

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

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Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 54/14, 60/8, 53/4 and 54/8.

In this connection, we would like to bring to the attention of your Excellency's Government our **observations concerning certain provisions contained in the draft bill "Prevention and Remedy of Enforced Disappearance Act, 2026."**

While we do not seek to prejudge Bangladesh's international engagement following its accession to the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) on 30 August 2024, nor the positive elements contained in the draft bill, we express concern that several of its provisions, if adopted and implemented, may hinder Bangladesh's efforts to effectively protect victims of enforced disappearance, defined as both the disappeared person and any individual who have suffered harm as a direct result of such acts, and to prevent their recurrence.

The importance of an inclusive and participatory process

We note that, on 11 April 2026, the Enforced Disappearance Prevention and Remedy Ordinance (2025) lapsed without being introduced in Parliament. The present draft bill seeks to revive and advance this legislative initiative. We underline the importance of conducting comprehensive, inclusive, and accessible consultations with all relevant stakeholders, in particular families of forcibly disappeared persons, civil society actors, and those working to clarify their fate and whereabouts, and to ensure full reparation. Such consultations are essential to ensure that the legislative framework in Bangladesh is the result of a fully inclusive participatory process that can effectively protect the intersecting rights of the victims, provides for accountability commensurate to the gravity of the crime of enforced disappearance, and guarantees integral reparation.

Definition of enforced disappearance

Section 4 of the draft bill refers to "arrest, detention or abduction" but fails to encompass other forms of deprivation of liberty carried out by persons or groups of persons acting with the authorization, support or acquiescence of the State.

Section 4 also contains a provision which excludes from the definition of enforced disappearance any arrest that is followed by production before a magistrate within the constitutional time limit (article 33(2) of the Constitution), even if the fact of arrest, the whereabouts, or the condition of the person are kept secret in the interest of State security in the interim. This creates a significant carve-out that can be exploited to shield secret detention from criminal responsibility. This concern is reinforced by the Commission of Inquiry on Enforced Disappearances (“the Commission”), formed on 27 August 2024 by the Interim Government, whose findings for the period 2009 to 2024 reveal the systematic use of incommunicado detention followed by later court presentation, often with falsified arrest dates.

Article 1(2) of the ICPPED, as well as article 7 of the [1992 Declaration on the Protection of All Persons from Enforced Disappearance](#) (“the Declaration”), establish the absolute and non-derogable nature of the prohibition of enforced disappearance, including in situations of public emergency or threats to national security. Article 2 ICPPED and the preamble of the Declaration further define enforced disappearance as the deprivation of liberty followed by a refusal to acknowledge such deprivation or by concealment of the fate or whereabouts of the person concerned.

In this regard, we wish to stress that the element of refusal or concealment is central: the denial of information regarding fate or whereabouts, even if temporary or followed by eventual production before a judicial authority, is sufficient to constitute an enforced disappearance. In its general comment on the definition of enforced disappearance, the Working Group on Enforced or Involuntary Disappearances (“the Working Group”) clarified that the crime of enforced disappearance “starts with an arrest, detention or abduction against the will of the victim”, irrespective of the arbitrariness of deprivation of liberty itself or “whatever form such deprivation of liberty takes” ([A/HRC/7/2](#)). It further articulated, in its study on best practices on enforced disappearance in domestic criminal legislation, that the defining element of enforced disappearance lies in the refusal to acknowledge the deprivation of liberty or in the concealment of the fate or whereabouts of the disappeared person, thereby placing the individual outside the protection of the law. The Working Group emphasised that this element does not require permanence: even a temporary denial of information suffices to engage the State’s obligations and to trigger the characterization of the act as an enforced disappearance ([A/HRC/16/48/Add.3](#)).

The absolute and non-derogable prohibition of enforced disappearance is reinforced in the joint statement on short-term disappearances by the Committee on Enforced Disappearances (CED) and the Working Group, which emphasised that “there is no time limit, no matter how short, for an enforced disappearance to occur,” and that even brief periods of secret detention place individuals outside the protection of the law ([CED/C/11](#)).

Accordingly, while enforced disappearance encompasses any form of deprivation of liberty, the subsequent release of the disappeared person or their production before a judicial authority does not negate the commission of the offence or diminish its gravity. Taken together, these standards require that the legal framework in Bangladesh must fully reflect the continuous and autonomous nature of enforced disappearance, recognize all forms of deprivation of liberty carried out by persons or groups acting with the authorization, support or acquiescence of the State, and establish

a comprehensive and unconditional prohibition, without temporal, security-based, or exceptional limitations.

Death penalty

Section 6 of the draft bill provides for the death penalty as the maximum sentence where a disappeared person dies, where remains are found, or where the person has not been recovered after five years. The inclusion of the death penalty in this law is wholly inconsistent with international human rights standards relating to the rights to truth and to an effective judicial remedy. In this regard, the Commission found systematic evidence of destruction, falsified arrest records, and deliberate transfers between agencies to diffuse accountability. These findings show structural barriers to establishing criminal responsibility to the standard required for an irreversible sentence, further underscoring the death penalty's incompatibility with international standards in Bangladesh.

