

Accountability Denied: Bangladesh's Engagement with International Human Rights Bodies on Enforced Disappearances

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Abstract

This article examines Bangladesh's interaction with international human rights mechanisms, especially the ICCPR, CAT, UPR, and WGEID, highlighting the issue of enforced disappearances. The analysis applying Creamer and Simmons' framework of elite socialization, learning and capacity building, domestic mobilization, and law development reveals persistent state denial, mislabeling of crimes, and rejection of recommendations. Despite treaty obligations, Bangladesh's government dismissed allegations as politically motivated, refused to criminalize enforced disappearance and evaded scrutiny. While civil society efforts and international pressure increased visibility, systemic repression, and judicial inaction stifled accountability. The study underscores the limitations of non-binding mechanisms in authoritarian contexts, where political will determines compliance. The 2024 interim government's ratification of ICPPED signals potential reform, yet meaningful progress hinges on domestic legal reforms and dismantling institutionalized impunity.

Keywords: Enforced Disappearance, Human Rights Committee, Committee Against Torture, Bangladesh, State Party Report, Concluding Observations.

Introduction

Bangladesh experienced a mass uprising in August 2024 that ousted the 15-year rule by Bangladesh Awami League, which was marred with massive corruption and human rights violations; enforced disappearance being a prominent one.¹ In fact, the following interim government's two important initial measures were the establishment of a commission to investigate past cases of enforced disappearance and the signing of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).² Bangladesh was already a signatory to all other core human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against

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¹ OHCHR, *Human Rights Violations and Abuses related to the Protests of July and August 2024 in Bangladesh* (OHCHR, 2025) 4, 71.

² 'Bangladesh signs UN treaty on enforced disappearances' *The Daily Star* (Dhaka 29 August 2024) <<https://www.thedailystar.net/news/bangladesh/news/bangladesh-becomes-signatory-un-treaty-enforced-disappearances-3689396>> accessed 30 December 2024.

Torture (CAT), both of which specify enforced disappearance as a violation of multiple human rights.³

Enforcement of the treaty obligations is monitored by separate treaty bodies through various mechanisms, including self-reporting by the state parties. Bangladesh submitted its Initial State Report to the treaty body of ICCPR – the Human Rights Committee - in 2015,⁴ and to the treaty body of CAT – the Committee Against Torture – in 2019.⁵ Both the reports were reviewed by the respective Committees. This article analyzes the interaction between the Committees and the GoB throughout the review process, keeping a specific issue in focus - enforced disappearance.

Human Rights Council (HRC), the UN Working Group on Enforced or Involuntary Disappearances (WGEID), and other treaty bodies have also addressed the issue to various extents. The GoB was consistent in its denial and non-compliance in all of these interactions. It can create doubt regarding the efficacy of international human rights law (IHRL) enforcement mechanisms. To clarify the issue, this article turns to a theoretical framework based on Cosette D. Creamer and Beth A. Simmons's work. They have documented 4 mechanisms through which reporting procedure can positively impact human rights practice in the state party - elite socialization, learning and capacity building, domestic mobilization, and law development.⁶ How these mechanisms have failed in the context of Bangladesh due to the autocratic structure will be discussed in later parts of this article.

Literature Review and Methodology

Only a few researchers have engaged with the issue of enforced disappearance in Bangladesh. Sarkar and Islam⁷ (2013) attempted a comprehensive study of the laws and institutional mechanisms related to the offense and analyzed the incidents of enforced disappearance between 2007-2012. Sourav⁸ (2015) discussed the national and international criminal laws covering the offense. Both articles highlighted the significance of ICPED

³ Human Rights Committee 'General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life' (30 October 2018) UN Doc CCPR/C/GC/36 2.

⁴ Human Rights Committee 'Initial reports of States parties due in 2001: Bangladesh' (3 September 2015) UN Doc CCPR/C/BGD/1.

⁵ Committee Against Torture 'Initial reports submitted by Bangladesh under article 19 of the Convention, due in 1999' (3 October 2019) UN Doc CAT/C/BGD/1.

⁶ Cosette D. Creamer & Beth A. Simmons, 'The Proof Is in The Process: Self-Reporting Under International Human Rights Treaties' (2020) 114(1) American Journal of International Law 1.

⁷ Noor Mohammad Sarkar and Monir Islam, 'Enforced Disappearance In Defiance Of Human Rights: A Critical Review Of Legal And Institutional Aspects From Bangladesh Perspective' (2013) 13(1, 2) Bangladesh Journal of Law 105.

⁸ Raisul Islam Sourav, 'Defining the Crime of Enforced Disappearance in Conformity with International Criminal Law: a New Frontier for Bangladesh' (2015) 3(2) Bergen Journal of Criminal Law & Criminal Justice 1-23.

and the lack of national protection. Rana and Islam⁹ (2021) analyzed the reasons and consequences of enforced disappearance and extrajudicial killing based on data from NGOs. Malek¹⁰ (2024) focused on identifying the institutional gaps that allowed the offense to continue, with a short discussion on ICPPED. Most of the studies have not shed light on Bangladesh's interaction with the international bodies regarding the issue. These researches do not cover the other international human rights bodies Bangladesh has interacted with. Regarding ICPPED, they have not delved into why Bangladesh had not ratified it earlier and how the treaty obligation could have impacted the situation in the country.

Bari¹¹ (2021) was the only one who, though briefly, had talked about the review and recommendations by the CCPR and CAT. However, he opined that the incidents of enforced disappearance continued after the recommendations which he implied is the failure of the mechanism. Also, that failure happened because the recommendations were non-obligatory, which he deemed 'weakness.'¹² While Bari did not dig deeper, a more nuanced view could have been taken. In a complex ecosystem of state interest, domestic politics, and international relations, the efficacy of an actor or mechanism cannot be realistically determined on a binary scale of whether the offense has stopped, but rather on a spectrum of gradual and cumulative effects. Secondly, even the binding decisions of international legal bodies sometimes are not complied with. Therefore, the simple equation of 'non-bindingness equals non-compliance' risks overlooking various factors at play. This article aims to analyze the state denial and non-compliance against international human rights enforcement mechanisms.

