1

Dealing with Uncertainty

On Addressing Enforced Disappearances Universally

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Killer, you will be forgiven for everything.
Just tell me where you buried my son.
Did you put a Lab River stone on his chest?
Or did you pour sand from Sitnica River on it?
Maybe you laid him in my field?
How you condemned him, what guilt did you find for him?
What did you tell him at the end? Did you blindfold him?
Or did you boldly look a child in the face?
. . . Killer, you'll be forgiven for everything, just tell me where you buried him.
Under which tree did you end his life?
With what grass did you green him?[1]

—From the poem by Dragana Majstorović,
mother of a sixteen-year-old disappeared person in Kosovo Polje

1.1 Effects of Disappearances

Uncertainty. This simple word does not sound strong enough to describe all the seriousness and gravity of the consequences of an enforced disappearance. This human rights violation consists of an arrest, detention, abduction or other forms of deprivation of liberty by State agents or persons and groups acting with State authorization, support or acquiescence, followed by a refusal to acknowledge the deprivation of liberty or

* The opinions expressed in this chapter are strictly personal and do not in any way reflect the position of the CED and WGEID.

[1] Dragana Majstorović is mother of sixteen-year-old Ivan Majstorović from Kosovo Polje (Serbia) who went missing in 1999 on his way to school. See www.recom.link/wp-content/uploads/2014/11/Transkript.pdf (trans. Milica Kolaković-Bojović).

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by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.[2] In this context, the meaning of uncertainty goes beyond the lack of information about circumstances of a disappearance and the unknown fate of a missing person. Uncertainty encompasses all the stress, pain, suffering and emotional imbalance caused not only to direct victims but also family members, relatives and others close to the disappeared person.

All disappearances of persons cause uncertainty to families, but *enforced* disappearances lead to an additional layer of uncertainty, as it is State authorities that should search for missing persons. However, the circumstances of disappearances are rarely clear, thus during the search process it usually cannot be conclusively established whether the person was *forcibly* disappeared. Because of that, according to the UN Committee on Enforced Disappearances (CED, the Committee) States should conduct search activities according to the enforced disappearances framework, even when the enforced disappearance has not been conclusively established yet.[3] Additionally, acquiescence is the attribution threshold for enforced disappearances under international human rights, thus – as also widely discussed by various authors in this edited volume[4] – disappearances committed by persons not formally affiliated with the State can be enforced disappearances. As such, we use 'disappeared persons' to apply to persons that went missing and may have been forcibly disappeared and 'forcibly disappeared' to those with regard to whom it has been established that they were victims of enforced disappearances.

Being an individual case or a part of a widespread or systematic practice, an enforced disappearance prevents all directly or indirectly affected persons from continuing with their lives normally. A mother whose son went missing after he had left home in El Salvador looking for a better life in Mexico explained to the Committee how this changed her life:

> I am searching for my son .... He was 18 when he went missing. So, by now, he is 27 years old. I said goodbye to him when he was still at home, and he never called. It has been very hard for me to have this empty space at home. A space that no one will ever fill. I am always looking and

[2] Article 2, International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), 1726 UNTS 3, 20 December 2006. For more on the definition of enforced disappearances, see, for example, H. Relva, 'Three challenges for the codification of Enforced Disappearances' *Droits fondamentaux*, no. 19 (2021) 5.

[3] UN Committee on Enforced Disappearances, Guiding Principles for the Search for Disappeared Persons (8 May 2019), UN Doc CED/C/7.

[4] See discussions in Chapters 2, 6, 7 and 10.

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> waiting for him. For me, he is alive. Because I don't believe otherwise. I talk about him in the present tense. He is in my heart, thoughts, and prayers.[5]

A wife of a man disappeared in Pakistan shared her pain with the CED: 'It took me many months before I realized what had happened and that I needed to get up from bed and start searching for my loved one . . .. As I got up with extraordinary pain and determination, I started an endless, nerve-wracking battle in which I never rested.'[6]

The uncertainty also describes a legal vacuum because the unknown fate of a disappeared person has legal consequences and comprehensively affects the financial capacities of the whole family, especially when the main breadwinner went missing. Families often do not know whether the disappeared persons are dead or alive, which leads them to feel a sense of loss called 'ambiguous loss'.[7] Their access to property rights, childcare and various forms of social support and protection is frequently challenged by the uncertain fate of their loved one(s).[8] It tangles and breaks sensitive and priceless links between family members who desperately seek the truth.

A mother of a disappeared person from Mexico highlighted the impact this has on her grandchildren: 'My grandchildren can't understand that their parents were disappeared. They are convinced that they were abandoned. This makes them desperate, and they have lost touch with reality . . .. My eleven-year-old grandson is now involved in organized crime. He thinks they will give him news of his parents. I am desperate. The children of the disappeared are the forgotten ones of the system.'[9]

[5] Maria Elena Larios is a mother of Heriberto Antonio Gonzalez, eighteen-year-old boy who went missing after he left home in El Salvador looking for a better life in Mexico, testimony, 17th session of the CED, 30 September 2019, https://www.ohchr.org/en/stories/2020/05/un-virtual-meeting-gives-victims-chance-be-heard, DOA: 7 February 2022.