In this regard, several United Nations human rights mechanisms have identified the death penalty as incompatible with applicable international human rights standards, including in the context of enforced disappearance. The irreversible nature of capital punishment is fundamentally at odds with the protection of the right to life and the principle of proportionality, particularly in relation to an offence whose legal characterisation and attribution may evolve over time, and whose extreme gravity calls for severe custodial sanctions rather than execution. This position has been consistently reaffirmed by both the CED and the Working Group in their jurisprudence and dialogues with States (A/HRC/16/48), including in the course of the Working Group's technical advice to and recent engagement with Bangladesh¹.

We would like to underscore that the effectiveness of accountability depends less on the severity of punishment than on the existence of a comprehensive legal framework capable of ensuring prompt, impartial, and fair judicial proceedings. In its general comment on article 6 of the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee affirmed that a deprivation of life may be authorized by domestic law and still be arbitrary. The notion of "arbitrariness" must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law as well as elements of reasonableness, necessity and proportionality. While a disappearance resulting in death may in principle fall within this category, the Human Rights Committee emphasised that, in addition to the offence involving a clear and direct intent to kill, that strict due process guarantees and judicial safeguards must be fully respected ([CCPR/C/GC/36](#)). In this regard, the Human Rights Committee has also emphasised the absolute nature of the right to an effective remedy before a competent, independent and impartial tribunal under article 14 of the ICCPR ([CCPR/C/GC/32](#)).

In the context of enforced disappearance, where responsibility involves multiple actors within State structures, the imposition of the death penalty raises serious concerns. The risk that criminal responsibility for the death cannot be established with sufficient certainty, combined with systemic weaknesses in search activities, investigations and trials, can render such a penalty incompatible with the ICCPR.

¹ [wgeid-technical-advice-bangladesh-june-202.pdf](#)

Criminal liability and command responsibility

Section 9 of the draft bill addresses certain forms of liability but appears to lack several modes of responsibility laid out in article 6 of the ICPPED. In particular, it is unclear whether the draft adequately covers all forms of participation in the offence, including “any person” who “solicit” or “induce the commission of” an enforced disappearance, as well as accomplices.

Sections 10 and 11 further establish provisions on command responsibility, respectively; however, they introduce a different threshold to prosecute military and civilian superiors. The *mens rea* standard applicable to any civilian superior under section 11 requires that they “consciously disregarded” information, which draws from article 6(1)(b)(i) of the ICPPED. However, it sets a higher threshold to prosecute civilians compared to military superiors. This divergence risks creating an unjustified gap in accountability.

In its engagement with Bangladesh, the Working Group identified the formulation of command responsibility as a critical area in domestic enforced disappearance legislation, cautioning that an insufficiently precise *mens rea* standard, particularly where civilian and military superiors are treated differently, may create unjustified gaps in accountability. The *mens rea* standard of “knew, or consciously disregarded clear information” of article 6 of the ICPPED applies to both civilian and military superiors and reflects the principles of legality and that criminal responsibility is based on clearly defined and foreseeable standards of culpability (*nullum crimen sine lege*) and fair trial, irrespective of the type of legal system or State administrative structures in place.

We stress the importance of ensuring individual criminal responsibility for cases of enforced disappearance where there is actual knowledge of the crime, or wilful blindness, whilst avoiding criminal liability based on mere negligence. Holding an individual criminally responsible based on what they “should have known” can result in liability grounded in hindsight rather than actual awareness of the crime. As a result, article 6 of the ICPPED reflects a deliberate shift toward a more stringent, subjective culpability threshold, aimed at ensuring legal certainty and consistency with general principles of criminal responsibility, while still capturing situations of deliberate inaction in the face of clear information. Owing to the seriousness of the crime of enforced disappearance, it is particularly important that liability be confined to situations involving knowledge or at least wilful blindness, rather than mere negligence, in order to preserve fairness, legal certainty and the legitimacy of criminal proceedings.

The Declaration requires States to ensure that “all acts of enforced disappearance shall be punishable by appropriate penalties which shall take into account their extreme seriousness” (article 4) and to bring those responsible to justice (article 13). It further establishes that “no order or instruction of any public authority may be invoked to justify such acts, and that any person receiving such an order has the right and duty not to obey it” (article 6(1)). Read together, the Declaration also implies that superiors must be held “appropriately” accountable where they fail to prevent or repress enforced disappearances committed by subordinates.

Consistent with this standard, we wish to emphasize that the draft bill should ensure criminal liability for any person participating in the offense, and apply the principle of command responsibility equally, autonomously, and without distinction across all State structures, and that it is firmly grounded in the superior's duty to exercise effective control. In addition, criminal liability should be established based on individual responsibility, including where superiors fail to act despite having actual knowledge of the commission of enforced disappearance. This is essential to ensure that no gaps in accountability arise as a result of differences in status, institutional affiliation, or hierarchy, and that all those in positions of authority who tolerate or wilfully ignore an enforced disappearance are held fully accountable.

