

Short-term enforced disappearance: what mechanisms to curb this phenomenon?

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Short-term enforced disappearances are an abominable practice that violates the fundamental rights of the individual. In this short study, we will look at this troubling phenomenon, highlighting its definition, its short duration and the measures that can be put in place at the international level to combat this insidious practice. By highlighting the reminder and the definition of enforced disappearances, we hope to raise awareness of this problem and to encourage concrete actions to put an end to it.

Las desapariciones forzadas de corta duración son una práctica abominable que viola los derechos fundamentales de la persona. En este breve estudio, analizaremos este preocupante fenómeno, destacando su definición, su corta duración y las medidas que se pueden implementar a nivel internacional para combatir esta práctica insidiosa. Al resaltar el recordatorio y la definición de desaparición forzada, esperamos crear conciencia sobre este problema y alentar acciones concretas para ponerle fin.

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The United Nations Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances have decided to launch a call for contributions to publish a joint statement on the notion of “short-term enforced disappearance”. This document is a spontaneous contribution.

Both short and long-term enforced disappearances represent a serious violation of human rights and a flagrant violation of human dignity. This phenomenon is characterized by the arbitrary arrest, detention or abduction of people by state agents or by groups acting with the support, authorization or approval of government authorities¹. Unlike long-term enforced disappearances, which can last for years, short-term enforced disappearances occur over a more limited period of time, ranging from a few hours to a few days². Despite their relatively short duration in comparison with long-term enforced disappearances, these harmful acts have devastating consequences for the victims and their families who are so many indirect victims. These practices are therefore particularly illegal and are aimed primarily at depriving individuals of their fundamental rights but also at instilling fear in the populations who are victims of these abuses, too often in particularly targeted communities³.

Short-term enforced disappearances are characterized by their clandestinity. This essential characteristic means that victims are generally held in secret locations and are not officially registered in detention centers, which makes their location difficult, if not impossible⁴. This opacity aims to prevent any form of responsibility and to create a climate of fear and impunity.

¹ In accordance with the definition enshrined in Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, the concept of "enforced disappearance" encompasses a variety of acts such as arrest, detention, abduction or any other form of deprivation of liberty. Article 2 provides: «For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law».

² If the notion of enforced disappearance is commonly understood as a long-term disappearance, there is nothing to confirm that a disappearance of a shorter duration cannot also retain this qualification. Thus, a sequestration or clandestine arrest lasting a few days, or even a few hours, can very well be qualified as a short-term enforced disappearance.

³ These acts are often committed in the context of security policies, counter-terrorism or repression of opposition movements, and can affect various groups of people, such as human rights activists, defenders of minorities, journalists critical of the government, peaceful protesters and members of specific ethnic or religious groups.

⁴ In 2010, the joint study on global practices of secret detention in the context of the fight against terrorism, prepared by several special procedures of the Human Rights Council, concluded that "any case of secret detention also amounts to a case of enforced disappearance". See in this sense: Several Special Procedures of the HRC, 2010, A/HRC/13/42.

Factors contributing to the commission of short-term enforced disappearances

Several factors contribute to short-term enforced disappearances around the world. Key factors include weak rule of law, lack of oversight and accountability mechanisms, and the persistence of abusive security policies. Security forces and government agencies operating in a climate of corruption can then act with impunity, violating people's basic rights without fear of being held accountable for their actions. In addition, internal conflicts, civil wars and political crises can create a context conducive to enforced disappearances⁵. In these situations, the authorities may justify these acts by invoking national security or law enforcement considerations, thus neglecting respect for human rights and international standards⁶.

The consequences of short-term enforced disappearances are deeply devastating for the victims and their families. For those directly affected, detention in inhumane and often torturous conditions causes considerable physical and psychological suffering⁷. The anguish of uncertainty about the fate of their abducted loved ones plunges families into a state of emotional and psychological distress, which can last for years. Victims who are released after a short period of detention often face stigma and fear of reprisals, sometimes leading them not to report the abuses suffered, thus contributing to the cycle of impunity⁸. The families, for their part, live in constant anguish, awaiting information on the situation and the safety of their missing relatives.

⁵ Enforced disappearances in the context of an armed conflict have been the subject of numerous studies by specialists in international humanitarian law. For more information, see: <https://ihl-databases.icrc.org/en/customary-ihl/v2/rule98>. The practice of enforced disappearances of short or long duration can also be “deported”, as is the case during episodes of migration. To learn more about this subject: TOUERE ELENGA Ben Luther, « La disparition forcée des migrants : une question de droit international », *La Revue des droits de l’homme*, n°18, 2020, Online since 15 June 2020.

⁶ For more information on this point, see: Amnesty International, *No Impunity For Enforced Disappearances, Checklist for effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance*, Publication, 2011, 95 pages.

⁷ GIOVANNA BLANCHI Maria, « Enforced Disappearances and Torture Today: A View from Analytical Psychology, Victims of Enforced Disappearances: Absent Bodies, Inner Presences », *The Journal of Analytical Psychology*, vol. 68, iss. 2, April 2023, pages 327-336.