The qualitative method of research is followed in this article using primary and secondary texts as key sources of information. Primary texts include international conventions, domestic laws, reports, and other documents submitted to various UN human rights bodies. These were primarily accessed from OHCHR websites, in particular, the UN Treaty Body Database. Secondary texts include books, journal articles, reports from non-governmental organizations (NGOs), and a few news articles. This article revolves in the period of 2009-2024 since that was the period under scrutiny before the international bodies which are the focus of this study.

Enforced Disappearance: Concept and Context

ICPPED has defined 'Enforced Disappearance' as:

⁹ Ekramul Kabir Rana and Mohammed Jahirul Islam, 'NGO Discourses of Extrajudicial Killings and Enforced Disappearances in Bangladesh' (2021) 16(1) *International Journal of Criminal Justice Sciences* 110-126.

¹⁰ Abdul Malek, 'State Responsibilities and the Combatting Against Forced Disappearance in Bangladesh: Institutional and Legal Challenges' (2024) 16(4) *Pakistan Journal of Criminology* 1407.

¹¹ M Ehteshamul Bari, 'The Use Of Enforced Disappearance In Bangladesh As A Tool Of Political Oppression: Human Rights In Retreat' (2021) 29(3) *Michigan State University Law Review* 414.

¹² *ibid*, 464.

“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.”¹³

The Convention has negated any public emergency, even the state of war, as a legitimate ground of enforced disappearance.¹⁴ It obligates member states to criminalize enforced disappearance as a criminal offense.¹⁵

Other core human rights treaties prohibit the offense as well. Human Rights Committee stated in its General Comment 36 that enforced disappearance constitutes violations of several human rights contained in ICCPR, including the right to life, liberty, the right not to be tortured, and the right to recognition as a person before the law.¹⁶ Committee Against Torture decided in *Guerrer Larez v Venezuela* (2011) that the enforced disappearance in that case constituted an act of torture under CAT.¹⁷

During the liberation war of 1971, the Pakistani military perpetrated enforced disappearance of Bangladeshi people, in particular, its intellectual classes. In the following period till 2009, few isolated cases of enforced disappearance had been reported,¹⁸ notable incidents include abductions by the Rakkhi Bahini and the enforced disappearance of the indigenous Jumma women by the army and BDR.¹⁹

In 2009 the Bangladesh Awami League came to power led by Sheikh Hasina. Cases of enforced disappearance of opposition leaders by the Rapid Action Battalion (RAB) and other law enforcement agencies started to pile up. By 2014, the number of disappearances reaches 170.²⁰ Human rights organization Odhikar reported 370 cases in 2017.²¹ Human Rights Watch (HRW) documented 90 cases of enforced disappearance only in 2016.²² CGS

¹³ International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3 (ICPPED) art 2.

¹⁴ *ibid*, art 1.

¹⁵ *ibid*, art 4.

¹⁶ Human Rights Committee (n 3) 2.

¹⁷ *Guerrer Larez v Venezuela* (2011) Decision of the Committee Against Torture 10.

¹⁸ International Commission of Jurists, No More “Missing Persons”: The Criminalization of Enforced Disappearance in South Asia (ICJ 2017) 49-50; Human Rights Watch, “Where No Sun Can Enter” A Decade of Enforced Disappearances in Bangladesh (HRW 2021) 49.

¹⁹ Tasneem Khalil, *Jallad: Death Squads and State Terror in South Asia* (Pluto Press 2015) 27, 30.

²⁰ *ibid* 24.

²¹ International Commission of Jurists (n 18) 49.

²² Human Rights Watch, “We Don’t Have Him” Secret Detentions and Enforced Disappearances in Bangladesh (HRW 2017) 2.

reported 71 cases of enforced disappearance between 2019 and 2021, 40% of which had RAB personnel involved.²³ The motive was often to repress political opposition.²⁴

The rate of extrajudicial killings and enforced disappearances dropped temporarily in after US Global Magnitsky human rights sanctions against RAB and some of its top commanders were declared in December 2021.²⁵ But it caught up again within a few months. In 2022, journalism platform Netra News revealed the existence of secret prisons, colloquially known as 'Aynaghar', where victims of enforced disappearance were detained by RAB and DGFI, the military intelligence agency of Bangladesh.²⁶

After the fall of the Sheikh Hasina regime in the July-August uprising of 2024, several of those victims were rescued.²⁷ The interim government set up a commission of inquiry to investigate enforced disappearances and signed ICPPED.²⁸ Till December 2024, the Commission has verified 758 disappearance cases and stated that they have found prima facie evidence of the involvement of Sheikh Hasina in the offense.²⁹ Their provisional report elaborated on the systematic and coordinated manner of enforced disappearances conducted by government agencies.³⁰

Before 2024, Bangladesh did not have any specific law criminalizing enforced disappearance. The Penal Code of 1860 contained kidnapping and abduction provisions.³¹ Following the signing of ICPPED, Bangladesh has included enforced disappearance in the list of offenses that can constitute crimes against humanity under Section 3(2)(a) of the International Crimes Tribunal Act, 1973.³² It incorporates the definition of enforced disappearance from the Rome Statute. However, the offense has not been inserted in the

²³ Ali Riaz, *Where Are They? Enforced Disappearances in Bangladesh* (CGS 2022) 5.

²⁴ HRW 2021 (n 18) 24-25.

²⁵ Human Rights Watch, *World Report 2023* (HRW 2023) 67.

²⁶ Netra Report, 'Secret prisoners of Dhaka' (*Netra News*, 14 August 2022) <<https://netra.news/2022/secret-prisoners-of-dhaka/>> accessed 18 February 2025.