[6] Amina Masood, testimony, 21st session of the CED, 13 September 2021, https://www.ohchr.org/en/stories/2021/09/we-need-your-support-and-hope-see-our-dreams-coming-true, DOA: 7 February 2022.

[7] P. Boss, *Ambiguous Loss: Learning to Live with Unresolved Grief* (Harvard University Press, 2000).

[8] M. Kolaković-Bojović, 'Disappeared persons and the right to be considered alive – the current state of play in the Western Balkans' (2021) 4 *Yearbook. Human Rights Protection: Right to Life* 271, 272; G. Baranowska, 'The rights of the families of missing persons: Going beyond international humanitarian law' (2021) 55, 1 *Israel Law Review* 25.

[9] Comité contra la Desaparición Forzada, *Informe del Comité contra la Desaparición Forzada sobre su visita a México en virtud del artículo 33, par. 5 de la Convención*, CED/C/MEX/VR/1 (Recommendations), para. 87, 14.

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Another Mexican victim, a minor, said: 'I never imagined I would be here with you now, talking about my mother's disappearance. I didn't think this was possible. It's not the kind of thing they teach you at school. When your mother suddenly disappears, you have no idea what to do. It's a nightmare that starts over every day.'[10]

The families clearly want to receive support and information about their disappeared loved ones.[11] The support may assume different forms, but we should remember that it may not mean financial compensation only.[12] Without proper institutional support, the families feel abandoned in their attempts to search for their loved ones. They need truth, justice, reparation.[13] On the international level, there are different perspectives on reparation from regional courts, which have a huge influence on the outcomes of cases for victims of enforced disappearances.[14] Not all families have the same needs, which both international and domestic courts must also consider.[15]

Today, the statistics regarding disappeared persons and victims' heartbreaking stories amount to millions around the world. In Mexico alone,[16] the number of disappeared persons has recently reached 100,000.[17]

[10] Comité contra la Desaparición Forzada, *Informe del Comité contra la Desaparición Forzada sobre su visita a México en virtud del artículo 33 de la Convención*, CED/C/MEX/VR/1 (Findings), para. 51, 9.

[11] S. Robins, *Families of the Missing: A Test for Contemporary Approaches to Transitional Justice* (Routledge, 2013); S. Robins, 'Toward victim-centred transitional justice: Understanding the needs of families of the disappeared in postconflict Nepal' (2011) 5 *International Journal of Transitional Justice* 75.

[12] S. Fulton, 'Redress for enforced disappearances: Why financial compensation is not enough' (2014) 12, 4 *Journal of International Criminal Justice* 769.

[13] See Chapters 5 and 9.

[14] G. Citroni, 'Measures of reparation for victims of gross human rights violations: Developments and challenges in the jurisprudence of two regional human rights courts' (2012) 5 *Inter-American and European Human Rights Journal* 49; R. Rubio-Marin, C. Sandoval and C Diaz, 'Repairing family members: Gross human rights violations and communities of harm' in R. Rubio-Marin (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge University Press, 2009).

[15] F. Mégret, 'The strange case of the victim who did not want justice' (2018) 12, 3 *International Journal of Transitional Justice* 444.

[16] See Chapter 7.

[17] For more about trends and statistical data on enforced disappearances in Mexico, see Comité contra la Desaparición Forzada, *Informe del Comité contra la Desaparición Forzada sobre su visita a México en virtud del artículo 33 de la Convención*, CED/C/MEX/VR/1 (Findings) 3; CED & WGEID Joint Statement, Mexico: Dark landmark of 100,000 disappearances reflects pattern of impunity, UN experts warn, www.ohchr.org/en/statements/2022/05/mexico-dark-landmark-100000-disappearances-reflects-pattern-impunity-un-experts, DOA: 4 July 2022; D. Wilkinson, 'Mexico: Forced disappearance, an ongoing crime' in *Lessons from a Human*

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However, we must understand that despite the previous and unfolding crises of disappearances in several regions, enforced disappearances may occur anywhere and at any time. These are not isolated phenomena linked to a particular region, time and cultural, social or political background. Yet, each of these circumstances – individually or in synergy – may influence the occurrence and frequency of enforced disappearances.[18]

The diverse patterns of enforced disappearances, the growing community of those who suffered from them and the emerging situation in terms of global capacities to address all the challenges foreground the burning need to create a diversified response. This book contributes to those joint efforts to better understand – but also to improve – the universal legal responses to enforced disappearances. It demonstrates the practical functioning of UN standards and mechanisms and their relevance in specific regions and countries.

