or military government. When a person is disappeared that person is not only the victim; the entire family of the disappeared is being victimized. The State is going towards a terrible situation due to the negligence of the government. This has created panic among people. We should not only blame to police or RAB for disappearances. The state is patronizing this heinous crime. According to him, the trend and number of enforced disappearance is increasing day by day due to supremacy of power politics by some influential people. This is happening irrespective of any government or political ideology. He expresses concern that such killings are being justified by the state authority. He stated that no country could stop terrorism by applying counter terrorism. He expresses his gratitude to Odhikar for organising this meeting to make people aware against enforced disappearances.



Nurul Kabir, Editor, New Age and Advisor, Odhikar



Nurul Kabir said that the reason why we fought to make our country independent, has not been fulfilled. The state machinery is involved in most of the disappearances, and because of that, victims do not get remedy from the State. He said, it is the State's responsibility to find the people who disappeared. He said, "Every citizen has right to life and to live with dignity. If incidents of enforced disappearance increase then it would be considered a crime against humanity. If such crimes continue the external forces may interfere on our country in the name of human rights, which was the case in Iraq and Afghanistan. We have to be very careful about the interference of external forces."

Mahmudur Rahman Manna, Member Secretary, Citizens Movement for Democracy and Human Rights

Mahmudur Rahman Manna said that in Bangladesh, student politics are not functional in the universities. Gen. Ershad was in power for nine years, but during that time the Dhaka University Committee for Students Union (DUCSU) election was held; now a democratic party is in power but the DUCSU election was not held in 22 years. In basic terms, where there is no democracy, there is no humanity.



He observed that in Bangladesh, incidents of enforced disappearance are a continuing crime, which never tried. He said that the RAB as well as the DB police claim that they are not involved in such arrests or abductions. However, there are eye-witnesses that they narrate the cases of enforced disappearance, as this practice makes it harder to find those killed, identify the methods used to kill them and those responsible.

Syeda Ashifa Ashrafi Papia, Member of Parliament, BNP

Syeda Ashifa Ashrafi Papia said that the state is failing to protect the right to life of its citizens. The state itself took part in terrorism by patronizing acts of enforced disappearances. The Government has to identify those plain clothed men who were claiming to be members of law enforcement agencies. She urges Odhikar to organise such advocacy programme at the Language memorial (Jatiyo Shahid Miner).



Mayeen Uddin Khan Badal, Member of Parliament, Jatiyo Shomajtantrik Dol



Mayeen Uddin Khan Badal stated that Bangladesh was born with this crisis. He said, forced disappearance is a crime against humanity; and that it is necessary to raise our voice against it. It has to be taken very seriously and in an impartial perspective. He observed that we do not have an impartial administration to handle this.

He observed that it is very difficult to get rid of the practice of enforced disappearance when the State is involved in such acts or patronizes such crimes. The crime of

disappearance occurs in all the States. In the western countries, such crime also takes place. He said that no one should be subjected to punishment without a fair trial. He said that those who were 'disappeared'; one third of them did not come back. Mass awareness has to be created against enforced disappearance. He promised to keep working against disappearance and extrajudicial killing as a Member of Parliament. He urged the government to ratify the International Convention on Enforced Disappearance.

He strongly stated that he will stand for this convention. He said that if Odhikar gave him a Bill he would table this Bill in Parliament.

Conclusion

Enforced disappearance is deeply rooted in an exploitative and oppressive system that breeds social injustices and violations of basic human rights. It is an instrument of repression used by a government whose policies are opposed or assailed by critical members of society. It is often committed on the pretext of maintaining peace and order and protecting national security from those conveniently labeled as 'enemies of the State'.

The Convention is governed by a Committee on Enforced Disappearances elected by its parties. The Committee on Enforced Disappearances is the body of independent experts which monitors the implementation of the Convention by the States Parties. Parties are obliged to report to this Committee on the steps they have taken to implement it, within two years of becoming subject to it. The Committee examines each report and shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned.

The Convention reiterates basic principles in customary international law with respect to the obligation of States to investigate and prosecute perpetrators of enforced disappearances and to provide measures of reparation and redress to the victims.

The incident of enforced disappearance, which is internationally recognized as crime against humanity, is practiced in Bangladesh. This can not be acceptable at all in a civilized society. Speakers at the meeting commented that the democratic system will collapse if such heinous crimes are not prevented. Therefore, the Government of Bangladesh needs to ratify the International Convention for the Protection of All Persons from Enforced Disappearance immediately in order to prevent enforced disappearances.

The End

Annexure 1: Programme schedule

<p>Advocacy Meeting on the Accession to the International Convention for the Protection of All Persons from Enforced Disappearance 10 December 2011 Spectra Convention Centre, Dhaka Organised by Odhikar Supported by the Embassy of Switzerland, FIDH and AFAD</p>
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9:00 am – 9:30 am	Registration
9:30 am – 11:00 am	Inaugural Session
Presentation of Topic	<ul style="list-style-type: none"> • Dr. Saira Rahman Khan Founder Member, Odhikar
Session presided over by	<ul style="list-style-type: none"> • Dr. C R Abrar President, Odhikar
Chief Guest	<ul style="list-style-type: none"> • Justice M Imman Ali Honourable Judge, Supreme Court of Bangladesh
Special Guests	<ul style="list-style-type: none"> • Abdul Matin Khashru, MP (Awami League) Former Law Minister of Bangladesh • H.E. Dr. Urs Herren Ambassador, Embassy of Switzerland • Mugiyanto President, Asian Federation Against Involuntary Disappearances (AFAD) • David Knaute Head of Asia Desk International Federation for Human Rights (FIDH)
11:00 am – 11:30 am	Tea Break
11:30 am – 1:15 pm	Working Session 1
	<p>Presided by</p> <ul style="list-style-type: none"> • Adilur Rahman Khan Secretary, Odhikar
11:30 am – 11:45 am	<p>Paper Presentation :</p> <ul style="list-style-type: none"> • Farhad Mazhar Advisor, Odhikar

11:45 am – 12:45 pm	<p>Discussants:</p> <ul style="list-style-type: none"> • Victim: Shumi Das wife of Tapan Das • Dr. Tasneem Siddiqui Professor, Dept. of Political Science, Dhaka University • Abdul Quayum Joint Editor, Prothom Alo • Mahmudur Rahman Acting Editor, Amar Desh • Mirza Fakhru Islam Alamgir Acting Secretary General of BNP
12:45 pm – 1:15 pm	<p>Open Floor:</p> <ul style="list-style-type: none"> ▪ Question & Answer Session
1:15 pm – 2:15 pm	Lunch
2:15 pm – 4:30 pm	Working Session 2
	<p>Presided by</p> <ul style="list-style-type: none"> • Dr. Mizanur Rahman Chairman, National Human Rights Commission of Bangladesh
2:15 pm – 2:30 pm	<p>Paper Presentation:</p> <ul style="list-style-type: none"> • Mugiyanto President, Asian Federation Against Involuntary Disappearances (AFAD)
2:30 pm – 3:30 pm	<p>Discussants:</p> <ul style="list-style-type: none"> • Victim: Abu Sayed Chowdhury Himu son of Chowdhury Alam • David Knaute Head of Asia Desk International Federation for Human Rights (FIDH) • Saiful Huq General Secretary, Revolutionary Workers' Party of Bangladesh • Nurul Kabir Editor, New Age and Advisor, Odhikar • Mahmudur Rahman Manna Member Secretary, Citizens' Movement for Democracy and Human Rights • Syeda Ashifa Ashrafi Papia Member of Parliament (BNP) • Mayeen Uddin Khan Badal Member of Parliament (JSD)
3:30 pm – 4:00 pm	<p>Open Floor:</p> <ul style="list-style-type: none"> ▪ Question & Answer Session
4:00 pm – 4:30 pm	Closing Session
Special Guest	<ul style="list-style-type: none"> • Gabriele Derighetti Deputy Head of Mission, Embassy of Switzerland
Session presided over by	<ul style="list-style-type: none"> • Farida Akhter Treasurer, Odhikar
4:30 pm	Refreshments

Protect all persons from ‘enforced disappearance’⁷

Farhad Mazhar

People are abducted and disappearing from Bangladesh. Some are recovered as dead bodies after they were abducted. In many cases relatives of the disappeared accuse that law enforcing agencies have picked up the victim. However, the law enforcing agencies deny any knowledge about the disappeared. They flatly refuse the allegation that the victim had been picked up by agents or mysterious people posing as agents of police or RAB. This is a nightmare.

As human rights defenders many of us are documenting, reporting, campaigning and protesting against such crime. Enforced disappearance is an international crime. If it is widespread it will be considered as ‘crime against humanity’. This also implies that Bangladesh could become vulnerable to external humanitarian intervention. To combat this nightmare in addition to reporting, campaigning and protesting, it is essential that we engage in massive public campaign to make people aware of the heinous nature of the crime and demand it is stopped immediately. We should also appeal and convince the Government of Bangladesh to accede and ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED). This is only the minimum step by which we could begin addressing the pathological decadence of the present state of Bangladesh, failure of the judiciary to deliver justice and the violent (mainstream) political culture.

However it is important for us to understand that human rights movement is not independent from the democratic political aspiration of the people. Human rights movement is constitutive of democracy. Democracy is not simply an electoral process to ensure transfer of power from one party to another to exploit the people every five years, but first of all it is a state-form. Democracy is not about election; it is first and essentially about the form of the state where election is an exercise to solicit the will of the people to constitute as political community, draft a popular constitution and elect people on the basis of democratic constitution to govern and run state affairs. If human rights movement is not an integral aspect of peoples’ aspirations to constitute into democratic state-form for Bangladesh, it’s complain and campaigns may end up being, knowingly or unknowingly, an alibi for external intervention.