²⁷ Mujib Mashal and Shayeza Walid, 'Alone in the Dark: The Nightmare of Bangladesh's Secret Underground Prison' (*New York Times*, 17 October 2024) <<https://www.nytimes.com/2024/10/17/world/asia/bangladesh-disappeared.html>> accessed 18 February 2025.

²⁸ 'Bangladesh signs UN treaty on enforced disappearances' *The Daily Star* (Dhaka, 29 August 2024) <<https://www.thedailystar.net/news/bangladesh/news/bangladesh-becomes-signatory-un-treaty-enforced-disappearances-3689396>> accessed 30 December 2024.

²⁹ Zyma Islam, 'Enforced disappearances: 'Hasina herself was involved'' *The Daily Star* (Dhaka, 15 December 2024) <<https://www.thedailystar.net/news/extrajudicial/news/enforced-disappearances-hasina-herself-was-involved-3776231>> accessed 18 February 2025.

³⁰ 'Commission finds India's involvement in Bangladesh's enforced disappearance' *The Business Standard* (Dhaka, 21 December 2024) <<https://www.tbsnews.net/bangladesh/commission-finds-indias-involvement-bangladshs-enforced-disappearance-1023881>> accessed 30 December 2024.

³¹ Penal Code 1860 s 359-364.

³² International Crimes Tribunal Act, 1973 s 3(2)(a).

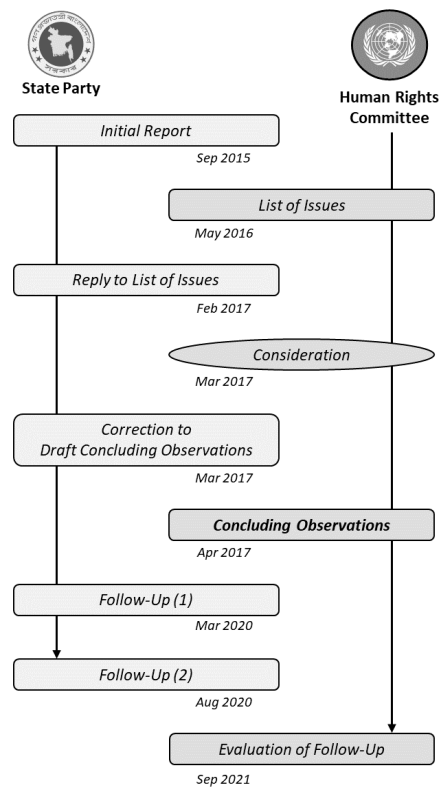
Penal Code or any other separate criminal legislation yet. The Inquiry Commission has been tasked with proposing relevant legal reforms.

Confrontation on the International Stage

From 2009 to 2024, Bangladesh submitted state reports to seven treaty bodies: CCPR, CESCR, CAT, CEDAW, CRPD, CRC, and CMW. Five of those bodies have touched on the issue of enforced disappearance. Bangladesh submitted national reports for three cycles of Universal Periodic Review (UPR) in that period: the 2nd, the 3rd, and 4th cycle. Enforced disappearance was discussed in all of them. WGEID has regularly published its report on the victims of enforced disappearance in Bangladesh and requested a government response. The interactions between GoB and these international human rights bodies are elaborated below.

Review by the Human Rights Committee: Denial Started

Bangladesh acceded to ICCPR in 2000.³³ Article 40 of ICCPR obligates the state parties to periodically submit reports to the Human Rights Committee regarding the human rights condition in that state.³⁴ Then the Committee asks for further clarification (known as the 'List of Issues'). After getting the state's response, they hold a constructive dialogue ('Consideration') with the state delegation over the report. Based on the discussion, they give recommendations ('Concluding Observations') to the state on their areas of concern. They also ask the state to follow up on 3 of the recommendations within a year and submit the next state report after 4-6 years. The first such report is called an Initial Report and the subsequent ones are called Periodic Reports.³⁵



³³ UN Treaty Body Database: Bangladesh

<https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=14&Lang=en > accessed 30 December 2024.

³⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 40.

³⁵ Office of the United Nations High Commissioner for Human Rights, 'The United Nations Human Rights Treaty System' (2012) 23-28

<<https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet30Rev1.pdf>> accessed 18 February 2025.

In 2015, Bangladesh submitted its Initial Report to the Committee.³⁶ The Report contained an article-by-article description of the measures GoB has taken to implement ICCPR.³⁷ Meanwhile, several shadow reports were also submitted by several Non-Governmental Organizations (NGOs), Civil Society Organizations (CSOs), and the National Human Rights Commission (NHRC).³⁸ The attached flowchart chronologically shows the steps of the review process.³⁹

Afterward, the Committee sent their List of 25 issues,⁴⁰ which included allegations of enforced disappearance.⁴¹ GoB replied that law enforcement officials do not get any immunity for committing crimes and “there had been no complaint lodged against the Police for excessive use of force, arbitrary arrests or so-called ‘enforced disappearance’ during the anti-government campaign in 2015.”⁴²

The Consideration of the report was held in March 2017.⁴³ During consideration, the Bangladeshi delegation, headed by the then Law Minister Anisul Huq,⁴⁴ stressed that enforced disappearance is not a term recognized by national laws rather kidnapping and abduction by criminals have legal remedies.

Members of the Committee opined that non-recognition in domestic laws does not make a crime non-existent, while it is already an internationally recognized offense. They asked how many allegations of conduct that would meet the international legal definition of enforced disappearance have been filed and investigated. They also mentioned the presence of information on state-involved enforced disappearances in Bangladesh and suggested that GoB could consider adopting the definition of enforced disappearance from ICCPED which would make the crime punishable under national criminal laws.⁴⁵

Bangladeshi delegation replied that there were no such needs because the offense was already covered by existing definitions of abduction and kidnapping. They attributed the

³⁶ Human Rights Committee (n 4) 1.

³⁷ Human Rights Committee (n 4) 3.