1.2 Current Developments and Legal Frameworks against Enforced Disappearances

International law avenues have been used for a long time to address enforced disappearances, with the first person being convicted by an international court for enforced disappearances in 1946. The German field marshal Wilhelm Keitel was sentenced in the Nuremburg trials, among other things, for implementing a policy for secretly transporting persons engaged in resistance activities in Western European territories, for whom the issuance of the death penalty by a court was uncertain.[19] However, subsequently, it was rather the human rights law than the

Rights Catastrophe, www.hrw.org/news/2018/11/26/mexico-forced-disappearance-ongoing-crime, DOA: 4 July 2022; L. Guercke, 'State responsibility for a failure to prevent violations of the right to life by organized criminal groups: Disappearances in Mexico' (2021) 21, 2 *Human Rights Law Review* 329; R. D. Saenz, 'Confronting Mexico's enforced disappearance monsters: How the ICC can contribute to the process of realizing criminal justice reform in Mexico' (2021) 50 *Vanderbilt Law Review* 45; I. Beltran-Gil, 'Double disappearance: A problem that increases the forensic crisis in Mexico' (2022) 5 *Forensic Science International: Reports Volume* 100256.

[18] M. Kolaković-Bojović, 'The United Nations response to enforced disappearance: No victim left behind' (2021) *UN Chronicle*, www.un.org/en/un-chronicle/united-nations-response-enforced-disappearance%E2%80%94no-victim-left-behind, DOA: 4 July 2022.

[19] B. Finucane, 'Enforced disappearance as a crime under international law' (2010) 35 *Yale Journey of International Law* 171; J. Nyamuya Maogoto, 'Now you see, now you don't: The State's duty to punish disappearances and extra-judicial executions' (2002) *Australian International Law Journal* 176, 179–81.

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criminal law framework that developed rules regarding enforced disappearances, first on the regional and then on the international level.

1.2.1 *Regional Developments*

While the book clearly demonstrates that enforced disappearances are a universal phenomenon that must be addressed with universal means,[20] the legal fight against enforced disappearances is undoubtedly connected with one region: Latin America. State authorities from the continent have in the 1960s and 1970s systemically employed enforced disappearances, which become a symbol of their rules. The very term 'enforced disappearances' (Spanish original 'desapariciones forzadas') was adopted to describe those events.[21] In response to those human rights violations, there arose powerful civil society initiatives, including the world-famous Mothers of the Plaza de Mayo: an association of women that demonstrated in Argentina in front of the presidential palace to petition for the live reappearance of their children.[22]

The families of the disappeared also brought the cases to the Inter-American Court of Human Rights, leading to the development of international case law on enforced disappearances.[23] The Court was at the forefront to recognize the right to truth of disappeared persons' families and developed impressive case law on reparations.[24] Furthermore, the

[20] In an earlier work, one of the editors compared enforced disappearances case law of organs with broad jurisdiction (Human Rights Committee, European Court of Human Rights) with organs with case law limited to a specific conflict (Human Rights Chamber for Bosnia and Hercegovina, Human Rights Advisory Panel in Kosovo, International Criminal Tribunal for the former Yugoslavia). The research demonstrates that specific conditions of the conflicts have not significantly influenced the elaboration and interpretation of the standards applied by each organ. Thus, we argue that a universal approach is possible. G. Baranowska, *Rights of Families of Disappeared Persons: How International Bodies Address the Needs of Families of Disappeared Persons in Europe* (Intersentia, 2021) 213–14.

[21] Report submitted by Mr Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, pursuant to paragraph 11 of Commission resolution 2001/46 of 23 April 2001, E/CN.4/2002/71, January 8, 2002.

[22] Broader on the role of NGO's in the fight, see Chapter 6. See also V. Vázquez Guevara 'Prologue to truth: Argentina's National Commission on the Disappeared and the authority of international law' (2021) *35 Leiden Journal of International Law* 105–27.

[23] A. E. Dulitzky, 'The Latin-American flavour of enforced disappearances' (2019) 19, 423 *Chicago Journal of International Law* 423, 446–51.

[24] G. Citroni, 'Measures of reparation for victims of gross human rights violations: Developments and challenges in the jurisprudence of two regional human rights courts' (2012) 5 *Inter-American and European Human Rights Journal* 49.

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Inter-American Court contributed to the adoption of the first international convention on enforced disappearances: the Inter-American Convention on the Forced Disappearance of Persons (1994).

The European equivalent of the Inter-American Court of Human Rights, the European Court of Human Rights, has also decided in enforced disappearances cases for many decades.[25] The vast majority of cases decided by the European court were disappearances that occurred during internal armed conflicts, in particular in Chechnya[26] and south-eastern Turkey.[27] Compared to the approach of the Inter-American Court, the European Court has been less favourable to applicants in such cases, in particular to recognize violations of disappeared persons' families.[28] The universal framework heads more in the direction of the Inter-American system, as the International Convention for the Protection of All Persons from Enforced Disappearance clearly recognizes disappeared persons' families as victims of enforced disappearances and provides them with the right to truth.

The legal framework regarding enforced disappearances has been strongly developed in the regional European and Inter-American system,

[25] With the first judgment in 1998, see *Kurt* v. *Turkey* App no 24276/94 (ECtHR, 25 May 1998). For more on the judgments, see S. Jötten, *Enforced Disappearances and EMRK* (Duncker & Humblot, 2012); Baranowska, *Rights of Families of Disappeared Persons*, 37–110.