International Convention for the Protection of All Persons from Enforced Disappearance

The International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED) was adopted in 29 June 2006 by the United Nations General Assembly and came into force in 23 December 2010. Enforced disappearance is an international crime and is committed when a person is arrested, detained or abducted by the state or agents acting for the state, who then deny that the person is being held or conceal their whereabouts. The key question for the human rights defenders of Bangladesh since the adoption of the ICPAPED convention has been to design an effective campaign strategy to enhance public awareness so that Government of Bangladesh accedes to and consequently ratify the convention. If it happens the domestic law of Bangladesh will have to

⁷ Presented at ‘Advocacy Meeting on Ratification of the Convention on Enforced Disappearances by Bangladesh, 10 December 2011, Spectra Convention Centre, Dhaka’.

eventually synchronize with the norms suggested by the convention. But we should widen our horizon understanding and engagement.

Bangladesh is familiar with 'enforced disappearance' which we did witness during the liberation war. Pakistan army and their local collaborators picked up people from their home and later they were found slaughtered. Many never returned and their whereabouts is still not known. Crimes of enforced disappearance also occurred during post-liberation periods. It is committed more or less by all regimes in Bangladesh. A growing concern in recent years is the increase in numbers of 'enforced disappearance' and the role of the law enforcing agencies, particularly the Rapid Action Battalion despite the promise of the present government with respect to human rights protection .

The criminal prohibition of enforced disappearance is not new. They derived from the laws of war as interpreted by the Nuremberg Tribunals. It is true that in the conventional human rights conception, the international crime of enforced disappearance evolved out of human rights instruments and declarations created in response to disappearances perpetrated in Latin America during the 1960s, 1970s, and 1980s. The key moments in the criminalization of the enforced disappearances are the 1992 Declaration on the Protection of All Persons from Enforced Disappearance, the 1994 Inter-American Convention on Forced Disappearance of Persons, and Rome Statute of the International Criminal Court.

Prohibition of enforced disappearance by the laws of war served the humanitarian function of protecting "family rights" during armed conflict. It also protects noncombatants and promotes key international values by constraining the conduct of belligerents. The protected object is the family and the international value is familial integrity. The Nuremberg Tribunals found that the continuing uncertainty of enforced disappearance violated "family rights," including the right to know the fate of a loved one of the populations under German military occupation. However, enforced disappearance was initially prohibited as criminal within a narrow context such as armed conflict, although this limited prohibition has subsequently been expanded to apply to additional contexts. The Rome statute included 'enforced disappearance' under crimes against humanity to be tried within the jurisdiction of the court. The significance of the 2006 International Convention on the Protection of All Persons from Enforced Disappearance lies not only in its wider scope and context but also in criminalizing those disappearances which do not amount to war.

However, the significance of 'enforced disappearance' as enshrined in 2006 convention cannot be understood without the context of global war on terror led by USA. People have disappeared from many countries including Bangladesh and many ended up in clandestine detention program run by CIA⁸. In this context ICPAPED is a response to the human rights abuse of the powerful countries. In fact Bush Administration attempted to water down the language of the draft ICPAPED convention. A senior Bush Administration policymaker acknowledged that "[o]ur negotiators were certainly aware that there was this program where people were being held, and were not in touch with people." The Administration objected to provisions in the Convention which established a right to know, codified command responsibility as a mode of liability, eliminated the defense of superior orders, and established a requirement to disobey an order to engage in enforced disappearance. USA is not a signatory to the convention⁹.

⁸ INT'L COMM. OF THE RED CROSS, ICRC REPORT ON THE TREATMENT OF FOURTEEN "HIGH VALUE DETAINEES" IN CIA CUSTODY 24 (2007), *available at* <http://www.nybooks.com/icrc-report.pdf>. This report marked "strictly confidential" was submitted to John Rizzo, Acting General Counsel of the CIA, and later leaked to media.

⁹ R. Jeffrey Smith, *U.S. Tried To Soften Treaty on Detainees: Bush White House Sought To Shield Those Running Secret CIA Prisons*, WASH. POST, Sept. 8, 2009, at A3.

In blatant violation of international law, the US administration authorized interrogation methods and detention conditions which are in themselves or in combination violated the international prohibition of torture and other cruel, inhuman or degrading treatment. In addition USA has subjected detainees to secret detention, inter-state transfers without due process, enforced disappearance, and indefinite detention without charge or trial. Such acts which were sanctioned at the highest levels have been labeled “lawful” by the President and members of his administration¹⁰.

Human rights movement is constitutive of democracy

The campaign strategy of human rights defenders of Bangladesh has generally been documenting and reporting of human rights violation in general and creating public awareness about the constitutional rights of the citizens as well as various international declarations, conventions and treaties protecting the dignity and rights of persons. Nevertheless, from our experience in Odhikar, the question of ‘rights’ cannot be addressed merely as an abstract moral notion extricating from the process of constituting the state on firm democratic principle. The rights and liberties of the human beings and citizens are political project and constitutive of democracy as we can easily witness in the American ‘Declaration of Independence’ and the ‘Declaration of Rights of Men and Citizens’.

The famous declaration of the July 4, 1776 that appeals to both secular and religious values says:

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”

The Declaration approved by the National Assembly of France on August 26, 1789 says:

“The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.”

These are not merely declarations but constitutive of friends and enemy distinction, democratic power, peoples’ sovereignty and a popular state-form or political association that derives its legitimacy from the will of the people. Therefore liberty or rights are not technical legal category that can be implanted by ‘law’ or ‘rule of law’ unless such law or rules are themselves derived from the principle of liberty and rights upon which the state and implementing institutions are already built.

The necessity to recollect and rethink these grounding principles lies in the fact that the decadence of the state and the erosion of democracy are indeed global and not merely a phenomenon of Bangladesh. Human rights address the individual rights and presuppose the democratic State as implementing agency. However, if States are violating rights of the people it becomes imperative that we revisit the political foundation of the state and its relevance to human rights. From this perspective it is important to realize that the ICPAPED convention is directed to states. The definition of the ‘Enforced Disappearance’ is stated as follows:

“...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

¹⁰ See ‘USA. Torture, Enforced Disappearance and impunity’ by Amnesty International.
<http://www.amnesty.org/en/library/info/AMR51/036/2008/en> (accessed on 8 December 2010)

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.” It is similar to the definition provided in the Rome Statute.

It is important to note that the definition criminalizes the attempt of the state to ‘place a person ... outside the protection of the law’. A comparison with placing a person outside the protection of the law by evoking new legal (?) definition could be interesting. When USA refuses to provide legal protection to the so called ‘enemy combatant’ they not only refuse the captured enemy to enjoy the status of POW as defined by Geneva convention, but also refuse the status of person charged with a crime according to American law. They are neither ‘prisoners’ nor persons accused, but simply ‘detainees’. While this is example of the legal travesty which ‘people are placed outside the law’ the same objective is achieved by forcing a person to disappear and eliminating him or her physically.

Human rights as constitutive of democracy implies the struggle to constitute and reconstitute the people and person as ‘legal subjects’ defined by the principle of freedom, rights and responsibilities against the global and national process of placing him or her ‘outside the protection of the (democratic) law’. Once we can grasp the human rights movement, particularly against enforced disappearance, as the immanent constitution of democracy we will be able to take a giant step in understanding our task as well as objective. Our task in Bangladesh is to resist any form of attempt to place a person outside legal protection of democratic norms and laws and our objective is to constitute Bangladesh state on a democratic principle based on new constitution.’

The End

Significance of the Convention on Enforced Disappearances in Asia¹¹

Mugiyanto¹²

The yearly reports of the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID) in the last few years are evidences enough to counter some arbitrary assumption that enforced disappearances are phenomena of the past and unique only to Latin and Central American countries. The reports indicate that Asian region contributed to most cases acknowledged by the Working Group.¹³ The continuous finding and reporting by the non-government organization and victims' association on the cases in Asia also proves that these heinous crimes are still daily practices, and in some countries the situation is very alarming. Furthermore, even if there are no more cases of enforced disappearances at the current time, but the government fails to clarify the fate and whereabouts of the victims, they are considered continuous crimes.¹⁴

If we look at the history, enforced disappearance was first used by the Nazi in 1941 in the "occupied territories" especially in the extermination of the Jews. It was subsequently employed by the military and dictatorial regimes in Asia and Latin America and later even by formally democratic regimes, including those in Asia.¹⁵ The 9/11 tragedy in New York in 2001 that gave pretext to "war on terrorism" agenda launched by the United States unfortunately provides new grounds for some governments, mostly in Asia and Middle East to commit enforced disappearances against those considered "terrorists".

In contradiction to the continuing practices of enforced disappearances in Asia, no single country in the region put enforced disappearances as a separate crime in their domestic legislation. Few countries such as the Philippines and Nepal have been in the process adopting the draft bill on enforced disappearances, but the way seems to be not an easy one. Some other countries including Indonesia put enforced disappearance a crime, but under the definition prescribed in the Rome Statute of the International Criminal Court which is difficult to prove.