³⁸ UN Treaty Body Database: Bangladesh

<https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=14&Lang=en > accessed 18 February 2025.

³⁹ *ibid.*

⁴⁰ Human Rights Committee ‘List of issues in relation to the initial report of Bangladesh’ (3 May 2016) UN Doc CCPR/C/BGD/Q/1.

⁴¹ *ibid* 2

⁴² Human Rights Committee ‘Replies of Bangladesh to the list of issues’ (14 February 2017) UN Doc CCPR/C/BGD/Q/1/Add.1. 4-5

⁴³ Human Rights Committee ‘Summary record of the 3339th meeting’ (14 March 2017) UN Doc CCPR/C/SR.3339 1.

⁴⁴ Permanent Mission of Bangladesh to the United Nations Office, *Letter for Issuing Security Badges to the Delegation Team from Bangladesh* (BMG/CHR-319 (A)/53 27 February 2017) 1.

⁴⁵ Human Rights Committee (n 43) 4,5,7

high acquittal rate in such cases to the reluctance of witnesses to testify for 'reasons that were as yet unknown'.⁴⁶

Afterward, the Committee prepared a draft of the Concluding Observations containing the positive steps taken by GoB and the areas of concern and recommendations. However, GoB sent the Committee a rather unusual letter, expressing their dissatisfaction with the draft.⁴⁷ In the letter, GoB stated that their efforts to implement ICCPR have not been 'recognized enough' in the draft Observations, and neither were their context and limitations 'adequately appreciated'. GoB suggested the Committee correct its recommendations because enforced disappearance is covered under abduction or kidnapping.⁴⁸ The letter appears to be unusual because nowhere in the reporting procedure it is mentioned that state parties will give their opinion about the Observations and might even suggest changing the committee's recommendations. However, none of the corrections suggested by GoB were followed in the adopted Observations and that letter was not mentioned by the Committee anywhere throughout the process. In April 2017, the Concluding Observations was adopted.⁴⁹

In Concluding Observations, the Committee expressed their concern on the state denial, lack of investigations, and accountability which leaves families of victims without information and redress.⁵⁰ They specifically recommended criminalizing enforced disappearance, establishing the truth about the fate and whereabouts of the victims, and conducting investigations.⁵¹ Making it one of the immediate priorities, they requested GoB to follow up on this concern within 2018.⁵²

After repeated reminders, GoB submitted two follow-ups in 2020 which were evaluated by the Committee in 2021.⁵³ In follow-ups, GoB tagged the cases of enforced disappearance as 'staged', 'false', and 'politically motivated to discredit the Government'.⁵⁴ GoB did not provide any information on investigations done on enforced disappearance, rather, repeated the already-covered-by-other-offences argument.⁵⁵ They also mentioned the Narayanganj 7-murder case for the 4th time as proof of their 'zero-tolerance' against law

⁴⁶ Human Rights Committee (n 43) 8

⁴⁷ Permanent Mission of Bangladesh to the United Nations Office, *Letter to respond to draft Concluding Observations and call for correction* (BMG/CHR-319 (A) 27 March 2017) 1.

⁴⁸ *ibid* 1

⁴⁹ Human Rights Committee 'Concluding observations on the initial report of Bangladesh' (27 April 2017) UN Doc CCPR/C/BGD/CO/1 1.

⁵⁰ *ibid* 5.

⁵¹ *ibid* 5.

⁵² *ibid* 8.

⁵³ Human Rights Committee 'Evaluation of the information on follow-up to the concluding observations on Bangladesh' (6 September 2021) UN Doc CCPR/C/132/2/Add.1 1.

⁵⁴ Human Rights Committee 'Information received from Bangladesh on follow-up to the concluding observations' (23 March 2020) UN Doc CCPR/C/BGD/CO/1/Add.1 (follow up 1) 4.

⁵⁵ Human Rights Committee 'Information received from Bangladesh on follow-up to the concluding observations' (19 August 2020) UN Doc CCPR/C/BGD/CO/1/Add.2 (follow up 2) 4-5.

enforcement agency (LEA)-involved crimes.⁵⁶ The Committee expressed their 'regrets' in 2021 as GoB fulfilled almost none of their recommendations. They also noted that the Narayanganj case had been decided before the issuance of the Concluding Observations.⁵⁷

Bangladesh was scheduled to submit its next periodic report by March 2021.⁵⁸ The report is still overdue.

Review by Committee Against Torture: A Repetition

In 2019, Bangladesh submitted its Initial Report to CAT.⁵⁹ The Consideration of the report was organized the same year, attended by the Bangladeshi delegation headed by Mr. Anisul Huq, accompanied by RAB and DGFI officials, among others. During the Consideration, Mr. Huq said that cases of possible 'abduction' were often reported as enforced disappearance. He added that there had been a tendency to label cases of missing persons as enforced disappearance intending to undermine the GoB.⁶⁰ He also made a statement that there had been no cases of enforced disappearance in the past 10 years which a member of the committee disagreed with, referring to the alternative information before the Committee.⁶¹ She also inquired about an indigenous rights activist Michael Chakma, who had been missing since 2019.⁶² The minister replied that his case had been ordered to be expedited by the court.⁶³ Point to be noted that at that time Michael Chakma was held in the secret prison operated by GoB.

In its Concluding Observations, the CmAT expressed serious concern over 'numerous, consistent reports' of enforced disappearances. They mentioned Mir Ahmed Bin Quasem, Abdullahil Amaan Al Azmi, and several other people who had allegedly been detained by the LEA. They noted with 'regret' that GoB did not provide any information regarding the status of the investigation into their cases.⁶⁴ Notably, those two persons were also rescued later from RAB and DGFI secret prisons. At the time, the Committee recommended an inquiry into the disappearance cases, especially into RAB, and ratification of ICPPED.⁶⁵

⁵⁶ Ibid 5; Human Rights Committee (n 42) 4; Human Rights Committee (n 43) 9; Human Rights Committee (n 54) 4-5.