[26] M. Imaeva, 'Deferring criminal accountability: Humanitarian resolution of conflict-related disappearances in the Caucasus' (PhD Thesis, Dublin City University, 2022). J. Lapitskaya, 'ECHR, Russia, and Chechnya: Two is not company and three is definitely a crowd' (2010–2011) 43, 2 *New York University Journal of International Law and Politics* 479.

[27] A. Reidy, F. Hampson and K. Boyle, 'Gross violations of human rights: Invoking the ECHR in case of Turkey' (1997) 15, 2 *Netherlands Quarterly of Human Rights*; D. Kurban, *Limits of Supranational Justice: The European Court of Human Rights and Turkey's Kurdish Conflict* (Cambridge University Press, 2020); B. Çalı, 'The logic of supranational human rights litigation, official acknowledgment, and human rights reform: The Southeast Turkey cases before the European Court of Human Rights' (2010) 35, 2 *Law & Social Inquiry* 311.

[28] O. Claude, 'A comparative approach to enforced disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence' (2010) *Intercultural Human Rights Law Review* 407; T. Feldman, 'Indirect victims, direct injury: Recognizing relatives as victims under the European human rights system' (2009) 1 *European Human Rights Law Review* 50; A. Murray, 'Enforced disappearance and relatives' rights before the Inter-American and European human rights courts' (2013) 2, 1 *International Human Rights Law Review* 57; I. Taqi, 'Adjudicating disappearance case in Turkey: An argument for adopting the Inter-American Court of Human Rights' approach' (2001) 24, 3 *Fordham International Law Journal* 940.

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as vividly presented in the chapters of this edited volume. However, the phenomenon is worldwide, and as such, the universal response is particularly relevant to regions with a weak regional response. The chapters make it evident, as they also showcase African and Asian examples, where no regional responses are available. However, there are simultaneously promising developments in the regions. For example, as analyzed in one of the chapters, in May 2022, the African Commission on Human and Peoples' Rights adopted the Guidelines for the Protection of All Persons from Enforced Disappearances in Africa.[29]

1.2.2 *The Universal System*

At the universal level, the right not to be subjected to enforced disappearances was first recognized in 1992 through the adoption of the Declaration on the Protection of all Persons from Enforced Disappearance (Declaration).[30] The already functioning Working Group on Enforced or Involuntary Disappearances (WGEID),[31] which operates under the UN Special Procedures, has been tasked with monitoring the Declaration's implementation. Established in 1980, the WGEID also helps relatives of disappeared persons to learn about their fate and serves as a channel of communication between sources reporting disappearances cases and relevant authorities. It also visits States worldwide and advises them on the implementation of the Declaration.

A major step to systematically work toward the eradication and prevention of enforced disappearances was made in 2006 with the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED, Convention), which is the first binding universal treaty on enforced disappearances.[32] The ICPPED

[29] African Commission on Human and Peoples' Rights Sessions (achpr.org), see also Chapter 8.

[30] Declaration on the Protection of All Persons from Enforced Disappearance, A/RES/47/133, 18 December 1992.

[31] On the Working Group, see Baranowska, *Rights of Families of Disappeared Persons*, 186–95; G. Citroni, M. G. Bianchi, 'The Committee on Enforced Disappearances: Challenges ahead' (2012) 6 *Diritti umani e diritto internazionale* 127. For a perspective on the first years of the Working Group and its influence on the UN Special Procedures, see N. S. Rodley, 'United Nations actions procedures against "disappearances, summary or arbitrary executions and torture"' (1986) 8, 4 *Human Rights Quarterly* 700.

[32] For literature on the ICPPED, see M. L. Vermeulen, *Enforced Disappearance, Determining State Responsibility under the International Convention for the Protection of All Persons from Enforced Disappearance* (Intersentia, 2012); G. Citroni and

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came into force in 2010 and created a monitoring body, the Committee on Enforced Disappearances, which oversees the implementation of the ICPPED. The CED uses the urgent actions procedure to request a State to take immediate measures to locate a disappeared person and reviews individual communications concerning an alleged violation of the ICPPED. Moreover, the CED examines interstate communications[33] and visits the States about which it receives reliable information that they 'seriously violate' the Convention.[34]

The Declaration and the ICPPED – as well as the WGEID and the CED – form the universal response to enforced disappearances aimed at preventing such events and supporting victims. However, there also are major differences between the two. The ICPPED is a binding international treaty, while the Declaration is a soft law instrument.[35] This also means that the CED can undertake actions regarding the States that have ratified the ICPPED, while the WGEID – just like all other UN special procedures – has a worldwide mandate. This is particularly relevant, as the ICPPED is still not widely ratified.

Both the CED and the WGEID received pleas from huge numbers of victims of enforced disappearances. During its over forty years of functioning, the WGEID has registered over 60,000 communications that allege enforced disappearances, out of which over 13,000 have been clarified.[36] In its first ten years of its functioning, the CED registered over 1,500 urgent actions that referred only to victims from the States that are parties to the ICPPED. While those numbers do not show the actual figures of enforced disappearances around the world, they indicate these two bodies' involvement with the victims. Moreover, the numbers

T. Scovazzi, *The Struggle against Enforced Disappearance and the 2007 United Nations Convention* (Martinus Nijhoff, 2007).