Besides, as compared to Latin America, Europe and Africa, Asia also does not have regional instruments or mechanism to deal with such crimes in form of a convention or a court. What we have in the region which is still in initial step is the ASEAN Intergovernmental Commission on Human Rights (AICHR) which applies only in the Member State of ASEAN in Southeast Asia sub-region.¹⁶

¹¹ The paper is presented at the Advocacy Meeting on the Accession to the International Convention for the Protection of All Persons from Enforced Disappearances held in Dhaka, Bangladesh on December 10, 2011 by Odhikar.

¹² Mugiyanto is the Chairperson of the Asian Federation Against Involuntary Disappearances (AFAD). He himself is a survivor of disappearances in Indonesia in 1998 when Indonesia was still under the authoritarian rule of General Suharto.

¹³ In the report released on January 26, 2011, the UNWGEID reported that the total number of cases transmitted by the Working Group to Governments since its inception is 53,337. The number of cases under active consideration that have not yet been clarified, closed or discontinued stands at 42,633 in a total of 83 States. The Working Group has been able to clarify 1,814 cases over the past five years.

¹⁴ Article 8, paragraph 1 (b) states that the statute of limitation "Commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature".

¹⁵ See the report submitted on January 8, 2002 by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, E/CN.4/2002/71.

¹⁶ On 23 October 2009, the Heads of State/Government of ASEAN presided over the Inaugural Ceremony of the ASEAN Intergovernmental Commission on Human Rights (AICHR), during which they also announced the "Cha-am Hua Hin Declaration on the Inauguration of the AICHR" to pledge full support to this new ASEAN body and emphasize their commitment to further develop cooperation to promote and protect human rights in the region.

Regional situation vis-a-vis enforced disappearances

The lack of political commitment of the most Asian governments, and the absence of the national and regional mechanism in combating enforced disappearances have made Asia a fertile ground for the practices of enforced disappearances.

In war-torn state of Jammu and Kashmir of India, around 8,000 people disappeared since the onset of armed conflict across the state in 1989, that are generally attributed to Indian security forces. The Association of Parents of the Disappeared Persons (APDP) has recently found more or less 2, 900 unmarked graves in cemeteries of 18 villages near the Line of Control, dividing Kashmir between India and Pakistan. Families believe that their disappeared relatives could have ended up in these unmarked graves. No single case was brought to court and the victim's rights have been denied although India already signed the Convention on Enforced Disappearances in February 2007.

In Indonesia, the government still have to follow up the recommendations of the National Commission on Human Rights (Komnas HAM) and the Parliament in order the government to take comprehensive measures which includes to investigate and prosecute the cases of enforced disappearances of pro democracy activists that happened before the fall of the dictatorship in 1997-1998.¹⁷ Human rights organization such as the Commission for the Disappearances and Victims of Violence (KontraS) and the Indonesian Association of Families of the Disappeared (IKOHI) also documented thousands of cases that happened in the past from 1966 – 2004 that need to be resolved by the government. Follow up needs to be taken by the Government of Indonesia especially because it signed the Convention on Enforced Disappearances in September 2009 and plans to ratify it in the very near future.¹⁸

In Nepal, massive human rights violations, including enforced disappearances took place during the ten year conflict between the government of Nepal and the Communist Party of Nepal-Maoist (CPN-M), which ended in 2006 by both parties signing the Comprehensive Peace Agreement. However, the cases of disappearance remain unresolved up to this day despite efforts of the Nepali government to institute some legal reforms. The draft bill for the establishment of a Truth and Reconciliation Commission was strongly criticized by civil society, for it allows granting of amnesties to the perpetrators. The same is true with the anti-disappearance bill which was approved in a form of an ordinance but was retracted following clamors of foul play by the national and international human rights organizations.

In Pakistan, thousands of persons have been subjected to enforced disappearance, mostly from Balochistan province and from the North Western Frontier Province, Sindh and Punjab. The number of cases has sharply increased since Pakistan joined the “war on terror” campaign. Still, as a result of the constant protests and petitions in courts by families of the disappeared, and with the clear resolve on the part of the Supreme Court by issuing orders to the military to produce the detainees before the courts, the government has finally acknowledged the custody of dozens of alleged terror suspects, but in most cases, the intelligence agencies continue to defy these judicial orders in the name of national security.

¹⁷ Besides the prosecution in the Human Rights Court, the Parliament also recommend the President to find out the 13 people still disappeared, to provide the compensation and rehabilitation foe the victims and to ratify the Convention on Enforced Disappearances.

¹⁸ As mentioned in the National Plan of action on Human Rights 2011-2014, Indonesia supposed to ratify the Convention on Enforced Disappearances in 2013. But the human rights organization such as KontraS and IKOHI are confident that the ratification could happen sooner than planned

In the Philippines, according to the reports of FIND and Karapatan, more than 2,000 people are victims of enforced disappearance since martial law up to the present. Disappearances are mostly carried out as a result of the counter-insurgency operations of the government against the communist and secessionist groups. Although, the number of cases of disappearances had dropped significantly in 2007 after the visit of Mr. Philip Alston, then UN Special Rapporteur on Extrajudicial Execution to the country, the political persecution against known progressive and opposition leaders by slapping them with trumped-up criminal charges, continues unabated. But remains, impunity still holds sway as the Philippine government has failed to pass a domestic legislation penalizing enforced disappearance and neglects its voluntary pledge to the UN Human Rights Council stating that it would sign and ratify the Convention on Enforced Disappearances.

In Thailand, enforced disappearance continues unabated. The recent escalation of political violence in the central district of Bangkok between the police forces and the Red-Shirt protesters and the ongoing military operations in southern provinces are feared to have resulted in more cases of disappearances. While recent cases have not been fully investigated by the authority, the perpetrators of past human rights violations particularly the military crackdown on pro-democracy demonstrators in Bangkok in May 1992 remain unpunished. The unresolved disappearance case of Atty. Somchai Neelaphajit, a human rights lawyer who disappeared in Bangkok in 2004 also continues to be a litmus test to the Thai judicial system.

In Timor-Leste, victims of gross violation of human rights under the Indonesian occupation from 1975 to 1999 are also still waiting for justice. The Truth, Reception and Reconciliation Commission (CAVR) of Timor-Leste, and the joint Commission of Truth and Friendship (CTF) with Indonesia have done many to them in term of truth. But in term of justice and prosecution to those most responsible, many thing still have to be done. Hundreds of Timorese children separated from their parents during Indonesian occupation living in Indonesia are still trying to identify them self and meet their relatives that supposed to be facilitated by the the government of Timor-Leste and Indonesia. In terms of the Convention on Enforced Disappearances, Timor-Leste President Ramos Horta that AFAD met in 2009 as well as parliament member said that they are keen to ratify it.

Sri Lanka is even very bad with extrajudicial killings and disappearances in the 1980's and 1990's. Before those cases was thoroughly and justly resolved, the current government of President Mahinda Rajapaksa is even in very serious pressure by international community to deal with possible commission of war crimes and crimes against humanity during the massive military operation against the Tamils in 2008-2009.

In Bangladesh, one of the leading human rights organizations Odhikar reported several cases of enforced disappearances 2010 and 2011. The Odhikar has carried out fact finding missions on some incidents of enforced disappearance. Due to intensive national and international campaigns against extra-judicial killings; some decisions were passed by the High Court Division of the Supreme Court. Based on the reports by AFAD member Odhikar, Bangladesh should and will ratify the Convention on Enforced Disappearances although it might not be in a very near future.

The birth of the Convention on Enforced Disappearances

It takes some three decades of efforts that finally on December 20, 2006, the United Nations General Assembly adopted the International Convention on the Protection of All Persons from Enforced Disappearance (CED). The Convention became the latest main international treaty on human rights. Different from other international convention, the Convention on Enforced Disappearances is a result

of a long struggle initiated by the families of enforced disappearances, mostly those from Latin American countries such as Argentina, Chile, Brazil, Guatemala and others. They are the first to campaign at the international level with the support of international NGOs and draw international attention on the existing practices of enforced disappearances in their countries and call on the international community, particularly the United Nations to address the problems.

Because of this struggle, in 1980 the United Nations established the first thematic mechanism to deal with enforced disappearances called the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID). The Working Group is composed of 5 independent experts representing geographical division of the UN whose mandate is essentially of humanitarian nature, namely it acts as a channel of communication between the family of the victim and the government concerned to clarify the fate and whereabouts of the disappeared persons. As such, the Working Group lacks any binding power as well as judicial competence and does not have the competence to condemn a State for human rights violations, or to establish individual responsibility, or to order serious and thorough investigations, or to award any measure of reparation to victims of enforced disappearance.

Later on December 18, 1992, the United Nations General Assembly unanimously adopted the United Nations Declaration for the Protection of all Persons from Enforced or Involuntary Disappearances under the Resolution 47/133. This declaration, although non-binding, reproduces some generally recognized customary rules and establishes the principles that shall guide and govern all States in the prevention and suppression of the practice of enforced disappearance.

Another historical moment indicating the victory of the efforts by families association, NGOs and some States was when after long and difficult negotiations since 2002, a text of the Convention on Enforced Disappearances was finally approved on 23 September 2005 by the drafting working group led by the late Ambassador of France, Bernard Kessedjian. It was then adopted by the UN Human Rights Council on 27 June 2006 and then unanimously adopted by the UN General Assembly in New York on 20 December 2006.

What is very remarkable in the process of negotiating the draft instrument (the Convention), is that the families associations such as the Latin American Federation of Association of Families of Disappeared Detainees (FEDEFAM), the Asian Federation Against Involuntary Disappearances (AFAD) and others were given very significant chances to participate and intervene. This makes the Convention becomes very strong and significantly reflect the needs and interests of the victims.