Retroactive and continuous nature of enforced disappearances

The draft bill contains no provision allowing for a conviction for enforced disappearance based on a legal instrument enacted after the disappearance began, notwithstanding the fundamental principles of legality and non-retroactivity.

Moreover, section 12 of the draft bill codifies the continuing nature of the offence “until the perpetrator of the offence discloses the whereabouts, condition *or* fate of the person subjected to enforced disappearance”. Such a disjunctive approach, by disclosing any one element, risks allowing the offence to cease upon the clarification of either the fate or the whereabouts of the disappeared person. However, enforced disappearance is a crime that persists until both the fate and whereabouts of the person have been fully clarified. The provision included in the draft bill is also formulated with exclusive emphasis on disclosure by “the perpetrator”, thereby implying that the continuing nature of the offence depends on perpetrator action. Such a formulation is unduly restrictive and at odds with international practice and jurisprudence, which focus on the objective clarification of fate and whereabouts irrespective of the source of the information, including through judicial, forensic or other competent State mechanisms.

Article 8(1) of the ICPPED provides for the continuing nature of the crime, while 24(2) of the ICPPED recognises the right to know the fate of the disappeared person, while articles 18 and 24(3) establish obligations relating to the location of the person or their remains. Similarly, the Declaration refers expressly to determining the fate of the disappeared person in article 13(6) and requires authorities to maintain and disclose information on the place of detention and to locate or return remains in articles 10 and 19. Article 17 stipulates that the act of enforced disappearance lasts “as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.” Taken together, these provisions imply the necessity of enabling legislation to allow convicting a perpetrator for an enforced disappearance committed prior to the State's accession to the ICPPED, and clarifying both fate and whereabouts - a requirement later made explicit by the CED and the Working Group in their jurisprudence and overall practice.

We reiterate that these two elements – fate and whereabouts - are cumulative and inseparable: clarification of the fate - whether the person is alive or dead and the circumstances thereof - does not suffice in the absence of knowledge of the whereabouts, including, where applicable, the location of remains, and *vice versa*. This

approach is closely linked to the right to truth, which encompasses full and precise information on both aspects.

While many cases of enforced disappearances remain unresolved, including the cases documented by the Commission occurring from 2009 to 2024, the draft bill, as drafted, therefore risks precluding limiting responsibility to discrete acts occurring at a specific point in time, terminating the continuing character of the offence, and undermining the full realization of the right to truth owed to victims of enforced disappearance and society at large.

Absence of a prescription regime

The draft bill contains no provision expressly establishing either the imprescriptibility of the offence or a specific statute of limitations regime. This silence creates legal uncertainty that domestic courts may resolve in ways inconsistent with Bangladesh's international obligations.

Where States choose to apply a statute of limitations, article 8 of the ICPPED requires that the limitation period be of long duration and proportionate to the extreme gravity of the offence, and that it commence only from the moment the offence ceases, that is, when the fate and whereabouts of the disappeared person are established with certainty. Accordingly, article 4 of the Declaration requires States to ensure that all acts of enforced disappearance are offences under criminal law and punishable by appropriate penalties reflecting their extreme seriousness. Read together with article 17(1) and (3), which affirms the continuing nature of enforced disappearance for as long as the fate and whereabouts of the disappeared person have not been clarified, and that statutes of limitation "shall be substantial and commensurate with the extreme seriousness of the offence," this implies that any limitation regime must not undermine accountability for such a grave and ongoing violation.

As highlighted in the 2010 study on enforced disappearance and domestic legislation, the Working Group underscores the need to recognize enforced disappearance as an autonomous and continuous offence in domestic law (A/HRC/16/48/Add.3). In this regard, the crime of enforced disappearance "continues to be committed" for as long as the person remains disappeared and the State has not provided clarification, thereby extending the State's obligations over time (A/HRC/16/48). This entails a duty to ensure the full elucidation of the circumstances of the case (A/HRC/22/45), as well as the provision of adequate, effective and comprehensive reparations to victims (A/HRC/45/13). These reparations encompass the rights to truth, justice and guarantees of non-repetition, underscoring that enforced disappearance inflicts enduring harm that persists until all these elements are fulfilled.

This ongoing character of the crime has significant legal implications, including the requirement that statutes of limitation should not apply while the disappearance continues, as well as the enduring duty of the State to investigate and prosecute those responsible. The absence of an explicit provision in the draft bill reflecting the inapplicability of statutes of limitation during the continuance of the disappearance is therefore a matter of concern. In this context, applying short or ordinary limitation periods would be incompatible with the object and purpose of the Declaration, as it

would risk extinguishing criminal responsibility before the offence has effectively ceased.

Best practice in international law emanates from States that have established that enforced disappearances are not subjected to statute of limitations or that it runs from the moment the enforced disappearance ceases to exist (A/HRC/16/48/Add.3). Therefore, international human rights law favours either the recognition of imprescriptibility or the adoption of limitation periods of exceptional duration, calculated at least from the moment when the fate and whereabouts of the disappeared person are established with certainty. This approach ensures that the inherently continuous and concealed nature of enforced disappearance does not result in impunity.