⁵⁷ Human Rights Committee (n 53) 3-4.

⁵⁸ Human Rights Committee (n 49) 8.

⁵⁹ Committee Against Torture 'Initial reports submitted by Bangladesh under article 19 of the Convention, due in 1999' (3 October 2019) UN Doc CAT/C/BGD/1.

⁶⁰ Committee Against Torture 'Summary record of the 1771th meeting' (9 August 2019) UN Doc CAT/C/SR.1771 8.

⁶¹ *ibid* 7.

⁶² Committee Against Torture 'Summary record of the 1769th meeting' (7 August 2019) UN Doc CAT/C/SR.1769 5.

⁶³ Committee Against Torture (n 60) 8.

⁶⁴ Committee Against Torture 'Concluding observations on the initial report of Bangladesh' (26 August 2019) UN Doc CAT/C/BGD/CO/1 4-5.

⁶⁵ *ibid*, 6.

However, Bangladesh did not submit any follow-up report, despite repeated reminders by CAT.⁶⁶

WGEID, UPR, and Miscellaneous Bodies: Non-Cooperation

UN Working Group on Enforced or Involuntary Disappearances (WGEID) appealed to GoB to act to halt the increasing number of enforced disappearances.⁶⁷ GoB did not respond to their repeated request to visit Bangladesh.⁶⁸ In 2023, WGEID reported 70 cases of enforced disappearance which GoB could not sufficiently explain.⁶⁹

CESCR,⁷⁰ CEDAW⁷¹, and CMW⁷² recommended GoB to ratify ICPPED in their respective Concluding Observations. Not only did those suggestions remain unfulfilled, but GoB's official position became more uncompromising as is evident in Universal Periodic Reviews (UPR). In the 2nd UPR, GoB supported such recommendations to ratify ICPPED,⁷³ but in the 3rd UPR, they rejected similar recommendations.⁷⁴ They only supported recommendations to investigate the cases and enhance the protection but failed to fulfill those too.⁷⁵ The 4th UPR did not give the option to outright reject recommendations. Bangladesh kept recommendations to ratify as 'noted'.⁷⁶

During the 2nd UPR review, the head of the GoB delegation denied the frequent occurrence of enforced disappearance in Bangladesh. She stated that the allegations were intended to undermine GoB's credibility and create public misperception.⁷⁷ The same denial was echoed in the 3rd UPR review with the head of the delegation stating that the

⁶⁶ Rapporteur for Follow-up to Concluding Observations Committee Against Torture, *Letter to request for follow-up* (3 March 2022) 1.

⁶⁷ 'UN expert group urges Bangladesh to stop enforced disappearances' (OHCHR 24 February 2017) <<https://www.ohchr.org/en/press-releases/2017/02/un-expert-group-urges-bangladesh-stop-enforced-disappearances>> accessed 18 February 2025.

⁶⁸ UNHRC 'Report of the Working Group on Enforced or Involuntary Disappearances' (8 August 2023) UN Doc A/HRC/54/22 15.

⁶⁹ *ibid* 8.

⁷⁰ Committee on Economic, Social and Cultural Rights 'Concluding observations on the initial report of Bangladesh' (18 April 2018) UN Doc E/C.12/BGD/CO/1 12.

⁷¹ Committee on the Elimination of Discrimination against Women 'Concluding observations of the Committee on the Elimination of Discrimination against Women' (22 March 2011) UN Doc CEDAW/C/BGD/CO/7 10.

⁷² Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families 'Concluding observations on the initial report of Bangladesh' (22 May 2017) UN Doc CMW/C/BGD/CO/1 2.

⁷³ UNHRC 'Report of the Working Group on the Universal Periodic Review' (8 July 2013) UN Doc A/HRC/24/12 (UNHRC 2nd UPR) 14,24; UNHRC 'Report of the Working Group on the Universal Periodic Review' (11 July 2018) UN Doc A/HRC/39/12 (UNHRC 3rd UPR) 22.

⁷⁴ UNHRC 3rd UPR (n 73) 14, 16, 21.

⁷⁵ Amnesty International, 'Universal Periodic Review of Bangladesh: Amnesty International's mid-term assessment of progress towards implementation of recommendations accepted at the third review' (Index: ASA 13/4732/2021 2021) 11-12.

⁷⁶ UNHRC 'Report of the Working Group on the Universal Periodic Review' (22 February 2024) UN Doc A/HRC/55/13/Add.1 (UNHRC 4th UPR) 2.

⁷⁷ UNHRC 2nd UPR (n 73) 9.

obvious intentions behind the allegations of 'so-called' enforced disappearances are false and intended to malign the GoB's achievements.⁷⁸ Regarding the ratification of ICPPED, he stated that Bangladesh needed to analyze in detail the provisions of the convention and its implications on the existing legal system and decide whether such ratification was necessary.⁷⁹ The 4th UPR review witnessed the delegation calling the allegations 'ill-motivated' to 'malign the GoB.'⁸⁰

Evasion of Accountability

A pattern of response is visible in the responses of GoB which has been followed more or less throughout the years: straightly denying disappearances (denial), claiming incidents as mere abductions (mislabeling), calling the accusations staged and politically motivated (smearing), and declining to criminalize enforced disappearance claiming that it was already covered by abduction provisions (semantic logic). The following chart has been compiled based on that information.

GoB Response	Year	Denial	Mislabeling	Smearing	Semantic Logic
UPR 2 nd Cycle	2013	Yes	-	Yes	Yes
ICCPR Reply to List of Issues	2017	Yes	-	-	-
ICCPR Consideration	2017	-	-	-	Yes
ICCPR dissatisfaction letter	2017	-	-	-	Yes
UPR 3 rd Cycle	2018	Yes	Yes	Yes	-
CAT Consideration	2019	Yes	Yes	Yes	Yes
ICCPR Follow-up 1	2020	-	Yes	Yes	Yes
ICCPR Follow-up 2	2020	-	-	-	Yes
UPR 4 th Cycle	2024	Yes	Yes	Yes	-

Figure 2: A table tallying the key elements of GoB's response on enforced disappearance question.