⁸ RODLEY Nigel, « Breaking the Cycle of Impunity for Gross Violations of Human Rights: The Pinochet Case in Perspective », *Nordic Journal of International Law*, n°69, 2000, pages 11-26.

International legal instruments of prevention and condemnation imagined by the international community

Faced with this persistent phenomenon of the practice by certain States of large-scale enforced disappearances, the international community wished to react and strengthen the fight against enforced disappearances by adopting several international legal instruments aimed at preventing these heinous acts and at being able to engage the legal responsibilities of those guilty of these crimes⁹. These international texts provide major legal frameworks to fight against enforced disappearances and promote the protection of human rights on a global scale.

The International Convention for the Protection of All Persons from Enforced Disappearance is the main international text specifically dedicated to the prevention and condemnation of enforced disappearances. Adopted by the United Nations General Assembly in 2006¹⁰, this convention aims to fill the gaps in international law on enforced disappearances. The Convention establishes a clear legal definition of enforced disappearance, in its article 2, thus recognizing the specificity of this crime and affirming the absolute prohibition of this practice. It also imposes on States parties the obligation to take legislative, administrative and judicial measures to prevent enforced disappearances, to prosecute and punish the perpetrators of these crimes, and to protect the victims and their families.

To another extent, it can be said that the Rome Statute is an essential international text in the fight against enforced disappearances¹¹. The Rome Statute establishes the International Criminal Court (ICC) as a permanent court responsible for trying the perpetrators of the most serious crimes, including enforced disappearances, when these crimes fall within the jurisdiction of the ICC. Although the Rome Statute does not explicitly mention enforced disappearances, this crime can be qualified as a crime against humanity when committed in a systematic and widespread manner¹². The ICC has jurisdiction to try alleged perpetrators of

⁹ SARKIN Jeremy, « Putting in place processes and mechanisms to prevent and eradicate enforced disappearances around the world », *South African Yearbook of International Law*, vol. 38, 2013.

¹⁰ United Nations, *International Convention for the Protection of All Persons from Enforced Disappearance*, New-York, 20 December 2006, Treaty Series, vol. 2716,p. 3; Doc.A/61/448; C.N.737.2008.

¹¹ United Nations, *Rome Statute of The International Criminal Court*, Rome, 17th July 1998, United Nations, Treaty Series, vol. 2187, No. 38544.

¹² *Ibid.*, article 7.

enforced disappearances if national states are unable or unwilling to prosecute. The Rome Statute thus reinforces the principle of complementarity, which encourages States to prosecute those responsible for these crimes at the national level, while offering an international remedy in the event of failure of national jurisdictions.

Although not legally binding, the Declaration on the Protection of All Persons from Enforced Disappearance represents a major step forward in recognizing the problem of enforced disappearances internationally¹³. Adopted by the United Nations General Assembly in 1992, this declaration stresses the importance of protecting individuals against enforced disappearances and calls on States to take action to prevent and punish this crime. The Declaration plays a crucial role in raising awareness of the issue of enforced disappearances and in promoting human rights. It also calls for international cooperation in the fight against this phenomenon and encourages States to establish national mechanisms for tracing missing persons and supporting families.¹⁴

National and international initiatives to combat short-term enforced disappearances

Preventing and eradicating short-term enforced disappearances requires concerted action by States, international organizations and civil society actors. Faced with the seriousness of this phenomenon and its devastating consequences, numerous initiatives have been put in place at national and international level to combat short-term enforced disappearances. These initiatives aim to strengthen oversight mechanisms, raise awareness among the general public and relevant stakeholders, and promote international cooperation in the prevention and resolution of this heinous crime.

One of the key measures to combat short-term enforced disappearances is to strengthen the monitoring mechanisms of the security forces and to ensure the accountability of perpetrators of abuses. States, at the forefront of these phenomena, must adopt laws and policies that clearly prohibit enforced disappearances and guarantee respect for human rights¹⁵. Monitoring and oversight mechanisms of security forces, such as independent

¹³ United Nations General Assembly, *Declaration on the Protection of All Persons from Enforced Disappearance*, 18th December 1992, Res. n°47/133.

¹⁴ *Ibid.*, Article 10.

¹⁵ Here, all the complexity of the fight against enforced disappearances appears. States guilty of such crimes in the world will be very reluctant to develop legislation strongly condemning these practices.

oversight bodies, commissions of inquiry and human rights defenders, are also commendable initiatives to ensure that abusive practices are identified and punished¹⁶. Finally, access to justice, more broadly to the truth and to appropriate reparation mechanisms for the victims of short-term enforced disappearances and their families is a necessary prerequisite for any desire to fight effectively against these illegal practices¹⁷.

Raising awareness is another key element in the fight against short-term enforced disappearances. Awareness campaigns should target the general public, state officials and security forces who may be led to commit the irreparable, as well as members of civil society. The objective of this type of campaign is to raise awareness of the devastating consequences of enforced disappearances on the victims and their families, while recalling the obligation to respect human rights and the absolute prohibition of these practices. The media, civil society organizations, schools and religious institutions play a crucial role in disseminating information about short-term enforced disappearances and promoting a culture of respect for human rights¹⁸. By encouraging dialogue and public debate on this topic, it is possible to raise awareness and mobilize support for the fight against this crime.