Absence of specific aggravating and mitigating circumstances

Section 17 of the draft bill provides for a general clemency mechanism but does not enumerate any specific mitigating and aggravating circumstances in line with article 7(2) of the ICPPED, relating to persons in situations of vulnerability, such as pregnant women, children, persons with disabilities, or other particularly vulnerable persons.

Article 4 of the Declaration requires that enforced disappearance be punishable by appropriate penalties that take into account its “extreme seriousness,” while also allowing for mitigating circumstances, particularly where perpetrators contribute to bringing the violation to an end, including by facilitating the release of the disappeared person or voluntarily providing information that assists in clarifying the case. This provision implies that domestic legislation must establish sentencing frameworks that duly reflect both the gravity of the offence and the specific circumstances that may either increase or attenuate individual criminal responsibility.

The CED has consistently held that a general regime of mitigating and aggravating circumstances in criminal codes does not sufficiently address the specific requirements of article 7(2) ICPPED. It has recommended inclusion of explicit provisions covering mitigating circumstances linked to contribution to the search and aggravating circumstances related to the death of the disappeared person, and the disappearance of particularly vulnerable persons. The Working Group has also underscored that reliance solely on general sentencing provisions in domestic criminal law may be insufficient to capture the specific gravity and continuing nature of enforced disappearance. General international practice by States reveals the importance of incorporating offence-specific considerations into national legislation. These include aggravating factors such as cases involving children, pregnant women, persons with disabilities, or other persons in situations of vulnerability, as well as instances resulting in the death of the disappeared person (see A/HRC/45/13). At the same time, mitigating circumstances may be recognized where the perpetrator effectively contributes to clarifying the fate or whereabouts of the disappeared person or assists in locating the disappeared person (A/HRC/16/48/Add.3).

Accordingly, the absence of explicit, offence-specific aggravating and mitigating circumstances in the present draft risks undermining the requirement to ensure penalties commensurate with the seriousness of the crime and may weaken the overall effectiveness of the accountability framework.

Detention registers and independent inspection mechanism

Section 8 of the draft bill prohibits secret detention and section 16 provides for judicial search warrants. However, the draft bill contains no reference to the State's positive obligation to maintain official, up to date registers of all persons deprived of liberty, nor adequately codifies offences, nor does it establish a mechanism for the independent inspection of places of detention. These are among the most critical preventive safeguards against enforced disappearance, given that enforced disappearances can also occur in any setting where individuals are deprived of liberty.

Article 17(3) of the ICPPED requires States parties to maintain official registers or records of persons deprived of liberty, containing minimum information including identity, date and place of admission, health status, and responsible authority. Article 18 further guarantees access to such information by relatives, counsel, and judicial authorities. Sanctions are prescribed in article 22(b) and (c) for failing to record a deprivation of liberty or deliberately recording inaccurate information, as well as for refusing to provide information or providing inaccurate information despite the legal requirements to do so having been met. Similar core safeguards applicable to all detention settings are enshrined in the Declaration. Article 10 establishes a comprehensive framework of safeguards relating to the recording and accessibility of information on persons deprived of liberty. It requires that all such persons be held in "officially recognized places of detention" and that "accurate" and "up-to-date" information on their identity, place of detention, and the authority responsible be systematically recorded. This information must be made promptly available to family members, legal counsel, or any other persons with a legitimate interest, as well as to competent authorities.

Read together, these provisions imply a positive obligation to maintain accurate, accessible, and up-to-date records of all detainees "in every place of detention" and State-wide register. Such records are essential to enable competent authorities, relatives, legal representatives and any person with a legitimate interest to trace the whereabouts of persons deprived of liberty and thereby prevent their disappearance.

The CED has identified the absence of such registers as a structural factor enabling enforced disappearances. The Working Group has consistently identified the absence of official detention registers and independent oversight of places of detention as structural factors facilitating enforced disappearances. It has emphasized that, while enforced disappearance may occur in any form of deprivation of liberty, effective prevention requires systematic documentation of detention and unrestricted monitoring of all places where individuals may be held (A/HRC/16/48/Add.3). This includes not only facilities within the criminal justice system, but also those operated by military or intelligence agencies, as well as settings falling outside traditional detention frameworks, such as migrant and refugee camps, psychiatric institutions, and social care facilities, where persons may be placed outside the protection of the law.

No exclusion of military jurisdiction

Section 19 of the draft bill provides for trial before the Court of Sessions and applies to members of all "disciplined forces", including military and other State

security actors, but does not expressly exclude military or special courts from jurisdiction, which may lack sufficient independence due to their links to the executive and military hierarchy. In contexts where members of the military or security forces are suspected, allowing jurisdiction to fall within military or special courts raises serious concerns as to whether such bodies can meet the required standards of independence and impartiality.