Effectiveness of the Monitoring Mechanism

The previous part explicitly demonstrates denial and non-compliance by the state party. Though the reporting procedure is a treaty obligation of the party states, Concluding Observations made by the Committee are not legally binding.⁸¹ In fact, none of the treaty enforcement mechanisms, e.g. periodic review, individual complaint, inter-state communication, or inquiry procedure, results in binding decisions. The proceedings are rather conciliatory and the value of the decisions is primarily jurisprudential. This has led many to render the mechanisms inadequate and ineffective.⁸² In particular, the review of

⁷⁸ UNHRC 3rd UPR (n 73) 6.

⁷⁹ UNHRC 3rd UPR (n 73) 7.

⁸⁰ UNHRC 4th UPR (n 76) 2.

⁸¹ Michael O'Flaherty, 'The Concluding Observations of United Nations Human Rights Treaty Bodies' (2006) 6 Human Rights Law Review 27, 36

⁸² James Crawford, 'The UN Human Rights Treaty System: A System in Crisis?' in Philip Alston and James Crawford (eds), *The Future Of Un Human Rights Treaty Monitoring* (CUP 2000) 1, 3.

periodic reports by the state, which is the focal point of this article, has been deemed often inconsequential by many commentators.⁸³

However, research shows that when states engage through reporting and constructive dialogue with the treaty bodies, that modestly improves the human rights practices in that country.⁸⁴ Creamer and Simmons documented 4 mechanisms through which it can happen - elite socialization, learning and capacity building, domestic mobilization, and law development.⁸⁵ This article will examine whether the conditions for these mechanisms were present in the case of Bangladesh. Three things to be noted here: the improvement Creamer and Simmons found was only to a 'modest' extent; it is clearer through repeated interaction with the bodies, not a one-shot like our case; it is an average result of cumulative data from numerous countries. Therefore, if the conditions are fulfilled and no improvement is found, it would not be rational to simply disregard the mechanisms. The analysis can be useful to demarcate the limitations of the theoretical framework Creamer and Simmons proposed.

Elite Socialization

Elite socialization is the process through which officials participating in the reporting system understand what the international community wants regarding the implementation of the treaty.⁸⁶ It involves persuasion, peer pressure, criticism, and even moderate shaming.

Throughout the periodic review process, the dialogue between GoB and treaty bodies became clearer and more precise. Initially, the Human Rights Committee was asking for GoB's response to allegations of violations including enforced disappearance.⁸⁷ GoB gave generalized answers.⁸⁸ But in Consideration, Concluding Observation, and Evaluation of the Follow-up, the Committee narrowed down to two issues: the criminalization of enforced disappearance and the investigation of the offenses. They also ruled out irrelevant information provided by the GoB (Narayanganj case). They countered GoB's semantic logic and called out the GoB for not providing exact data on the investigation of the offenses. Unfortunately, the subsequent responses by the GoB before similar forums contained similar issues. The Second follow-up to CCPR was slightly modified compared to the first one, as it did not resort to mislabeling and smearing.⁸⁹ But the vices caught up again in the 4th UPR review in 2024 (figure 2). So, even if GoB understood anything from the reviewing bodies, that understanding is not reflected in their communications.

⁸³ Emilie Hafner-Burton, *Making Human Rights A Reality* (Princeton University Press 2013) 100.

⁸⁴ Cosette D. Creamer & Beth A. Simmons, "The Dynamic Impact of Periodic Review on Women's Rights" (2018) 81 *Law and Contemporary Problems* 31.

⁸⁵ Creamer and Simmons (n 6) 1.

⁸⁶ *ibid* 25.

⁸⁷ Human Rights Committee (n 40) 2

⁸⁸ Human Rights Committee (n 42) 4

⁸⁹ Human Rights Committee (n 55) 4

The 'naming and shaming' mechanism exhibits limited impact as evidenced by GoB's sending of the unusual dissatisfaction letter. It indicates that their desire for acceptance and appraisal from the international community was hurt by the observations of the HR Committee. However, the impact did not translate into an actual reduction of the offense. During the dialogue with CAT, the GoB delegation was asked about specific missing persons and they had to answer about their whereabouts. CAT members did not buy GoB's denial. The review processes made GoB face at least a slight form of criticism and accountability. That can be part of the reason why the government had not submitted its overdue follow-up to CAT or the next periodic report to CCPR. Overall, it can be said that elite socialization did not occur to an extent adequate enough to observe changes.

Learning and Capacity Building

If the government delegation sent to the consideration is connected with relevant domestic law-making and implementing organs that is likely to improve the chances of carrying lessons back home.⁹⁰ The Bangladeshi delegation to Geneva consisted of high-ranking officials from government organs who deal directly with the rights in issue (e.g., ministries of hill tracts, home affairs, women's affairs, foreign affairs, labor; armed forces, police, and election commission).⁹¹ Therefore, it created the possibility of the suggestions learned from the constructive dialogue being implemented.

Ironically, the delegation to CAT consideration also included officers from RAB and DGFI,⁹² two agencies directly perpetrating enforced disappearance. The RAB officer in particular, Brig. Gen. Tofayel Mustafa Sorwar, was later sanctioned by the US for human rights violations including enforced disappearance.⁹³ The law minister Mr. Huq had been later arrested and charged with murder in the July-August uprising.⁹⁴ This begs the question of what will the actual perpetrators of the crime or their supervisors learn from the review processes. They cannot be expected to learn good practices to combat crime, rather the only lesson they might return with is how to deny and dodge the Committee's questions more convincingly.

Violations vary in the nature and degree of connection with the state party. For example, Conrad and Moore showed that policymakers do not always control decentralized

⁹⁰ Creamer and Simmons (n 6) 36

⁹¹ Permanent Mission of Bangladesh (n 44) 1

⁹² Permanent Mission of Bangladesh to the United Nations Office, *Letter for Issuing Security Badges to the Delegation Team from Bangladesh* (BMG/CHR-315/301 29 July 2019) 2.