If we look at the status of the Convention on Enforced Disappearances, it has 30 ratification and 90 signatures. Of the 30 ratification, only 13 recognize the competence of the Committee on Enforced Disappearances. Of the 30 ratifications, only three are from Asia, namely Japan, Kazakhstan and Iraq. So if we look at the composition, Asia is still very much underrepresented. The Convention entered into force on December 23, 2010, 30 days after the deposit of the document of ratification of the 20th ratification, namely Republic of Iraq to the Secretary General of the United Nations.¹⁹

¹⁹ See the UN website: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en

Some important provisions of the Convention on Enforced Disappearances

As a campaign and education material, AFAD published a “Primer to the Convention for the Protection of All Persons from Enforced Disappearances” which helps public to understand the background of the Convention, what it is and why we particularly in Asia need the Convention. Some of the important points are to be mention here.

1. The Convention establishes the non-derogable rights of everyone not to be subjected to enforced disappearance. No circumstance whatsoever, be it a state or threat of war, internal political instability or any other public emergency, may be invoked to justify an enforced disappearance. The Convention holds that enforced disappearance constitutes an offense under criminal law and it considers this widespread or systematic practice of enforced disappearance a crime against humanity. Indeed, enforced disappearance is a crime under international law.

2. The Convention provides for the right of the relatives of the disappeared persons and of the society as a whole to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate and whereabouts of the disappeared person. According to the Convention, each State Party shall codify enforced disappearance as an autonomous offense under its criminal law and punish it by appropriate penalties which take into account its extreme seriousness. State Parties to the Convention shall cooperate in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains. Each State Party shall take appropriate measures in this sense.

3. The Convention contains a provision that emphasizes the right to form and participate freely in organizations and associations supporting the cause of the disappeared. The Convention also provides that:

- Enforced disappearance is a continuing offense and statutes of limitation for criminal proceedings shall not apply until the fate and whereabouts of the victim are established with certainty;
- Enforced disappearances constituting crimes against humanity (systematic and widespread practice) are imprescriptible;
- No one shall be held in secret detention;
- All States Parties shall establish and maintain up-to-date official registers of persons deprived of liberty and, upon request, provide some basic information on people deprived of their liberty to judicial authorities and any person with a legitimate interest in this information;
- In cases of enforced disappearance, “victim” means the disappeared person and any individual who has suffered harm as a direct result of an enforced disappearance; and
- All victims (in the broad sense stated above) of disappearance have the right to obtain reparation and prompt, fair and adequate compensation.

The Convention on Enforced Disappearances fills the gap²⁰

There have been several international and regional bodies tasked to address the issue of enforced are the following such as the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID), European and Inter-American Court of Human Rights and the African Commission of Human and Peoples' Rights, International Criminal Court (ICC), United Nations Human Rights Committee (HRC) and International Committee of the Red Cross (ICRC). But they all have their own limitation.

The United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID) established in 1980, for instance, lacks any binding power as well as judicial competence. Its mandate is essentially humanitarian and despite much valuable work, it has not been able to stop the spread of enforced disappearance. The regional mechanisms apply only for countries in the region respectively.

On the other hand, the ICC is a Court of international criminal law which establishes criminal responsibility of individuals for crimes against humanity, genocide, and war crimes, and not individual cases of enforced disappearances as defined by the Convention. Victims of enforced disappearances and their relatives do not have direct access to this international tribunal, for it is so created so as to condemn international criminals and not to primarily protect the rights of the victims.

For its part, the Human Rights Committee (HRC) serves as the monitoring body of the International Covenant on Civil and Political Rights (ICCPR) for all States that have ratified it and its First Optional Protocol. As many States are Parties to the Covenant, it has a colossal workload and a huge backlog that is almost paralyzing its action. The HRC is a quasi-judicial body and its views on individual communications lack a binding power. Families have always insisted that the Convention should be a fully bodied instrument in its own right with its own monitoring organ.

The ICRC works to guarantee the implementation of the Geneva Conventions and their Additional Protocols. However, its competence is limited to situations of conflict and to international humanitarian law. Further, the ICRC lacks any binding or judicial power and all its actions are highly confidential and strictly humanitarian.

Conclusion

Enforced disappearances are continuously practiced by governments in many countries in Asia with different pretexts, such as national security and stability, war against terrorism, war against separatism, war against communism and others. It happens in different nature of government from military regime, authoritarian regime, and sadly it happens also in the so called democratic government. This ongoing practice brings about masses of cases reported to the United Nations Working Group on Enforced or Involuntary Disappearances that make Asia contributes most of the cases reported by the Working Group.

On the other hand, there is an absent in national and regional level for legislation able to tackle these massive crimes. No single country in Asia criminalized enforced disappearances. This situation then resulted in massive of neglected victims unable to access their rights to truth, justice, and reparations.

²⁰ Most points here are taken from the Primer on the Convention published by AFAD

However, some countries show progress in their willingness to dealing with the phenomena by signing and ratifying the Convention on Enforced Disappearances (Japan, Kazakhstan, Iraq, India, Indonesia and others) or in the process of doing so such as Thailand, The Philippines, Nepal, Timor-Leste, South Korea and others.

In the global world where human rights and fights against impunity has been a common language and spirit, each country should makes efforts to its best to move and transform words into reality. Ensuring the protection and fulfillment of human rights should then be our transformed commitment. Only this way we can measure our country as a democratic and civilized country. This all can be done initially by joining the international justice and human rights systems that have been agreed by our government in the United Nations. In the context of global fights against enforced disappearances, ratification and implementation of the International Convention for the Protection of All Persons from Enforced Disappearances should be our common goal.

The End

Annexure 3 : Fact-finding Reports

Disappearance of Mohammad Chowdhury Alam, Ward Councillor Number-56 of Dhaka City Corporation

Fact finding Report
Odhikar

Mohammad Chowdhury Alam (66), Councilor of 56 number ward of Dhaka City Corporation and a resident of 315/C Khilgaon, was abducted from in front of Metro Garden on 75, Indira road on June 25, 2010. The family alleges that he was taken away in a micro-bus, by 7/8 men who dressed in plain clothes and identified themselves as law enforcement officers.

His son, Abu Syed Chowdhury Himu, claimed that, Mohammad Chowdhury Alam was abducted by law enforcement officers and in response, on the 4th of July, 2010, he filed a Habeas Corpus petition at the High Court Division of the Supreme Court. At that time, Judge H.M Shamsuddin Chowdhury and Judge Sheikh Md. Zakir Hossain, sat at the division bench. The Court, without issuing any rule on the habeas corpus, wanted to give the police a directive. Hearing this, the concerned lawyers decided to withdraw the writ petition.

On 18th July, 2010, Abu Syed Chowdhury Himu, again filed a petition about Mohammad Chowdhury Alam having gone missing, at the division bench which comprised of Justice Mamunun Rahman and Justice Syeda Afsar Zahan. Having taken the matter into consideration, on 19th July, 2010, the court ordered the Police IGP and RAB DG to immediately investigate the matter and take effective steps. The Court also ordered for a report to be submitted on Mohammad Chowdhury Alam's abductors

Human Rights organization, Odhikar, has conducted a fact finding mission in to the matter. During this, they interviewed:

- Relatives of the victim
- Eye witnesses
- Police Officers



Photograph: Mohammad Chowdhury Alam

Abu Syed Chowdhury Himu (35), Chowdhury Alam's son

Abu Syed Chowdhury Himu told Odhikar that, his father, Mohammad Chowdhury Alam, was a member of the Executive committee of the main opposition party, BNP and President of BNP Ramna unit. Also, he was Ward Councilor of 56 number ward of Dhaka City Corporation.

Himu said that, on the evening of 20th June, 2010, his father went to the United Hospital in Gulshan-2 to visit Dhaka City Corporation Mayor Sadek Hossian Khoka, who was admitted there for medical

attention. On that day, a man named Billal Hussein from the Detective division of RAB headquarters, attempted but failed to take his father into a microbus and abduct him.

Himu further told Odhikar that, a man attempting to cause political harass his father, Mohammad Chowdhury Alam, filed a case at Shahbagh Police station on 20th June, 2010. To prevent being arrested for that accusation, his father went into hiding at a relative's place at 38 Indira road.

At 5:00 pm on the evening of 25th June, 2010, Khilgaon Police station's Sub Inspector (SI) Tafazzal Hussein came to their Khilgaon residence and asked Himu whether his father was home. When Himu told him that he was not there, the SI informed him that a case had been filed against his father on 20th June, 2010 and he had brought the warrant for that arrest. SI Tafazzel Hussein then menacingly told him that another case had been filed against his father that morning, as in 25th June, 2010, at Shahbagh Police station.

At around 8:00 pm on the evening of 25th June, 2010, his father came to their Khilgaon residence in a relative's car which was driven by their Chauffeur Ashim Chandra Bhaumik. After spending approximately 15 minutes there, Mohammad Chowdhury Alam headed out towards the house of Momtaz Begum, the owner of PRS garden at 42/B-1, Indira road. At around 10:00 pm that night he received news at his cell phone that his father had been abducted from in front of Metro Garden at 75 Indira road, by 7/8 plain clothed men and identified themselves as law enforcement officers. The men picked Mohammad Chowdhury Alam up in a micro-bus and took him away.

On the next morning, 26th June, 2010, the private car from which Mohammad Chowdhury Alam was abducted from was found abandoned by the WASA centre at Kaoron bazaar. He said that, he then searched for his father in numerous locations but was unable to find him. Afterwards, he went to Tejgaon Police station to file a general diary (GD) about his father having gone missing, but the Police officers at the station refused to register the GD, saying that they could not do so as the place of the incident fell under the Shere Bangla Nagar police station. On his insistence, however, the police officers brought the private car from where it was abandoned and kept it under police custody.