Articles 11 and 12 of the ICCPED require that cases of enforced disappearance be submitted to competent authorities for prosecution and investigated by bodies that are independent and impartial, with full powers to carry out effective investigations. In particular, article 12(1) obliges States to ensure that any authority responsible for investigations is institutionally and practically independent from those potentially implicated. The Declaration requirement of effective accountability in articles 4 and 13 implies that proceedings must be conducted before competent, independent, and impartial courts. Article 16(2) further stipulates that those responsible shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts”.

The CED has consistently held, across numerous State party reviews and in its statement on enforced disappearance and military jurisdiction, that as a matter of principle military courts lack the independence and impartiality required to deal with human rights violations such as enforced disappearances. All cases of enforced disappearance must be expressly excluded from military jurisdiction, even when committed in a military context or by military personnel in the course of their duties. The Working Group has consistently affirmed that serious human rights violations, including enforced disappearances, should not fall under military jurisdiction, as such courts generally lack the requisite independence and impartiality where members of the armed or security forces are implicated (A/HRC/16/48). It has further emphasized that investigations and prosecutions must be carried out by ordinary civilian courts capable of guaranteeing full due process and accountability (A/HRC/22/45).

This is also consistent with the jurisprudence of the Human Rights Committee, which has underscored that the requirement of a “competent, independent and impartial tribunal” under article 14 of the ICCPR is a fundamental guarantee that must be strictly respected (CCPR/C/GC/32). It has also expressed concern about the trial of serious human rights violations before military or special courts, particularly where such courts lack independence or are not suited to adjudicate violations against civilians (CCPR/C/21/Rev.1/Add.13).

In this context, we wish to caution that recourse to special or exceptional jurisdictions may contribute to impunity and undermine victims’ rights to truth and justice. Accordingly, the absence of an explicit exclusion of military or special jurisdiction in the present draft bill risks undermining compliance with international standards requiring that enforced disappearance cases be investigated and prosecuted by independent civilian courts.

Right to an effective remedy

Section 23 of the draft bill treats the judicial fine as compensation, and section 30 creates a fund for rehabilitation and compensation on a discretionary basis.

The draft bill also recognizes the right to truth, freedom of association, and legal aid in section 28. However, it does not establish a comprehensive reparation framework in line with international standards by not providing a holistic and victim-centred approach that encompasses all recognized forms of reparation and ensures their effective implementation, rather than relying on fines or discretionary mechanisms.

Article 24(4) of the ICPPED guarantees the right to prompt, fair and adequate reparation, which must encompass all five forms recognized in international law - restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Article 24(5) further addresses specific dimensions of harm, including social welfare, legal status, family law and property rights. In addition, article 24(2) recognizes the right to know the truth as an autonomous right, while article 12(1) requires that victims, be able to participate effectively at all stages of investigations and proceedings, including through access to case files and the right to appeal.

Similarly, the Declaration recognises the right to reparation (article 19) and requires States to ensure victims obtain adequate compensation corresponding to the gravity of the violation. The right to know the truth is also implicit in provisions requiring investigation and clarification of fate and whereabouts (articles 9 and 13). This obligation is further reinforced by the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation ([A/RES/60/147](#)), which require States to ensure full and effective reparation proportional to the gravity of the violation.

Building on these principles, the Working Group has emphasised that reparation must be comprehensive and victim-centred, and include elements such as compensation, rehabilitation and satisfaction (A/HRC/16/48); it has further stressed that reparation should not depend solely on criminal proceedings or the financial capacity of perpetrators (A/HRC/27/49); and it has underscored the need to regulate the legal situation of families, including in relation to social welfare, financial matters, family law and property rights (A/HRC/19/58).

Consequently, these provisions fall short of the comprehensive reparation framework required under international law as reparations measures do not aim at comprehensively addressing the multiple consequences and effects of the harm suffered by the victims, which include persons that were forcibly disappeared, their families and anyone that suffered direct harm as a result of an enforced disappearance; or include measures in the areas of restitution, compensation, rehabilitation and satisfaction. These provisions are also insufficient in practice, given the likely insolvency of convicted perpetrators.

Witness and victim protection

Section 27 of the draft bill limits protection to general guarantees under the Whistleblower Protection Act, 2011, and discretionary measures ordered by courts, which is inadequate and insufficient considering the international standards applicable to enforced disappearance.

Article 12(1) of the ICPPED requires effective protection of complainants, witnesses, relatives, defence counsel, and persons participating in investigations against ill-treatment, intimidation, and reprisals. Similarly, article 13 of the Declaration also

requires that States ensure that complainants, witnesses, relatives of the disappeared and those conducting investigations are protected against ill-treatment, intimidation or reprisals.

The CED and the Working Group have consistently underscored that acts of intimidation and reprisals against relatives, witnesses, human rights defenders and persons involved in search activities, constitute a central obstacle to the investigation of enforced disappearances, requiring prompt and effective preventive and protective action by States. This includes that institutional arrangements should be independent from potentially implicated authorities ([A/HRC/54/22](#)). In its interpretative guidance, the Working Group further clarified that protection measures under the Declaration must be effective in practice and not merely formal and therefore must go beyond confidentiality to include safeguards capable of preventing retaliation ([E/CN.4/2006/56](#)).