[33] Claims submitted by a State party according to which another State party is not fulfilling its obligations under the Convention.

[34] For a detailed analysis of CED's competences, see O. De Frouville, 'The Committee on Enforced Disappearances' in M. Alston (ed.), *The United Nations and Human Rights: A Critical Appraisal*, 2nd ed. (Oxford University Press, 2020); E. Decaux, 'Competences and functioning of the Committee on Enforced Disappearances' presented at the Conference on Enforced Disappearances, Berlin, 25 April 2012, Deutsches Institut für Menschenrechte, June 2012.

[35] See the study by the WGEID arguing that the Declaration has been increasingly regarded as customary international law: WGEID 'Thirtieth anniversary of the Declaration on the Protection of All Persons from Enforced Disappearances', 31 August 2022, A/HRC/51/31/Add.3.

[36] Working Group on Enforced or Involuntary Disappearances (WGEID), Annual Report for 2022, UN Doc. A/HRC/54/22, 30 July 2023.

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reveal how the actions of those two UN bodies can touch on the lives of individuals. For example, thanks to the CED's urgent actions' mechanism, more than 100 persons have been located so far – more than 80 of them alive – which changed hundreds of lives of their family members, relatives and loved ones who suffered from enforced disappearances.

The relevance of the CED and WGEID is also recognized by domestic actors. In June 2021, the Mexican Supreme Court of Justice of the Nation declared the binding character of CED's urgent actions and obliged Mexican institutions to follow the measures ordered by the Committee.[37] In an innovative and much needed move, since 2019 the WGEID also reviews disappearances committed by non-State actors, called by the WGEID 'disappearances tantamount to enforced disappearances.' Finally, the CED even influenced some changes at the level of interstate cooperation in cases requiring the implementation of urgent actions.[38]

While the mandate to support families in inquiring about the fate and whereabouts of their disappeared loved ones is of crucial importance for the families that reach out to the CED and the WGEID, there are equally important areas of work of those two UN bodies. Thus, this book indicates their role as norm entrepreneurs.[39] They regularly adopt general comments, statements and thematic studies, which explain and develop existing standards about the most critical questions and challenges to combatting enforced disappearances. For example, disappearances in migration have recently become a worldwide phenomenon, posing huge challenges to both victims and States.[40] In 2017, the

[37] The Supreme Court of Justice of the Nation unanimously approved the lawsuit number 1077/2019 related to the Enforced Disappearance of Víctor Álvarez Damián who forcibly disappeared on 11 December 2013, in Veracruz's port. On 16 June 2021, the Supreme Court made the decision in which they stated that the CED urgent actions have a binding character for all authorities of the State party. The case was submitted by an NGO (IDHEAS) that has presented many urgent actions to the Committee. The NGO did this on behalf of a disappeared person and his mother after State authorities told the mother that they did not have any obligations to consider CED recommendations. See https://opiniojuris.org/2021/08/17/supreme-court-of-justice-of-mexico-the-urgent-actions-of-the-committee-on-enforced-disappearances-are-legally-binding/, DOA: 11 August 2022.

[38] E.g., this situation occurred in Honduras, in which authorities used the interstate cooperation mechanism to implement the CED urgent action. See, CED COB on Honduras CED/C/HND/CO/1, 31 May 2018, para. 29.

[39] See also, M. Lesch and N. Reiners, 'Informal human rights law-making: How treaty bodies use "General Comments" to develop international law' (2023) 2 *Global Constitutionalism* 378–401.

[40] See V. Azarova, A. D. Danson Brown and I. Mann 'The enforced disappearance of migrants' (2022) 40 *Boston University International Law Journal* 133; B. Duhaime and

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WGEID produced a report on enforced disappearances in the context of migration, showing the direct link between migration and enforced disappearances. In 2023, the CED adopted a General Comment on enforced disappearances in the context of migration.

1.3 Aims of the Book

This book demonstrates the current challenges in the area of enforced disappearances and how they have been – or can be – addressed using international law and UN mechanisms. The challenges are not limited to a particular region, time or context. Throughout different parts of the globe, families of forcibly disappeared persons face similar problems, including ineffective search for the disappeared persons or utter lack of support. By bringing together different questions considered in the chapters highlighting universal or regional perspectives, the book contributes to the discussion on the protection from enforced disappearances from both an academic and practical viewpoint.