On the 30th of June, 2010, Himu went to Shere Bangla Nagar Police Station as he wanted to file a case there. However, the police officers refused to register the case and asked him to file a GD instead. The police officers filed his GD under the allegation that a group of plain clothed men had abducted his father. GD number- 1766; dated 30/06/10.

On 1st July, 2010, officer in-charge (OC) of Shere Bangla Nagar police Station, Mohammad Reaz Hussein, called Himu and asked him to come to the police station. When he arrived at the police station the OC asked him to file a case. He then filed a case, using a copy of the GD as primary statement of complaint, against 7/8 unnamed assailants for abducting his father. Case number- 4; Date: 01/07/10, under Section: 341/365 of the Penal code. The investigation was initiated by SI Kamruzzaman. Later, on 4th July, 2010, the case was transferred to the Detective Branch (DB). Himu was informed that the investigating officer on the case was now Inspector Mashiur Rahman.

Himu further told Odhikar that, on 4th July, 2010, he filed a habeas corpus petition at the High court division of the Supreme Court, alleging that his father was abducted by law enforcement officers. At that time, Justice H.M Shamsuddin Chowdhury and Justice Sheikh Md. Zakir Hussein, sat at the Division Bench and heard the petition. The Court, without issuing any rule on the habeas corpus, wanted to give the police a written directive. Hearing this, the concerned lawyers decided to withdraw the Writ.

However, seeing no progress on the case at the Shere Bangla Nagar police station, he re-filed the petition at the High Court Division of the Supreme Court on 18th July 2010. The Division Bench which consisted of Justice Mamunun Rahman and Justice Syeda Afsar Zahan, heard the petition this time. Having taken the matter into consideration, on 19th July, 2010, the court ordered the Police IGP and RAB DG to immediately investigate the matter and take effective steps. The court also ordered the Inspector General of Police and Director General of Rapid Action Battalion (RAB) to submit a report at the court regarding his abduction.

Mohammad Jasimuddin Chowdhury (27), Chowdhury Alam's Chauffeur

Mohammad Jasimuddin told Odhikar that, at 5:00 pm on the evening of 20th June, 2010, Mohammad Chowdhury Alam headed out, from his residence in Khilgaon, towards United hospital in Gulshan- 2 in his private car. He was going there to visit Sadek Hussein Khoka, the Mayor of Dhaka City Corporation, who was admitted there for medical attention. When Jasimuddin had parked the car in front of the hospital, Mohammad Chowdhury Alam stepped out and entered the hospital building.

Later, at around 7:30pm that evening, Mohammad Chowdhury Alam left the hospital and headed out towards Gulshan- 2 in the same private car. At that time, a micro-bus appeared from near the United Hospital and blocked the path of his private car. He said, at that time 5/6 people came out of the micro-bus and surrounded the car. Seeing the situation that was before him, he instinctively picked up speed and headed towards Gulshan-2. They were being pursued by two men on a motor cycle. They stopped when they reached the Gulshan-2 traffic signal. There, through the window of his private car, Mohammad Chowdhury Alam informed SI Mohammad Ali of Gulshan Police station about the situation. The Sub- Inspector was there in charge of traffic duty. SI Muhammad Ali then chased the motor cycle which was following Chowdhury Alam's car. He caught one of the two men who were on the motor-cycle, while the other one escaped. The SI came to know that the man was a member of the intelligence wing of the RAB headquarters and that his name was Billal Hussein. He is Assistant Sub Inspector of RAB. His ID number was 314772 and PIR No 4016801. SI Mohammad Ali took Billal Hossain to Gulshan police station and filed a General Diary against him. The General Diary Number was 1748, dated June 20, 2010. Later, men arrived from the RAB headquarters and arranged Billal Hussein's release and took him away. Jasimuddin told Odhikar that, since that day, Law enforcement officers had been trying to arrest Mohammad Chowdhury Alam.

SI Mohammad Ali, Gulshan Police Station, Dhaka Metropolitan Police, Dhaka

SI Mohammad Ali told Odhikar that, he had heard about the abduction of Mohammad Chowdhury Alam. However, he refused to say anything about the incident or about the pursuit of Mohammad Chowdhury Alam's car, which took place before him.

SI Tafazzel Hussein, Khilgaon Police Station, Dhaka Metropolitan Police, Dhaka

SI Tafazzel Hussein told Odhikar that, on 24th June, 2010, an arrest warrant arrived at their station through police mail. The warrant was issued from the Shahbagh police station bearing the case number- 43; Date: 20.06.2010; under Section 385/506 of the Penal Code. At around 5:00pm on the evening of 25th June, 2010, he went to Mohammad Chowdhury Alam's residence at 315/C Khilgaon, with the arrest warrant. On his arrival he found that Mohammad Chowdhury Alam was not there and accordingly he returned to the police station.

Ashim Chandra Bhaumik (20), Private car Driver

Ashim Chandra Bhaumik told Odhikar that, he was an employee as a chauffeur at the house of Momtaz Begum, the owner of PRS Garden at 42/B-1, Indira road. The private car he drove was a Black X- Fielder, with license plate no- Dhaka- Metro- GA- 23-3516. Mohammad Chowdhury Alam was hiding at that residence. At around 5:00 pm on the evening of 25th June, 2010, he drove Mohammad Chowdhury Alam to BNP's Central Office, situated in 28/1, Naya Palton VIP road. Mohammad Chowdhury Alam stayed there in a meeting for about one hour. At around 8:00 pm that evening he drove Mohammad Chowdhury Alam to his residence at 315/C Khilgaon.

Ashim Chandra Bhaumik further informs Odhikar that, Mohammad Chowdhury Alam left the car and entered his house where he stayed for around 15 minutes before returning to the car. Then he headed out towards Indira road from Khilgaon. While on their way, at around 9:00 pm in front of Metro Garden at 75 Indira, he saw a yellow Taxi cab coming from the south (i.e. the opposite direction). He moved to the side in order to allow the taxi cab to pass, but at the same time the cab mimicked his act. Seeing this he tried to pass but at the same time, the taxi tried to pass too. This led to a head on collision. He then stepped out of the car and asked the cab driver to step down as well. The taxi driver did not do so and told Ashim, from inside the car that, he would go some way ahead and stop the car there. However, the taxi cab did not stop and sped away north. Almost instantly a white micro bus arrived from behind and stood in front of the private car. Seeing this, Ashim went back into the car to pull the car to the side but at that moment 7/8 men stepped out of the micro bus and surrounded it.

He said that, the men were dressed in denim pants, shirts and t-shirts. He said they all looked similar; all of them were tall and had the same short hair-cut. The men opened the door of the private car and forcefully pulled him out. After that they began to slap him. When he wanted to know why they were doing so, they informed him that they were Law Enforcement Officers. At that time they pulled Mohammad Chowdhury Alam out of the private car and took him into the micro-bus. They thrust him on to the street and one of the men drove the private car off to the south. The other men drove the micro-bus away north, with Mohammad Chowdhury Alam inside it. Ashim then used his cell phone to inform Momtaz Begum and her brother Mahbubur Rahman about the incident that just took place. He then went back to Momtaz Begum's house. He said that the private car was found abandoned beside the WASA center at Kaoran bazaar on June 26, 2010. The car was later taken and kept in custody at Tejgaon police station.

Omar Farooque (27), Security Guard, Metro Garden, 75 Indira road, Farm gate, Dhaka

Omar Farooque told Odhikar that, at approximately 6:00 pm on the evening of 25th June, 2010, he was on duty at the Metro Garden gate with Amidul Islam. At around 9:00 pm, a yellow taxi cab, followed by a micro-bus was approaching from the south while a private car was coming from the north. Since the road was narrow, it made it difficult for both the cars to pass simultaneously. While they attempted to do so, the taxi cab hit the private car and sped off. The micro-bus then stood in the path of the private car and 7/8 men came out of the micro-bus and surrounded the private car. They slapped the driver of the private car several times and then forcefully pulled a man out from the car. The man was dressed in white panjabi and pajamas. Upon resistance from the man, the assailants struggled with him and forced him in to the micro-bus and shut the door. One of the men took the private car and drove it off south, the others entered the micro-bus and it was driven away north.

SI Kamruzzaman, Shere Bangla Nagar Police Station, Dhaka Metropolitan Police, Dhaka

SI Kamruzzaman told Odhikar that, on the morning of 30th June, 2010, Mohammad Chowdhury Alam's son Himu, came to the Shere Bangla Nagar police station and filed a GD. In the GD he mentioned that, at approximately 9:00 pm on 25th June, 2010, his father Mohammad Chowdhury Alam was abducted from in front of Metro Garden at 75 Indira road, by 7/8 men who identified themselves as law enforcement officers. GD number- 1766; Date: 30/06/10.

SI Karmuzzaman further said that, at around 7:30 pm on 1st July, 2010, Himu came to the police station again and using a copy of the GD as primary statement of complaint, against 7/8 unnamed assailants for abducting his father. Case number: 4; Date: 01/07/10. SI Kamruzzaman was in-charge of the case. On 04/07/10 the case was transferred to the Detective Branch. Inspector Mashiur Rahman was put in-charge of the investigation.