The Human Rights Committee has interpreted the State's obligations of the right to an "effective remedy" under article 2(3) of the ICCPR, as requiring not only formal access to judicial mechanisms but also the ability to pursue complaints in practice, free from intimidation or reprisals ([CCPR/C/21/Rev.1/Add.1](#)). This obligation is heightened in cases of serious human rights violations, where the Committee has stressed that a failure to protect complainants, witnesses and investigators undermines the effectiveness of remedies and risks fostering impunity (CCPR/C/21/Rev.1/Add.13).

In this context, relying on general legal frameworks and *ad hoc* judicial orders without establishing a dedicated, specialised protection regime or explicitly criminalising acts of intimidation or retaliation, risks falling short of these international standards. Such limitations may deter reporting, compromise the integrity of investigations, and ultimately undermine accountability and the right to an effective remedy in cases of enforced disappearance.

No search mechanism or right to participation

The draft bill appears to conflate the search for disappeared persons with criminal investigation and does not clearly establish a distinct and proactive duty to search. While section 14 regulates the filing of complaints and the conduct of investigations under the Code of Criminal Procedure, and sections 14 and 15 focus primarily on investigative processes and evidentiary reporting, the bill does not set out a standalone obligation to search that is independent from criminal proceedings. Although section 16 provides for search measures, including the issuance of warrants to find disappeared persons, these measures remain procedurally linked to judicial proceedings and do not amount to a comprehensive, *ex officio* and continuous search framework. The draft bill contains no provision ensuring the right to take part in the search for the disappeared.

Articles 12 and 24 of the ICPPED codify the obligation of States to search for disappeared persons, an obligation already articulated in the Declaration, which establishes a continuing duty to search, investigate and clarify the fate and whereabouts of the disappeared (articles 9 and 13).

Building on this framework, principles 1, 3, 5, 6, 7, 10 and 13 of the *Guiding Principles for the Search for Disappeared Persons* (Guiding Principles) of the CED reaffirm that the search constitutes an autonomous obligation of the State, which must be initiated *ex officio* and without delay as soon as there are reasonable grounds to believe that a person has been subjected to enforced disappearance. This obligation requires that the search be conducted without any waiting period and irrespective of the filing of a formal complaint, and that it be pursued continuously until the fate and whereabouts of the person are clarified. The same principles further require that search activities be proactive, coordinated and independent from the initiation or progress of criminal investigations, while maintaining a clear legal distinction between the search and the investigation, even though they must remain closely interrelated. They also provide that competent authorities must be endowed with adequate powers and resources, including unrestricted access to all places of deprivation of liberty, as well as to relevant registers, archives, and information, including those held by military and intelligence bodies ([CED/C/7](#)).

Importantly, international standards also recognise the central role and right of the family, their representatives, and any person, association or organization with a legitimate interest, to participate effectively in the search process. Article 24 of the ICPPED recognises victims' rights in relation to truth and the fate and whereabouts of disappeared persons, while the Guiding Principles explicitly affirm that the search must respect and enable their participation, including through involvement in search processes and the ability to organise and contribute to efforts aimed at establishing the fate and whereabouts of disappeared persons. The Working Group has likewise emphasised its role in facilitating communication with families and assisting them in determining the fate or whereabouts of disappeared relatives, reflecting the participatory dimension inherent in the search obligation.

The Working Group has also consistently reiterated that the obligation to search is distinct from the duty to investigate and must be undertaken with urgency from the moment authorities are informed of a disappearance. In this context, the search for the disappeared is an autonomous obligation, it must begin immediately upon any indication of an enforced disappearance has occurred, and it must continue for as long as the person remains disappeared, and until both the fate and whereabouts are clearly established. Domestic legislation should establish a comprehensive system for the search for disappeared persons, including guarantees for the effective participation of the families, their representatives and any person with a legitimate interest in search activities.

In this light, the draft bill's reliance on complaint-triggered procedures (section 14), investigation-driven mechanisms (sections 14 and 15), and judicially authorised searches (section 16), without establishing an explicit, participatory, autonomous and continuous duty to search, risks undermining the effectiveness of efforts to locate disappeared persons. This gap may result in delays, fragmented action, and an over-reliance on criminal processes, contrary to international standards requiring immediate, independent, inclusive and sustained search measures irrespective of parallel accountability proceedings.

Legal status of disappeared persons

Section 29 is limited to property management and declaration of absence after five years and fails to include the full range of adverse effects of enforced disappearances for the family and any person directly harmed by the enforced disappearance, which cuts across all aspects of their lives.

Article 24(6) of the ICPPED requires States parties to adopt legislation covering the legal situation of disappeared persons and their relatives in fields including social welfare, financial matters, family law, and property rights. Similarly, article 19 of the Declaration establishes the overall normative framework governing the right of victims to redress and adequate compensation.