The frameworks developed in international human rights law at the universal level reside at the centre of this book's focus. At the same time, the book touches on other areas of international law that are relevant for enforced disappearances, in particular international humanitarian law[41] and international criminal law.[42] Some of the questions regarding the

A. Thibault, 'Protection of migrants from enforced disappearances: A human rights perspective' (2017) 99 *International Review of the Red Cross* 569; A. Gündoğdu, 'Border deaths as forced disappearances: Frantz Fanon and the outlines of a critical phenomenology' (2022) 5, 3 *Puncta. Journal of Critical Phenomoneology* 12; V. Laakkonen, 'Death, disappearances, borders: Migrant disappearability as a technology of deterrence' (2022) 99 *Political Geography* 102767; M. Tazzioli and N. de Genova, 'Kidnapping migrants as a tactic of border enforcements' 2020 *Society and Space* 867 (who frame enforced disappearances as 'kidnapping' and not enforced disappearance); E. Distretti, 'Enforced disappearances and border deaths along the migrant trail' in P. Cuttitta and T. Last (eds.), *Border Deaths: Causes, Dynamics And Consequences Of Migration-Related Mortality* (Amsterdam University Press, 2019) 117.

[41] International humanitarian law and international human rights law have been influencing each other in the development of the rules, see G. Gaggioli, 'The prohibition of enforced disappearances: A meaningful example of a partial merger between human rights law and international humanitarian law' in R. Kolb and G. Gaggioli (eds.), *Research Handbook on Human Rights and Humanitarian Law* (Edward Elgar, 2013); on enforced disappearances and international human rights law, see also A. La Vaccara, *When the Conflict Ends, While Uncertainty Continues: Accounting For Missing Persons Between War and Peace in International Law* (Hart, 2019).

[42] Which defines enforced disappearances differently from the international human rights law framework. See I. Giorgou, 'State involvement in the perpetration of enforced

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overlap and influence between those areas of international law find elaboration in the chapters on enforced disappearances in war[43] and committed by non-State actors.[44]

As this book addresses universal challenges, it focuses on universal mechanisms and responses. However, the regional systems were central in developing universal standards, and so, the former continue to influence and dialogue with the latter. Consequently, the book also engages with regional frameworks, reflecting not only on the well-known European and Inter-American systems – recognized for addressing enforced disappearances – but also the African system.[45] Moreover, the book reflects on the standards set by another regional organization, the European Union, as it evaluates the painful experiences of the Western Balkans in the context of its attempts to join the European Union and achieve its rule of law standards.[46] Furthermore, the book explores the reasons for the insufficient influence of the universal mechanisms in the Asia and Pacific region.

Besides the role of universal and regional mechanisms, this book recognizes the variety of actors at the national level and their specific roles in the commission and eradication of enforced disappearances. Mindful of the above, the book deals with State and non-State actors, victims and human rights defenders.

Furthermore, our publication focuses on families,[47] which stems from several factors. First, enforced disappearances are chosen as means of violence precisely because they affect not only the disappeared person, but they also frighten their families and communities. Second, families endure unique forms of suffering in direct result of a disappearance (ambiguous loss).[48] Third, it is the families that have been at the forefront

disappearance and the Rome Statute' (2013) 11, 5 *Journal of International Criminal Justice* 1001.

[43] Chapter 2.

[44] Chapter 7.

[45] Chapter 8.

[46] Chapter 9.

[47] The ICPPED recognized them as victims of enforced disappearances. In addition, international case law has predominantly recognized that rights of family members are violated, when enforced disappearances occur.

[48] Boss, *Ambiguous Loss*; P. Boss, 'Ambiguous Loss: Working with families of the missing' (2002) 41 *Family Process* 14. For an overview of research on grief experienced by relatives of missing persons, see G. Klochok and C. Herrera-Espiñeira, 'The grief of relatives of missing migrants and supportive interventions: A narrative review' (2021) *Clinical Nursing Research* 1023.

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of the fight against enforced disappearances.[49] Their involvement initially focuses on finding their family members, but it often transforms into broader human rights activism.[50] Therefore, this family-centred system strongly affects the approach of this book, emerging as a horizontal issue relevant to several of its chapters.

Finally, the book considers a gender-sensitive perspective. Most of the disappeared are men, while most of the left behind are women, whose economic situation deteriorates after the disappearances. Often, the disappearances stigmatize the women,[51] forcing them into low-paying, unstable jobs.[52] Thus, courts should also acknowledge the gender violence that accompanies enforced disappearance cases.[53]

Such complex scope of this book shows in its authors' diverse professional background and rich professional experience, which provides a comprehensive approach to addressing enforced disappearances. The authors are current and former members of the UN Committee on Enforced Disappearances, the UN Working Group on Enforced or Involuntary Disappearances and other UN treaty bodies. Besides their rich experience in UN mechanisms, their individual engagement in various professional fields ensures a rich expertise and different perspectives in the identification and addressing of relevant issues. Most are active members of the research community. Many participate in regional developments regarding enforced disappearances, NGO operations, along with domestic mechanisms and initiatives aimed at the eradication of enforced disappearances. Such a diverse group of contributors allows this book to become a strong and nuanced voice in the discussion on enforced disappearances.

[49] I. Kovras, *Grassroots Activism and the Evolution of Transitional Justice* (Cambridge University Press, 2017).