Inspector Mashiur Rahman, Detective Division (DB), Mintu road, Dhaka

Inspector Mashiur Rahman told Odhikar that, on 4th July, 2010 case number: 4 of Shere Bangla Nagar Police Station was transferred to the DB. He was then put in charge of the case. He refused to say anything further while the case was under investigation.

Mohammad Rezaul Karim, Officer in-charge, Shahbagh Station, Dhaka Metropolitan Police, Dhaka

Mohammad Rezaul Karim told Odhikar that, he had read in the news paper that Ward Councillor Mohammad Chowdhury Alam had been missing since 25th June, 2010. He said that there were 5 cases filed against him in 2007, 2 General Diaries filed against him in 2009, and 2 cases and 2 General Diaries filed against him in 2010. It is not known whether these cases have been filed under political bias.

Odhikar demands that Mohammad Chowdhury Alam be found and that the abductors be brought to justice.

-The End-

Tapan Das, abducted by alleged DB police from Shyampur in Dhaka

Fact finding Report Odhikar

At around 8 pm on 3 August 2011 Tapan Das (40), the son of Tulsi Das and Rajoshri Das of 19/1 Nobinchondra Gowshami Road of Shyampur, Dhaka, was arrested by a few people who identified themselves as Detective Branch (DB) of Police from KB Road of the Mil Barrack area, Gendaria. His family informed Odhikar that since his arrest, Tapan Das has been missing.

Odhikar has conducted a fact-finding mission in to the matter. During this, they interviewed:

- The family of Tapan Das
- Neighbours and relatives
- Eye-witness
- Members of the law enforcement agency



Photo: Tapan Das

Shumi Das (28), wife of Tapan Das

Shumi Das informed Odhikar that Tapan Das left the house at around 10 am on 3 August 2011. On that day at around 7.30 pm, she had her last conversation with him. Hearing the news that the Detective Branch (DB) police had taken her husband in a microbus, she searched for him in different places. Shumi Das said that accompanied by her younger brother Shujon, she went to Shutrampur Police Station, Gendaria Police Station, Shyampur Police Station, and RAB offices in search of Tapan. Besides this, she also searched for him in Mitford Hospital and Dhaka Medical College Hospital. In the meantime, different media publicised the news of the abduction of Tapan. Her husband is a tailor by profession, but is also involved in trading land.

She said that hearing that the DB police had arrested Tapan, they (she and Shujon) went to the Detective Brach offices. However, the DB police could not find any trace of Tapan. She also said that although a GD (General Diary) was filed regarding the abduction the police changed it to a missing persons case. They mentioned the incidence of abduction by DB police, but police twisted it in their own way and recorded it as a missing person's case. She informed that at first they went to Shyampur Police Station and there the police said that it was a case under the jurisdiction of Gendaria Police Station, so they went to Gendaria Police Station. In Gendaria Police Station, the police said that since their residence is in the Shyampur area they would have to file a GD at Shyampur Police Station. In this way, the duty officers harassed them from evening until mid night, sending them from one police station to another. She does not know the reason for the arrest of Tapan by the DB police. There was no case or GD against Tapan in any police station. He was known to all as a simple person and masterful tailor. She expects interference of the Prime Minister in this matter to rescue her husband.

Gobinda Das (33), friend of Tapan Das

Gobinda Das told Odhikar that at around 8 pm on 3 August 2011, he and Tapan Das were returning home on a rickshaw after completing some work in the Chamber of Advocate Zakir. Tapan used to meet regularly with Advocate Zakir on the necessary work related to land trading. That day while returning from the chamber their rickshaw passed an under-construction building of Aesthetic Property Development Limited, adjacent to the KB Road of Faridabad, near Gendaria Police Station; DB police stopped the rickshaw and asked Tapan Das his name. Tapan replied. To verify if this was true, the DB police asked Gobinda who he was with. Having confirmed Tapan's identity the police asked him to get down from the rickshaw. They put Tapan in a white microbus standing by the side of the road and took his mobile. After some time the same people returned and picked up Gobinda in the microbus. Since most of the shops on either side of the road were closed, it was rather dark. On one side, the construction work of Aesthetic Property Development Limited was going on but nobody came forward to help them. Some people sitting on other rickshaws saw the incident but did nothing. Getting into the microbus, Gobinda saw that Tapan was blindfolded and handcuffed. Then they put handcuffs on Gobinda and blindfolded him as well. He heard Tapan requesting the police to loosen the handcuff. Then they asked Tapan how many mobiles he had and in reply, he said that he had only one. At that moment Tapan's second mobile rang and hearing this, they beat Tapan and snatched that mobile as well. Gobinda heard the sound of Tapan being beaten. Gobinda informed Odhikar that Tapan had 30 thousand taka with him. DB police asked Tapan about Gobinda, asking what his name was, his identity and his occupation. Then Tapan said that Gobinda delivered papers and made photocopies regarding land trading business and generally helped the advocates; for these reasons Gobinda stayed with Tapan. Tapan also said that Gobinda had been working with him for about 7/8 days.

After learning this information from Tapan, the police asked Gobinda the same questions regarding himself. The microbus stopped after having travelled a long way. Gobinda was taken out of the microbus near the DB office on Mintu Road. Gobinda informed Odhikar that there were around 6/7 people in the microbus. The DB police ordered him to leave the microbus. After getting out of the microbus he asked the police where he should go. The DB police instructed him to walk straight ahead without looking back. Then after returning to his area, he informed Tapan's family that the DB police had Tapan.

Dr. Moron Chan Das (70), father of Gobinda Das

Dr. Moron Chan Das informed Odhikar that at around 8 pm on 3 August 2011 his son Gobinda and Tapan Das were arrested from Faridabad KB Road near Gendaria Police Station and the old post office, by some people who identified themselves as DB police. His son Gobinda used to make banners. Then due to a financial crisis, he left that shop and took a job in his friend Anjan's shop at Postogola which was in the trade of recycling second hand items. He did not like this work and so left it and was jobless for a few days. Coming to know about his jobless condition, Tapan employed him in the chamber of an advocate. He went to work with Tapan for 7/8 days. Dr. Das felt relieved after knowing that his son was working with Tapan in a lawyer's chamber. He informed Odhikar that everyone in the area knew Tapan as a good person. He said that once Tapan was a very good tailor master. Later on, he started block printing on Sari's. He does not have any enemies in their area. When DB police took Tapan and his son Gobinda away in a microbus, he was in his medicine shop at 17 Horichoron Ray Road in front of Bahadurpur Lane. An eyewitness, a women named Lili (34) informed him about the incident. At around 10.30 pm at night, when Gobinda returned home, he came to know that Tapan had been arrested by DB police.

Shujon Das (25), brother-in-law of Tapan Das

Shujon Das informed Odhikar that at around 8.30 pm on 3 August 2011 an eye-witness of the incidence, and his neighbor, Lili, informed the people in the area that 7/8 unknown people took his brother-in-law and Gobinda away in a microbus. Later on, he came to know that DB police had picked up Tapan. He along with his sister went to different police stations, DB offices and other places in order to find Tapan. After failing to find Tapan at 7 pm on 4 August 2011, they went to Shyampur Police Station to file a GD for abduction but the police did not want to listen to them at first. After many requests, the GD was filed but in the place of abduction, they stated 'missing person'. Later on, they were informed that since the incident had occurred in the area under Gendaria Police Station they would have to file the case there. To file the case they went to Gendaria Police Station from Shyampur Police Station. The duty officer of Gendaria Police Station informed them that as they are residents of Shyampur they have to file the case in Shyampur police station. Shujon Das said that they were harassed by the police when they first tried to file GD. Then again they experienced the same harassment when they attempted to file the case. To file the case they moved from Gendaria to Shyampur police stations several times but each station refused to file the case. They were kept waiting until midnight in the police station and then asked to return the next morning at 11 am. The next day they had to wait for hours and hours in Shyampur Police Station. After waiting for a long time, they were again sent to Gendaria Police Station from Shyampur Police Station. In this way they were harassed for 3/4 days. He said that different news media covered the news of the abduction of Tapan but after police harassment the GD was finally filed, but as a missing person incident. They expressed their frustration at the performance of the police.

Kutubur Rahman, Officer-in-Charge, Shyampur Model Police Station

Kutubur Rahman informed Odhikar that as Tapan went missing near the Gendaria Police Station, the case had to be filed there. He took steps after coming to know about the incident. According to his information, Tapan sometimes went into hiding. Some local people told him that Tapan did this, in order to not have to repay loans. He stated that they were trying to find Tapan. Regarding this, a missing persons GD has been filed, but his family did not file any case of abduction.

Shubash Kumar Pal, Operations Officer, Gendaria Police Station

Shubash Kumar Pal informed Odhikar that it was a mistake of the family of Tapan Das not to file a case. He suggested that they should file a case. He does not know the reason for the disinterest showed by the police of Shyampur Police Station. He said that he talked with the family of Tapan Das. The case should be filed at Shyampur Police Station because Tapan lives in the area under Shyampur Police Station. He did not return after leaving the house that day, as mentioned in the GD.

Masudur Rahman, Additional Deputy Commissioner, DB, Media and Community Service, Dhaka Metropolitan Police

Masudur Rahman informed Odhikar that on 3 August 2011 DB police did not arrest anyone named Tapan. On the day of the incident, none of their team went to that area. The victim's relatives informed him about the incident. He saw the news in the paper but he claimed that DB police had no relation with the incident.