The CED, interpreting article 24, has affirmed that States must establish appropriate legal frameworks to address the uncertainty arising from disappearance, without conditioning the enjoyment of rights on a prior declaration of death ([CED/C/GC/1](#)). Similarly, the Working Group has interpreted this as encompassing measures addressing the legal consequences of disappearance, including civil status, family relations, and access to social and economic rights. We stress that States should adopt measures regulating the legal situation of disappeared persons whose fate remains unknown and of their families, including access to social benefits, guardianship, management of property, and inheritance arrangements.

The Human Rights Committee has likewise held that enforced disappearance engages violations of the right to recognition as a person before the law (article 16) and to the protection of the family (article 23) of the ICCPR, requiring States to provide effective remedies addressing legal uncertainty affecting civil status and family life.

Section 29 is therefore unduly narrow, as it limits regulation to property management and delayed declarations of absence, without addressing the broader and immediate legal and social consequences of enforced disappearance for families. This falls short of the aforementioned international standards, which require comprehensive frameworks covering civil status, family relations and socio-economic rights without conditioning them on proof of death.

Absence of provisions for survivors

The draft bill contains no specific provision to protect the rights of persons who have been subjected to enforced disappearance and subsequently released, and prevent their criminalization. This omission fails to acknowledge the continuing obligations of the State arising from enforced disappearance, which, by placing the disappeared person outside the protection of the law, triggers duties that persist beyond the act itself. In particular, it overlooks the rights of such victims to truth, justice and full reparation, including access to rehabilitation. The Commission also found structural measures to discredit survivors and obstruct justice, noting the absence of judicial review of Anti-Terrorism charges and safeguards against retaliatory proceedings for those engaging with legal or investigative processes.

The CED has confirmed that the notion of “victim” under article 24 of the ICPPED includes persons who have been subjected to enforced disappearance and later

released, who retain the right to full reparation, including rehabilitation and satisfaction (CED/C/GC/1). The Working Group has explicitly affirmed that survivors of enforced disappearance are victims, entitled to truth, justice, reparation (including rehabilitation), and guarantees of non-repetition, as well as protection against reprisals or secondary victimisation ([E/CN.4/1998/43](#)). In its technical advice to Bangladesh, the Working Group further highlighted the situation of survivors of enforced disappearance as requiring specific attention in domestic legislation, recommending measures including access to justice and reparation, legal and economic support, and the review and dismissal of criminal charges unjustly brought against them. It also recommended a review of cases brought against survivors under the Anti-Terrorism Act.

In its jurisprudence, the Human Rights Committee has repeatedly found violations in cases involving survivors of secret or unacknowledged detention, recognizing their entitlement to remedies under articles 7, 9 and 10, read alone and in conjunction with article 2(3), of the ICCPR, including compensation and rehabilitation.

Taken together, the absence of specific protections for released persons subjected to enforced disappearance reveals a significant gap in the draft bill, which fails to reflect the continuing nature of State obligations following enforced disappearance.

Lack of child-specific provisions

The draft bill contains no regulation of disappearance-related violations affecting children.

Article 25 of the ICPPED imposes specific obligations on States parties, including the criminalization of the wrongful removal of children of disappeared persons or of children born in captivity, the establishment of mechanisms for their search, identification and restoration of identity, and the review of adoption or placement decisions made in the context of enforced disappearance.

Article 20 of the Declaration requires States to adopt special measures for the protection of children affected by enforced disappearance, including safeguards against wrongful removal, identity substitution, or concealment, read in conjunction with articles 1 and 19. Principle 4 of the Guiding Principles requires a differential approach at all stages of the search, explicitly addressing children as well as women, persons with disabilities, indigenous peoples, and other groups

The CED has further clarified that States must criminalise and prevent wrongful removal of children, falsification of identity, and concealment, while guaranteeing the child's right to identity and family relations (CED/C/GC/1). The Working Group has underscored that States must address specific child-related violations, including loss or falsification of identity, illegal adoptions or transfers, and the protection of children born during captivity, ensuring restoration of identity and family links ([A/HRC/35/44](#); [A/HRC/WGEID/98/1](#)).

In its jurisprudence, the Human Rights Committee has also recognised that enforced disappearance may violate children's rights under articles 16, 17, 23 and 24 of the ICCPR, including the right to identity, legal personality, and family protection.

Absence of a gender dimension

The draft bill does not incorporate a gender-sensitive approach grounded on principles of equality and non-discrimination inherent in international human rights law.

The ICPPED reflects these principles in its general obligations, which apply to all persons without distinction, including through article 1(1) on the prohibition of enforced disappearance, and article 24 on the rights of victims. Similarly, article 2 and 7 of the Declaration expressly affirm that “no State shall practice, permit or tolerate enforced disappearance” and that “no circumstances whatsoever may be invoked to justify it”, reinforcing its universal and non-discriminatory application. Moreover, principle 4 of the Guiding Principles requires a differential approach at all stages of the search, explicitly addressing women, and other groups, such as children, persons with disabilities, indigenous peoples, and others.