[50] I. Kovras and M. E. Burchianti, 'Building bridges of memory: The mothers of the Plaza de Mayo and the cultural politics of maternal memories' (2004) 15, 2 *History and Anthropology* 133; 'Interview with Estela Barnes de Carlotto, president of the Grandmothers of the Plaza de Mayo' (2017) 99, 2 *International Review of the Red Cross* 487.

[51] 'Families of Missing Migrants: Their Search for Answers, the Impacts of Loss and Recommendations for Improved Support', IOM Publications Platform.

[52] Working Group on Enforced or Involuntary Disappearances, Follow-up Report to the Recommendations, February 2014, available at https://trial.ba/wp-content/uploads/2016/02/Follow-upreportBiHFeb2014.pdf.

[53] R. Rubio-Marín and C. Sandoval, 'Engendering the reparations jurisprudence of the Inter-American Court of Human Rights: The promise of the Cotton Field Judgment' (2011) 33, 4 *Human Rights Quarterly* 1062.

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1.4 Structure of the Book

The book is divided in two parts collecting analyzes of still insufficiently elaborated issues. The first part of the book, consisting of four chapters, considers horizontal issues: the application of enforced disappearances in armed conflicts, the impact of the Guiding Principles on the Search of Disappeared Persons, new technologies and enforced disappearances, as well as social rights. Three of these chapters closely zoom in on the two UN bodies dealing with enforced disappearances, the WGEID and the CED, showing their impact, contribution to the field, as well as pointing out areas for improvement. The second part of the book, consisting of five chapters, scrutinizes global challenges based on case studies, namely the role of NGOs, disappearances by non-State actors and of migrants, reparation and ratification of the ICPPED. Those chapters are all embedded in a regional case study, which allows for delving in more detail into examples, which showcase broader trends and challenges.

Chapter 2 analyzes enforced disappearances that occur during armed conflict, which is a worldwide phenomenon, raising many theoretical and practical questions. The author of the chapter, Ivan Jovanović, himself a practitioner, addresses the issue of enforced disappearances in armed conflicts through the lens of the ICPPED. The chapter explores the differences between enforced disappearances and the term 'missing persons' existing in international humanitarian law. It also demonstrates how the ICPPED fills gaps in IHL, highlighting the advantage of an international treaty in contrast to customary law – in particular for practitioners – as well as the potential of the continues nature of enforced disappearances for accountability efforts. Furthermore, limitations of the ICPPED in the context of armed conflict are shown, particularly by not including non-State actors among the potential perpetrators. While victims of enforced disappearances are a narrower group within the broader category of missing persons, the chapter argues for cautiousness not to exclude large numbers of families of missing persons from access to aid, services and reparation.

The CED's Guiding Principles on the Search for Disappeared persons adopted in 2019 are embedded in a similar approach, by stating principles that States are expected to apply in all instances, not just when it is clear that an enforced disappearance took place. Chapter 3, exploring the origins and assessing the impact of the Guiding Principles, was written by the two CED rapporteurs appointed to prepare the Guiding Principles, Maria Clara Galvis Patiño and Rainer Huhle. The authors highlight the

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autonomous obligation of searching for disappeared persons and explain how through its various instruments – urgent actions and State reporting – the CED became aware of the need to adopt guidelines on the search. The chapter's unique contribution is particularly the exploration of the impact the Guiding Principles have, during their first four years of existence (2019–2022), already made on public policies of States – both State parties and non-State parties to the ICPPED, case law, legislation, academic literature and civil society. The chapter shows the particularly significant impact in Latin American countries and the Inter-American system, while also being showcased in other regions, notably with the inclusion of the Guiding Principles in the Guidelines adopted by the African Union. The wide impact of the Guiding Principles can be explained by the highly participatory consultation process leading to its adoption, as well as efforts to widely distribute the Guiding Principles. It also is a tribute of the involvement and activities of families of disappeared persons, who were involved in the consultation process and are now demanding the Guiding Principles to be implemented domestically.

The search for disappeared persons and thus the efficient implementation of the Guiding Principles are strongly impacted by the development of new technologies. Gabriella Citroni, the author of the WGEID 2023 thematic study on the topic of new technologies and enforced disappearances wrote Chapter 4, showing both opportunities and challenges in the area. The chapter briefly analyzes the main finding from the work of UN Special Procedures on new technologies, including the WGEID, and then demonstrates the role new technologies have so far played in the activities of the WGEID, as well as areas for improvement. Citroni shows that there are still many questions as to which new technologies would be accepted – and how their credibility could be assessed – by the WGEID when reviewing cases under its humanitarian mandate. The chapter further explores how the WGEID could better engage with new technologies during its country visits. While highlighting the necessity of traditional approaches and techniques, the chapter shows also that new technologies can greatly enrich the functioning of the WGEID and argues that their opportunities outweigh the challenges. The questions posed and solutions proposed in this chapter can be equally relevant for the CED.