⁹³ Office of Foreign Assets Control, 'Global Magnitsky Designations; North Korea Designations; Burma-related Designations; Non-SDN Chinese Military-Industrial Complex Companies (NS-CMIC) List Update' <<https://ofac.treasury.gov/recent-actions/20211210>> accessed 18 February 2025.

⁹⁴ 'Ex-minister Anisul on 3-day remand in murder case' *Daily Star* (Dhaka, 5 February 2025) <<https://www.thedailystar.net/news/bangladesh/crime-justice/news/ex-minister-anisul-3-day-remand-murder-case-3816746>> accessed 18 February 2025.

state agents committing torture.⁹⁵ In that case, learning good practices can help the willing government to comply better with its obligations. The same can be said when the government has to balance its legitimate interest against the obligation. But for a government-coordinated crime like enforced disappearance, and especially when the delegation can include the perpetrators, the chance of learning and capacity building seems null. However, the recommendations proposed by the treaty bodies can be useful for a government that wants to end the practice.

Domestic Mobilization

Domestic mobilization works through civil society scrutiny, public attention, and media coverage of the review process.⁹⁶ NGOs and NHRs are often consulted by the states while preparing periodic reports. They also assess, contest, and pressure the states to comply with the recommendations of the Committee.⁹⁷

GoB claimed to have consulted NHRC and several prominent NGOs in preparing the initial report.⁹⁸ The 2017 Concluding Observations by the Human Rights Committee were cited and mentioned in a few international organizational reports⁹⁹ and media like Al Jazeera,¹⁰⁰ no notable Bangladeshi newspaper or media outlets have reported on the issue. The CAT concluding observations in 2019 were published in several outlets.¹⁰¹ In 2021, WGEID sent GoB a list of 76 missing persons which came to media attention in 2022, following the visit of the UN High Commissioner for Human Rights, Michelle Bachelet.¹⁰²

GoB had failed to adequately answer for the disappearances, but the Foreign Minister stated that WGEID's information was biased.¹⁰³

This attempt to discredit the UN Working Group was not an isolated event. UN Special Rapporteurs identified a government-backed smear campaign against UN bodies where

⁹⁵ C R Conrad and Will H Moore, 'What Stops the Torture?' (2010) 54(2) American Journal of Political Science 461-463.

⁹⁶ Creamer and Simmons (n 6) 39-43.

⁹⁷ *ibid* 40.

⁹⁸ Human Rights Committee (n 4) 2; Human Rights Committee (n 42) 17.

⁹⁹ ICJ 2017 (n 18) 49-50; HRW 2021 (n 18) 51.

¹⁰⁰ David Bergman, 'UN blasts Bangladesh over extrajudicial killings' *Al Jazeera* (Doha, 29 March 2017) <<https://www.aljazeera.com/news/2017/3/29/un-blasts-bangladesh-over-extrajudicial-killings>> accessed 18 February 2025.

¹⁰¹ Humayun Kabir Bhuiyan, 'CAT findings on torture: UN body recommends independent inquiry into allegations against law enforcers' *Dhaka Tribune* (Dhaka, 10 August 2019) <<https://www.dhakatribune.com/bangladesh/foreign-affairs/184540/cat-findings-on-torture-un-body-recommends>> accessed 18 February 2025.

¹⁰² 'জাতিসংঘের তালিকায় গুমের শিকার হওয়া ৭৬ জন' *Prothom Alo* (Dhaka, 30 August 2022) <<https://www.prothomalo.com/bangladesh/eb25w6dqu>> accessed 18 February 2025.

¹⁰³ 'গুমের তালিকার অনেকে মরেছে ভূমধ্যসাগরে: পররাষ্ট্রমন্ত্রী' *Jugantar* (Dhaka, 6 February 2022) <<https://www.jugantor.com/tp-lastpage/517070>> accessed 18 February 2025.

the prime minister's son was allegedly involved.¹⁰⁴ GoB denied the license renewal of the non-governmental organization Odhikar for 'tarnishing the image of the country'.¹⁰⁵ Odhikar had been working on enforced disappearance for a long time and had submitted a shadow report to the Human Rights Committee before the periodic review of Bangladesh. Another organization, Mayer Daak, composed of relatives of disappeared persons, was intimidated and harassed by police and ruling party-affiliated people.¹⁰⁶

These incidents show two key trends: increased media attention to IHRL bodies' opinions on enforced disappearance; and intensified GoB suppression of the NGOs. It indicates that while mobilization occurred to some extent, it was obstructed through attack on civil and political rights.

Law Development

Observations and recommendations of the treaty bodies often get cited in domestic court decisions and bolster the push for legislative changes.¹⁰⁷ Bangladesh's state report to the Convention on the Rights of the Child (CRC) and their Concluding Observations had been quoted in a *Suo Moto* rule by the HCD¹⁰⁸ and a writ judgment regarding corporal punishment of children in educational institutions.¹⁰⁹ However, such examples are rare and the GoB Initial Report or Concluding Observations regarding ICCPR or CAT have not been used in any judicial decisions of Bangladesh. Regrettably, the Supreme Court of Bangladesh consistently overlooked the increasing number of enforced disappearance cases. The Constitution of Bangladesh allows citizens to file for habeas corpus writ to produce detained persons before the Court.¹¹⁰ Though several writ petitions had been filed by the relatives of the forcibly disappeared persons, the High Court Division never offered redress in the 15 years. The petitions rarely went beyond initial filing and even if the Court issued a rule nisi upon the authorities, when the government agencies denied their involvement, the Court simply accepted their excuse and stopped pursuing the case.¹¹¹ Therefore, it was

¹⁰⁴ David Bergman, 'UN rapporteurs claim prime minister's son was part of government's "smear campaign" concerning enforced disappearances' (Netra News, 4 March 2023) <<https://storage.googleapis.com/netra.news/2023/un-rapporteurs-claim-prime-ministers-son-is-part-of-governments-smear-campaign-concerning-enforced-disappearances/index.html?ref=netra.news>> accessed 18 February 2025.