Observation of Odhikar: During the fact-finding Odhikar took the statement of Tapan's family, police and eye-witnesses. Police informed that the DB police did not arrest Tapan but according to the statement of the eyewitnesses, DB police arrested Tapan and his friend Gobinda Das and took them to the DB office at Mintu Road. After the microbus stopped there, Gobinda was set free and Tapan was taken to the office. Tapan's family claimed that they do not know any reason for arresting Tapan. They complained that the law enforcement agencies are not showing any interest to find Tapan.

Habibur Rahman Haoladar of Morelganj of Bagerhat district allegedly abducted by law enforcement agencies

Fact Finding Reports Odhikar

Habibur Rahman Haoladar Habib (48) is a fishmonger of Gora, Katakhal area of West Betbunia village under Morelganj Police Station of Bagerhat district. At around 5.30 am on 6 July 2011, the police of local Police Station, Armed Police Battalion, and District Detective Branch (DB) Police, with the help of some local people, arrested him from his house.

Morelganj police denied involvement in the arrest of Habib and said that members of the opponent party may have abducted him wearing police uniform.

Odhikar conducted a fact-finding mission in to the matter. During this, they interviewed:

- The relatives of Habibur Rahman Haolader
- Eye-witnesses
- Members of the law enforcement agency

Mahmuda Begum (36), Habib's wife

Mahmuda Begum informed Odhikar that at around 5 am on 6 July 2011 she and her husband said their morning prayers and then went out to see the new engine boat in the Katakhal canal, adjacent to the road in front of their house. At that time two people, approached them. One of them had a gun and he grabbed her husband's right hand. Then Habib asked for their identity and they said that they were from the 'administration'. Then from the other side of the canal Bodhu Mollik, a local and two police wearing the uniform of the Armed Police Battalion came over. They all started to punch, kick, and beat Habib. One police tied Habib's eyes with blindfold. By this time, four people, in police uniform and carrying arms came out of a neighbour's house. With them a few more people came. The police had two bags with them. They took Habib in front of the house of another neighbour, Roshid Khan. Then Mahmuda shouted for help and asked the neighbours to save Habib.

She said that Abed Mollik, son of Arshed Mollik; Jahangir Mollik, son of Abed Mollik and Kalam Mollik, Bodhu Mollik, son of Mofiz Mollik; Rasel Mollik, son of Bodhu Mollik all gathered there. They were beating Habib with the police. The joints in his knees broke because of excessive beating and started bleeding. During the fight, the police took their badges off their uniforms. Habib's daughter Jesmine recognised one of the police officers as the ASI of Morelganj Police Station, Zohirul Islam. A few local people tried to come forward but the police threatened to shoot them. Around 20/25 local people witnessed the incident but everyone was so scared to protest.

The men then took Habib with them in the engine boat and sailed towards Morelganj and she, with her brother-in-law, Abul Hossain Haoladar, and daughter, Jesmin Akhter and a few other people followed the boat in another engine boat. Arriving at the Morelganj boat terminal, she saw that 5 men were escorting her husband down. The four police in the same engine boat and got down at the terminal of the police station. The men escorting her husband put him in a black microbus. When she asked them where her husband would be taken, one of them said that they were members of Bagerhat Detective Branch (DB) of Police and they were taking Habib to the Bagerhat DB office. She and Jesmine went to Bagerhat DB office by bus. There, the DB police informed them that they had not arrested anyone named Habib. Then she went to the office of the Bagerhat Police Superintendent. She

saw the black microbus in front of the office and the driver was cleaning the mud off. The police who were in charge of the gate did not let her enter to meet to the Police Superintendent. She, then informed the local MP, Dr. Mozammel Haque about the arrest of Habib. Dr. Mozammel Haque tried to search for Habib in different administrative offices but could not confirm the news or locate Habib. She claimed that the police had concealed her husband after arresting him. She arranged a press conference to rescue her husband and on 16 July 2011, she gave an application to the Superintendent of Police and Officer-in-Charge of Morelganj Police Station regarding this. She said that the opponents of her husband told her that the police were given eleven and a half lakh taka to arrest Habib. She said her family was threatened that if anyone interferes into the matter anymore then he would face the same consequences. She also said that the opponents of Habib are demanding 10 lakh taka.

Manik (27), eye-witness

Manik informed Odhikar that at around 5.30 am on 6 July 2011 he woke up hearing the scream of Habib's daughter, Jasmin. He went towards Habib's home, where he saw 8/9 men with arms surrounding Habib who was in handcuffs. The men warned him that he would be shot if he came any closer. Then he did not move. Later Habib was taken away in a boat.

Moriam Begum (35), eye-witness

Moriam Begum informed Odhikar that at dawn on 6 July 2011 she came out of the house hearing the screams of Habib's daughter. She saw 8/9 men with arms at the bank of the Katakhal canal. They shouted to everyone to leave otherwise they would shoot. 20/25 local people stood like a silent audience in fear of the police. Four among the men were in police uniform. At the other side of the canal, four more policemen were present and with them were Bodhu Mollik and Rasel Mollik. In the presence of the public, police and some local people beat Habib brutally. Later on, the police took Habib with them in an engine boat.

Moazzem Hossain Jomaddar (62), Gram police, Ward no.3, Bohorbunia Union Parishad

Moazzem Hossain Jomaddar, a village policeman told Odhikar that Habib is his neighbour. On 6 July 2011 after saying his morning prayers his daughter, Khadija Khatun told him that some people were screaming in front of Habib's house. He saw a crowd before the house of Abdur Rob Majhi. When he approached the crowd, he was threatened not to step forward otherwise they would shot him. He saw one person wearing the uniform of the Armed Police Battalion. After some time, they took Habib away with the help of some local people. He said that whenever any police operation takes place, he gets the information but he had not been informed from the police station about the move to arrest Habib.

Dr. Mozammel Haque, MP (Morelganj-Shoronkhola), Bagerhat

Dr. Mozammel Haque told Odhikar that Habib was a courageous and responsible man who was very vocal against crime in his locality. He had enmity with a dacoit named Nurujjaman Mollik. That dacoit group filed a false case against Habib to mar his character. He said that he heard from the police Superintendent that the members of the law enforcement agency took Habib. He, however, did not know the details.

Mahirun (35), Habib's neighbour

Mahirun told Odhikar that at around 6 am on 6 July 2011 she heard shouting and came out of his house. One man wearing the uniform of the Armed Police Battalion threatened her that she would be shot if she came forward. The people on the other side of the canal were also wearing the uniform of the Armed Police Battalion. At that time, three people entered into Habib's home with arms. They were wearing Lungi and blue shirt. The armed people searched through Habib's home but returned after not finding any arms. The police asked him that where Habib kept arms. Then she said that for his security Habib used to keep chopper and rope with him. After some time two men, wearing police uniform searched Habib's house again and found 35 taka only. At that time, they took his signature on the note that everything is fine in the house. They beat Habib with the branch of Gocha tree first. Then again, beat him when his eyes were tied and hands were handcuffed. Later on, they took him towards Morelganj in engine boat.

Zahid (28), Boatman

Zahid told Odhikar that at around 6 am on 6 July 2011 Habib's daughter, Jesmin called him and asked to bring an engine boat to their house. When he arrived there with an engine boat, he saw that police were taking Habib in an engine boat. He followed the police boat with Jesmin and 7/8 other people. After arriving at Morelganj, they saw the police take Habib down on a terminal. Then Jesmin and the others went to the police.

Abdul Khaleque, Officer-in-Charge, Morelganj Police Station, Bagerhat

Abdul Khaleque told Odhikar that on 6 July 2011 nobody arrested anyone called Habibur Rahman Haoladar Habib of west Betbunia village. However, Habib's family gave him a written complaint. He informed Odhikar that he is investigating the case.

He said that Habib is a listed forest dacoit and his number in District Special Branch is 255. The locals feared him. In Morelganj Police Station, there are 10 cases and 10 GD against Habib. Among these, there are four murder cases including one for the death of a boatman, Jafor Jomaddar, four of attempt to murder, one arms case, and one dacoit case. Habib had some very influential enemies. He suspected that they could have taken him wearing police uniforms.

Sohrab Hossain Molla, Officer-in-Charge, District Detective Branch (DB), Bagerhat

Sohrab Hossain Molla told Odhikar that he had heard of the news of Habib being arrested. However, he does not know who made the arrest.

Khondkar Rofiqul Islam, Police Superintendent, Bagerhat

Khondkar Rofiqul Islam told Odhikar that he heard the news of the arrest of a person from Bohorbunia named Habibur Rahman Haoladar from different sources, including Dr. Mozammel Haque and Habib's family. However, he said that the police did not arrest Habib. He also said that it was a hartal on 6 July 2011 and the whole police force was on duty to keep the law and order situation normal in the area. He heard that on that day a coastguard team set out on an expedition in the deep jungle of Sunderban in search of dacoits. No DB or local police team went to Bohorbunia on that day, he alleged.

He told Odhikar that sometimes Habib use to disguise himself and was listed dacoit. There was warrant issued against him. There are also 7/8 cases in Morelganj Police Station against him. He received a complaint from Habib's family regarding his arrest and disappearance. On 2 August 2011,

he gave responsibility to the Officer-in-Charge of Morelganj Police Station, Abdul Khaleque to investigate this matter.

On 12 July 2011, Habibur's wife Mahmuda Begum organised a press conference at Bagerhat press club. She claimed her husband was an honest and responsible person and he was a victim of a conspiracy. She demanded that her husband be traced and rescued.

On 4 August 2011 Habibur's daughter, Jesmin Begum filed a General Diary (GD) in Morelganj Police Station mentioning the threats they were receiving. The GD number is 162. In the GD, she mentioned their loss of property, their insecurity and fear and threats over the phone in Habib's wife's number (01729655767). She also mentioned that the people who opposed her father keep walking around near their house and threatening them.