Chapter 5, written by Ariel Dulitzky, turns to social rights of disappeared persons. This often overlooked topic is crucial, as access to property, health care, education, religious facilities and other social and

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cultural rights can be restricted, discontinued or permanently blocked due to an enforced disappearance. Dulitzky demonstrates positive aspects in the CED's approach to social rights, as well as showcases gaps. He proposes to use approaches of the WGEID, Inter-American Court of Human Rights, UN treaty bodies and special procedures to seek alternative solutions. In particular, the WGEID 2015 thematic study on economic social and cultural has shown both how people who are unable to fully exercise those rights are more likely to become victims of enforced disappearances and that those who enforced disappearance have a particular negative effect on enjoyment of social rights by the disappeared persons and their families. The significant contribution of the Inter-American Court of Human Rights stems from its understanding of enforced disappearances as a multiple violation of multi-offensive nature and by being a pioneer in acknowledging families as victims of enforced disappearances. Dultizky argues that relying on those approaches would allow us to address the restrictive interpretations applied so far by the CED.

As mentioned above, the second part of the book analyzes the universal challenges from regional or domestic perspectives. It starts with Chapter 6, on the NGO contributions to eradicate enforced disappearances in Latin America. Born from the enormous suffering of mothers and grandmothers looking for their loved ones, the NGOs in Latin America have grown into one of the main forces to initiate, support and complement activities of the universal, regional and national institutional mechanisms that combat enforced disappearances. The chapter's author, Horacio Ravenna, was himself engaged with several of these crucial NGOs and provides a first-hand analysis of their background, current challenges and perspectives of their involvement in the eradication of enforced disappearances. The chapter is a tribute to the people and organizations that were substantial in pushing for an international treaty on enforced disappearances.

While the initial consolidation of NGOs was made because of widespread enforced disappearances of political opponents in Latin America, the reasons for more current disappearances are complex, covering particularly war on crime and migration. Chapter 7 by Lene Guercke demonstrates how contemporary disappearances in Mexico have become a conceptual challenge for the international framework on enforced disappearances. The country has experienced an unprecedented increase in disappearances since the adoption of the militarized approach to public security in 2006, commonly called the 'war on drugs'. One of

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the features of those disappearances is that they are often committed by criminal organizations, thus triggering questions on whether and how the enforced disappearances framework can be applied at all. The chapter's conceptual contribution is an analysis of whether a failure to identify dead bodies can be a form of enforced disappearances and under which circumstances impunity can be assessed as form of acquiescence. In the search for a response to the second question, the chapter engages in depth with the 2023 CED's statements on non-State actors.

Chapter 8 engages with another form of contemporary disappearances, that is, disappearances in migration, zooming in on Africa. As the contribution by Eva Nudd and Barbara Lochbihler makes clear, the continent is an important case study for this topic due to the widespread disappearances occurring to migrants and refugee seekers, as well as regional initiatives aiming at addressing precisely this topic. Among others, the African Commission adopted in 2021 a resolution addressing the problem of missing migrants in Africa and the impact on their families. The authors, both knowing and have worked on enforced disappearances on the continent, highlight also practical challenges, such as the lack of understanding of the very concept and distrust in authorities. They conclude that awareness raising and capacity building is a crucial step to overcome existing challenges.

Western Balkan countries have achieved incredible progress in establishing the fates and whereabouts of 30,000 (out of 40,000) missing persons after the wars in the 1990s and 2000s. Chapter 9 engages with an aspect that so far has received less scholarly attention than the search for the disappeared persons in this region: reparation. The authors of the chapter, Milica Kolaković-Bojović and Jasminka Džumhur, both researchers and practitioners from the Western Balkans, present an in-depth analysis of the complex legal situation on reparation in the region. They point out the impact of differentiation between family members of civilians and military members, as well as the challenges of families living currently in different States than where their loved ones disappeared. While the adopted laws differ between the three analyzed countries, namely Bosnia and Hercegovina, Serbia and Croatia, a common denominator is the absence of the crime of enforced disappearances, which appears particularly surprising in a region where the violation was so widespread.

Considering the undisputable importance of the universal applicability of the ICPPED, Chapter 10 is devoted to strategies of increasing ratification. Written by Koji Teraya, a human rights expert coming himself from

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the region with the least amount of ratification – the Asia-Pacific region – it takes such a regional focus. Teraya analyzes the impact of such a situation on the ratification coverage goals set by the CED and emphasizes that this imbalance suggests that focusing on bottleneck regions will be more effective for increasing ratification. The chapter concludes that the slow tempo of the ratification and the seriousness of enforced disappearances urge for the need to arrange symptomatic treatments, along with suggesting possible strategies to increase the number of ratifications in the Asia-Pacific region.

We expect that our assessment and contextualization of the most serious problems, recent achievements, current debates and rich experience of countries and regions with widespread problems of enforced disappearances in this book will influence the scientific and professional community – along with decision-makers at the national level – to recognize and address the challenges associated with this phenomenon in a most efficient manner. We sincerely hope this book will not remain exclusively on the shelves and in the hands of academic community members. After all, our overarching goal was to shed light on and explain the phenomenon of enforced disappearances and provide solutions for how to deal with them globally, regionally and locally through the joint efforts of the UN and regional mechanisms, national authorities, NGOs and the academic community.

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