The CED has repeatedly stressed the obligation of States to integrate a gender perspective in legislation and practice, including recognition of gender-specific harms and barriers to access to justice (CED/C/GC/1). The Working Group has further highlighted the gendered impact of enforced disappearance, noting that women, both as forcibly disappeared persons and as relatives or as having directly suffered as a result, experience specific harms, including economic marginalisation, legal insecurity and stigma, and has called for gender-sensitive investigation, documentation and reparation policies ([A/HRC/7/2](#)).

The Human Rights Committee has reinforced those effective remedies under article 2(3), read together with articles 2(1), 3 and 26 of the ICCPR, must be accessible and non-discriminatory, taking into account the differentiated impact of violations on women ([CCPR/C/21/Rev.1/Add.13](#)).

Database deficiencies

The database framework envisaged in section 32 of the draft bill is insufficient. The draft bill establishes a database under Government supervision. The scope of the information and the governance standards are inadequate compared to international requirements.

Articles 17 and 18 of the ICPPED oblige States parties to maintain accurate registers and access to information on persons deprived of liberty, while article 24(3) requires States to adopt “all appropriate measures” to search for disappeared persons, release them, and “to locate, respect and return their remains,” if the disappeared person dies. Articles 9 to 13 of the Declaration require States to ensure effective investigation, documentation, and traceability of cases, which presupposes the existence of reliable record-keeping systems. Principle 11 of the Guiding Principles further stipulates that national databases must be continuously updated and capable of disaggregation; genetic databanks with an appropriate legal framework guaranteeing independent administration; strict data protection rules limiting the use of personal data, including medical and genetic information, exclusively to search purposes and related criminal proceedings; and preservation of records beyond the closure of individual cases.

The CED has required the establishment of comprehensive registers and databases of persons deprived of liberty and disappeared persons, accessible to competent authorities and institutions, with appropriate safeguards for personal data (CED/C/GC/1). The Working Group has emphasised the importance of establishing centralised, reliable and secure databases on disappeared persons, including measures for data protection, preservation of records, and prevention of tampering or destruction of evidence. During its engagement with Bangladesh, the Working Group documented the risk of evidence destruction by security and intelligence agencies, underscoring the importance of robust database governance and physical security of archives as an international standard applicable to domestic legislation.

The Human Rights Committee has found that the absence of proper record-keeping and documentation contributes to violations of articles 6, 7 and 9 of the ICCPR, while undermining the right to an effective remedy under article 2(3), as it facilitates impunity and perpetuates enforced disappearance.

Taken together, these standards underline that the obligation to search is continuous and requires robust systems for the collection, management and protection of data. States must therefore establish comprehensive and reliable information frameworks capable of supporting sustained, coordinated and rights-compliant search processes. Without such safeguards, efforts to clarify the fate and whereabouts of disappeared person risk remaining fragmented and ineffective.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis of the draft bill “Prevention and Remedy of Enforced Disappearance Act, 2026,” including clarification on the rationale for the provisions identified as potentially inconsistent with international human rights standards.
2. Please provide your observations on the measures you intend to take to address the shortcomings identified in this communication, in particular with regard to the definition of enforced disappearance, the inclusion of the death penalty, command responsibility, the absence of a statute of limitations regime, and gaps relating to victims’ rights, and to ensure that the draft law is fully consistent with Bangladesh’s obligations under the ICCPR, ICPPED, the Declaration, and other applicable international standards.
3. Please provide information on the measures your Excellency’s Government intends to take to ensure the establishment of an autonomous, prompt, and effective search mechanism for forcibly disappeared persons, as well as safeguards relating to up-to-date detention registers, independent oversight of all places of deprivation of liberty, and the establishment of comprehensive, reliable and secure databases.

4. Please provide information on measures envisaged to ensure the full recognition and protection of all victims under the draft bill in accordance with the principles of equality and non-discrimination, taking into account both the disappeared person and any individual who has suffered harm as a direct result of the disappearance, including relatives, released survivors, children affected by enforced disappearances, as well as the specific incorporation of a gender-sensitive approach.
5. Please provide information on the measures taken by your Excellency's Government to ensure the safe, meaningful, and effective consultation and participation of all relevant stakeholders, including the families of forcibly disappeared persons, civil society organisations, and those who work to ascertain their fate and whereabouts in the finalisation and implementation of the law.
6. Please provide information on the mechanisms that will be established to guarantee the effective protection of victims, witnesses, human rights defenders, and legal representatives against intimidation, reprisals, and re-traumatisation, including measures to ensure their physical and psychological well-being throughout judicial and non-judicial processes.
7. Please provide information on the measures envisaged to establish a comprehensive, victim-centred reparation framework, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, and how these measures will be effectively implemented independently of criminal proceedings.
8. Please provide information on the measures taken to ensure that the findings and recommendations of the Commission are duly taken into account in the drafting of the new legislation and indicate whether any follow-up measures are envisaged in relation to its introduction to Parliament and its implementation.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Gabriella Citroni

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Ganna Yudkivska

Vice-Chair on communications of the Working Group on Arbitrary Detention

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Bernard Duhaime
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non-recurrence