During the fact-finding, Odhikar interviewed the police and eye-witnesses. Police said that they did not arrest Habib but according to the statement of eye-witnesses, with the help of local people police wearing uniforms and having arms took Habib with them. Habib's family claim that some local people had him arrested because of enmity and police concealed him in exchange for money. There is no eagerness apparent from the law enforcement agencies to rescue Habib.

Odhikar demands that Habib be found as soon as possible and after a fair investigation, the criminals be brought to justice.

-The End-

Disappearance of Jubo Union Organiser, K M Shamim Akhtar, after being picked up by members of LEA from Purana Paltan Line in Dhaka City

Fact-finding Report

Odhikar

On September 29, 2011 at around 8.15 in the morning K M Shamim Akhtar (36) was arrested by the members of the law enforcing agency from 6/1, Purana Palton Line, Dhaka-1000. He was the son of Khan Mobarak Hossain and Zohra Akhtar; and a resident of 12/4, Purana Paltan Line (5th floor), of Dhaka Metropolitan City. Shamim's family alleged that his whereabouts remain unknown from the day he was picked up by the law enforcing agency.

Odhikar conducted a fact-finding mission into the incident. During the fact-finding mission, Odhikar spoke with:

- The relatives of Shamim
- Eye- witnesses
- Concerned police officers and RAB



Photo: K M Shamim Akhter

Jhorna Khanom (30), wife of K M Shamim Akhter

Jhorna Khanom told Odhikar that her husband's home was in the Arazi Dumuria village under Dumuria Police Station in Khulna District. She lives in Dhaka with her husband, mother in law Zohra Akhtar (50), and son Tazbeed Khan Dipto (7). During his student life, Shamim was involved with Chhatra Union²¹ and after that he joined the Jubo Union²². He was abroad for a few years after completing his studies. After returning from abroad, Shamim was preparing for examinations to be enlisted in the Bangladesh Bar Council as an Advocate.

On September 29, 2011 at around 8.00am, Jhorna left home for her office. At around 12.00 pm her mother-in-law called her on her cell phone and informed that, Shamim had gone out at around 8.15 am in the morning to purchase something and had not returned. She came to know from local shopkeepers that around 7 people, who were allegedly the members of law enforcement agency, captured him and put scotch tape on his mouth and dragged him away into a microbus. Jhorna then rushed to the Paltan Model Police Station after returning to her house and lodged a General Diary (GD), numbered 1839, dated 29/09/2011. On the same day she went to the Rapid Action Battalion-3 (RAB-3) office and made a written complaint, mentioning that her husband had been abducted.

²¹ Chhatra Union is the student wing of the Communist Party of Bangladesh

²² Jubo Union is the youth wing of the Communist Party of Bangladesh

On September 30, 2011 Shamim's family held a press conference at Dhaka Reporters Unity, but the whereabouts of Shamim Akhtar was still unknown.

On October 2, 2011 Jhorna visited the National Human Rights Commission and made a written complaint, given file number 1923, dated 02/10/2011. She mentioned in the complaint that, the police and RAB members did not cooperate with the family in finding Shamim.

Jhorna said that there were eight political cases filed against Shamim with Dumuria Police Station in Khulna. During his student life, Shamim was the Vice-President of the Bangladesh Chhatra Union's Central Committee and was also the President of Bangladesh Chhatra Union of Khulna District Unit.

Zohra Akhtar (50), mother of Shamim

Zohra Akhtar told Odhikar that, on September 29, 2011 at around 8.15 am, Shamim went out the same time she and her grandson Tazbeed Khan Dipto were going to school. She was worried when Shamim did not come back by noon. Some shopkeepers from the Purana Paltan Line area told her that, a few people picked Shamim up in a microbus. She then informed Jhorna about the incident by calling her on her cell phone. Johra Akhtar was told by the shopkeepers that Shamim was taken away by law enforcing agency members. She organised a press conference at the Dhaka Reporters Unity on September 30, 2011, where she claimed that the law enforcing agency members picked up her son.

Md. Babul (48), Eye-witness

Md. Babul told Odhikar that he has a vegetable shop at 6/1 Purana Paltan Line. He was at his shop in the morning of September 29, 2011. At that time, around seven plain clothed men captured a man wearing a lungi and fatua. They were pushing him towards the Bottola Mosque located on the Bijoy Nagar road from Purana Paltan Line. At that time, some local people came forward to help the captured man, but they were obstructed by those men.

He said that the men in plain clothes had short hair and were of the same height, but he could not recognise the man who they were taking away. Later some locals told him that he was Shamim, who was known to him. At around 12.30 pm, he went to Shamim's wife and described everything.

Md. Dulal Reza (28), Eye-witness

Md. Dulal Reza informed Odhkar that he used to sell tea in front of the Bithi Pharmacy located at 27 Bijoy Nagar. On September 29, 2011 at around 7.30 in the morning a silver coloured microbus stopped in front of his shop. About seven men came out and the driver of the microbus started to drink tea from his shop. At 8.15 am the men returned with a man wearing lungi and fatua from the Purana Paltan Line area and they pushed him into the microbus forcibly. The captured man shouted once, "Please save me, they are going to kill me". Before the arrival of local people, the microbus went away. Dulal recalled that the hair style of all the men was short and they were approximately of the same height. He believes that the abductors were from law enforcement agencies.

Major Emarot Hossain, RAB-3, Tikatuli, Dhaka

Major Emarot Hossain told Odhikar that, on September 29, 2011, a lady named Jhorna Khanom from the Purana Paltan Line area came to RAB office and made a written complaint. That complaint was registered on 2 October 2011 as Regd. No. 1041. Jhorna Khanom mentioned in her complaint that her husband K M Shamim Akhtar was picked up by some strangers in a microbus from in front of his house. Major Emarot Hossain said that Lieutenant Commander Jarrar Hossain Khan was assigned to take necessary steps on that complaint on October 3, 2011.

In order to know updates about the case, Odhikar tried to contact Major Emarot Hossain on his cell phone many times but he did not answer.

Lieutenant Commander Jarrar Hossain Khan, RAB-3, Tikatuli, Dhaka

Lieutenant Commander Jarrar Hossain Khan told Odhkar that he is investigating the complaint made by Jhorna Khanom of Purana Paltan Line area about her husband's abduction. He informed that he was ordered by the RAB Forces Headquarters to investigate the matter.

Sub Inspector Shyamol Chandra Dhar, Paltan Model Police Station, Dhaka Metropolitan Police (DMP), Dhaka

Sub Inspector (SI) Shyamol Chandra Dhar told Odhikar that on September 29, 2011, he was on duty at the Bijoy Nagar and Paltan areas. The duty officer from the police station sent a message to him that, a lady named Jhorna Khanom of Purana Paltan Line area lodged a General Diary (GD), which was numbered 1839. He was told to investigate on that GD. Then he went to the Purana Paltan Line and Bijoy Nagar areas. By investigating, he found some evidence that around 7 people picked up a man named Shamim Akhtar in a microbus. He contacted Jhorna Khanom for further information. He also contacted Shamim's permanent address under Dumuria Thana of Khulna District. He was informed by the Officer-in-Charge of Dumuria Police Station through a fax that around 13 cases, including a murder case were filed against Shamim. Police of the Dumuria Police Station were also searching for Shamim to arrest him.

On December 14, 2011 when Odhikar contacted SI Shyamol Chandra Dhar, he stated that the case had been transferred to SI Nasir Uddin.

SI Nasir Uddin, Paltan Model Police Station, DMP, Dhaka

On December 18, 2011, when Odhikar contacted SI Nasir Uddin, he informed that he has investigated the complaint based on GD No. 1839 and talked with some people at the place from where Shamim was picked up. But he could not find any clues regarding who were responsible for abducting Shamim. He told Odhikar to contact the Officer-in-Charge of the police station for further information.

Md. Shahidul Huq, Officer-in-Charge, Paltan Model Police Station, DMP, Dhaka

On January 18, 2012 Mohammad Shahidul Huq told Odhikar that Shamim's wife Jhorna Khanom filed a GD alleging that her husband was abducted on September 29, 2011. SI Shyamol Chandra Dhar initially investigated the matter under this GD. Later the responsibility was handed over to SI Nasir Uddin. It was known during primary investigation that some unidentified people picked up Shamim. But the details could not be known. He also informed that Jhorna Khanom was told to file a case as continuing investigation was not possible based on a General Diary.

Odhikar talked with the policemen, RAB members, and eye-witnesses during the fact-finding mission. According to the RAB and police they did not arrest anyone named KM Shamim Akhtar on the 29th of September 2011 from Purana Paltan Line area. However, it was known by the statement of Shamim's mother during the fact finding conducted by Odhikar that, on September 29, 2011, Shamim was picked up allegedly by the members of law enforcement agency in broad daylight from Purana Paltan Line area, in the presence of many people. SI Shyamol Chandra Dhar of Paltan Model Police Station said that he found primary evidence after investigating into the complaint. During investigation, he got to know that Shamim was picked up by some people in a microbus. He also sent a message to Shamim's village home in Dumuria Thana. Officer-in-Charge of Dumuria Police Station told him that

about 13 cases were filed against Shamim in his police station. Shamim's wife Jhorna informed that there were 8 pending political cases, which were under process for withdrawal.

Odhkar demands that the Government take appropriate steps to find K M Shamim Akhtar and bring the perpetrators before justice through a proper and unbiased investigation.

-The End-