¹⁰⁵ 'Rights organisation 'Odhikar' denied registration renewal' *The Business Standard* (Dhaka, 6 June 2022) <<https://www.tbsnews.net/bangladesh/rights-organisation-odhikar-denied-registration-renewal-434262>> accessed 18 February 2025.

¹⁰⁶ David Bergman (n 104).

¹⁰⁷ Creamer and Simmons (n 6) 44.

¹⁰⁸ *State v Secretary, Ministry of Law, Justice & Parliamentary Affairs and others*, (HCD 3 September 2009) *Suo Moto* Rule No.5621 Of 2009 12-15

¹⁰⁹ *BLAST & ASK v Government of Bangladesh & Or.* [2010] 63 DLR (2011) 643 (HCD) 14

¹¹⁰ Constitution of the People's Republic of Bangladesh, art 102(2)(b)(i).

¹¹¹ HRW 2017 (n 22) 65; BSS 'Report: Enforced disappearances' survivors face stigma of criminal charges' *Dhaka Tribune* (Dhaka, 20 January 2025) <<https://www.dhakatribune.com/bangladesh/371350/report-enforced-disappearances-survivors-face>> accessed 18 February 2025.

highly unlikely that the Court would refer to the CCPR or CAT observations and recommendations to serve justice for the victims of enforced disappearance.

Any measure by the legislature was not possible either. The national parliament was composed of a majority of Awami League members led by Prime Minister Sheikh Hasina who herself was allegedly involved in the offense.¹¹² Back in 2017, she resorted to misleading comparisons when she said in Parliament that many people go missing in the UK and USA.¹¹³ Such an evasive statement from the chief executive position nullifies the chance of legislative advancement on the matter.

Why the Mechanisms Failed

The foregoing discussion depicts the four mechanisms of Creamer and Simmons as predominantly ineffective in the context of Bangladesh. This ineffectiveness can be attributed to the autocratic¹¹⁴ structure of the past regime. The 'elites' in Creamer and Simmons' theory, the political and bureaucratic top-tier members of the government, did a tradeoff between the politico-financial gains from enforced disappearance and impairment of their international legitimacy. When the impairment resulted in softer repercussions (naming and shaming by human rights bodies), they responded with a dissatisfaction letter or smear campaigns. When it brought upon harder consequences (US sanctions), the offense was reduced for a brief period. But its restart says that the domestic gains from the offense were higher than even sanctions. The learning mechanism failed since the perpetrators were part of the delegation and policymakers. Domestic mobilization was stifled by systemic repression of civil society and media. Law development did not occur because the executive had usurped control of the judiciary and legislature. Riaz and Rana (2024) identified three elements of the institutional strategy autocrats follow: changing the constitution and other laws; capturing the judiciary and other government agencies; and silencing the political opposition.¹¹⁵ In Bangladesh, all three of these elements facilitated and insulated perpetration of enforced disappearance, which in a feedback loop, more forcefully strengthened the reign of terror.¹¹⁶ Simmons acknowledged that in stable

¹¹² Sirajul Islam Rubel, 'Crimes against humanity: ICT analyzing Hasina's phone calls, documents' *The Daily Star* (Dhaka, 3 January 2025) <<https://www.thedailystar.net/news/bangladesh/crime-justice/news/crimes-against-humanity-ict-analysing-hasinas-phone-calls-documents-3790706>> accessed 18 February 2025.

¹¹³ Michael Safi, 'Bangladesh PM claims 'forced disappearances take place in UK and US'' *The Guardian* (London, 25 November 2017) <<https://www.theguardian.com/world/2017/nov/25/bangladesh-pm-sheikh-hasina-claims-forced-disappearances-take-place-in-uk-and-us>> accessed 18 February 2025.

¹¹⁴ Ali Riaz and Md Sohel Rana, *How Autocrats Rise: Sequences of Democratic Backsliding* (Palgrave Macmillan 2024) 50; Anbarasan Ethirajan and Akbar Hossein, 'Sheikh Hasina's final hours as a hated autocrat' *BBC* (London, 7 August 2024) <<https://www.bbc.com/news/articles/cz733dly2ero>> accessed 28 February 2025; 'Bangladesh has ousted an autocrat. Now for the hard part' *The Economist* (London, 8 August 2024) <<https://www.economist.com/leaders/2024/08/08/bangladesh-has-ousted-an-autocrat-now-for-the-hard-part>> accessed 28 February 2025.

¹¹⁵ Riaz and Rana (n 114) 39, 43.

¹¹⁶ *ibid* 69.

autocracies repression could overwhelm the benefits of mobilization.¹¹⁷ However, the case of Bangladesh demonstrates how autocracies can undermine the remaining three mechanisms as well.

Conclusion

The analysis of GoB's responses through Creamer and Simmons' framework reveals the importance of domestic components, e.g. the democratic environment and independence of the judiciary, for IHRL bodies to make an impact. The conditions of improvement were rendered futile because of the 2009-2024 regime's strategic reliance on repression as a tool of governance. However, in the changed scenario, the implementation of the CCPR, CAT, UPR, and WGEID recommendations can put Bangladesh on the path to dismantling oppressive state tools. As a dualist country, international obligations are not directly judicially enforceable in Bangladesh. Hence, the criminalization of enforced disappearance and other treaty obligations of ICPPED need to be incorporated into domestic laws. Bangladesh should also recognize the competence of the Committee to consider complaints from individual victims. The report and recommendations by the Inquiry Commission will be a useful guide in unraveling the systematic operation of the crime in order to shut down those pathways.

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¹¹⁷ Beth A Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (CUP 2009) 144-54.

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