International cooperation is necessary in order to effectively combat short-term enforced disappearances. States should work closely with international organizations, such as the United Nations and the International Criminal Court, as well as NGOs and regional institutions, to exchange information and good practices. International human rights monitoring mechanisms, such as the United Nations Special Rapporteurs on Enforced Disappearances play a key role in investigating reported cases and pressing states to account. Sharing information between different stakeholders is fundamental to identify trends and patterns of abuse and to put in place appropriate prevention measures¹⁹. By encouraging

This difficulty is at the center of many studies and works carried out by international organizations and NGOs all over the world.

¹⁶ CRENZEL Emilio, « From judicial truth to historical knowledge : the disappearance of persons in Argentina », *African Yearbook of Rhetoric*, 2012, vol.3, n°2.

¹⁷ FULTON Sarah, « Redress for Enforced Disappearance: Why Financial Compensation is not Enough », *Journal of International Criminal Justice*, Volume 12, Issue 4, September 2014, pages 769–786.

¹⁸ To deepen the role of the media in the fight against short and long-term enforced disappearances: DW Akademie, Enforced disappearance: Digital art and journalism break the silence, Jul.2022, <akademie.dw.com/en/enforced-disappearance-digital-art-and-journalism-break-the-silence>

¹⁹ For example, one of the roles of the Working Group is to be able to investigate disappearances. Similarly, civil society organizations play a vital role in the effective functioning of the Working Group's mandate. They can educate the public about the Task Force and its various procedures. NGOs

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In addition, as may have been recalled previously, States are encouraged to ratify the relevant international legal instruments and to incorporate international human rights standards into their national legislation. International cooperation and coordination mechanisms can also help States to strengthen their institutional capacities to deal with the challenges related to short-term enforced disappearances.

Protection of victims and witnesses and support for families, an essential step for a restorative process

Although absolutely necessary, the fight against short-term enforced disappearances must go beyond preventing and prosecuting the alleged perpetrators. It is also important to ensure adequate protection for victims and witnesses of these acts and to provide comprehensive support to the families of missing persons. In order to help the victims to rebuild themselves and to fight against the impunity surrounding these crimes, the establishment of protection and support mechanisms allows for close support.

It seems obvious that the victims of short-term enforced disappearances face considerable risks, throughout their captivity, of course, but including, after the fact, with the existence of risks of reprisals, threats and harassment on the part of the perpetrators. The guarantee of their physical and psychological safety depends on the existence of protection mechanisms. To this end, programs for the protection of witnesses and victims of enforced disappearances can be devised by States, including measures such as anonymity, emergency evacuation in the event of danger, and access to psychological and medical support²⁰. These programs should be tailored to the specific needs of each victim and witness²¹. In addition, it is important to put in place mechanisms to investigate allegations of reprisals or threats against victims or witnesses, and to prosecute those responsible for these acts. The protection

often help relatives of missing persons submit cases to the Working Group and follow up on subsequent updates.

²⁰ This support and psychological follow-up appears to be fundamental. A 2015 United Nations report highlights the disastrous consequences caused by enforced disappearances on direct victims and families: United Nations General Assembly, *Study on enforced or involuntary disappearances and economic, social and cultural rights*, 9th July 2015, A/HRC/30/38/Add.5.

²¹ Indeed, to be fully effective, the programs must take into account the profiles of the victims as well as the families. These profiles differ according to age, sex, mental health and the general and individual circumstances in which the facts took place.

of victims and witnesses is essential in order to ensure their cooperation in investigations and legal proceedings, while promoting the fight against impunity.

The families of missing persons face a particularly difficult situation, marked by uncertainty and anguish regarding the fate of their loved ones. This state of affairs demonstrates the need to provide full and adequate support to help them cope with this traumatic situation and allow families to access information on the fate of missing persons and on the progress of ongoing investigations. Transparent communication with families is essential to avoid further distress caused by lack of information and to guarantee their right to the truth. In addition to access to information, the families of disappeared persons need psychological and emotional support to cope with their situation in the same way as the first victims of these enforced disappearances.

On a legal level, families may also need support to help them assert their rights and seek justice. States must facilitate families' access to lawyers specializing in human rights and the rights of victims, in order to help them to initiate legal proceedings and obtain reparations for the harm suffered, but also to deal with a judicial machine, which is often considered inaccessible and difficult. The transitional justice mechanism, including specific tools such as truth commissions, special courts and reparations programs, can play a crucial role in the fight against impunity and in promoting reconciliation and peace²². These are all avenues of study that can be considered by States in order to meet the specific needs of victims and their families, including, as we have seen, measures of material, psychological, social and symbolic reparation.

²² For more information: SALIH Maleeka, SAMARASINGHE Gameela, « Families of the missing in Sri Lanka: Psychosocial considerations in transitional justice mechanisms », *International Review of the Red Cross*, 2017, vol.99, pages 497-517; KARL Sylvania, « Rehumanizing the Disappeared: Spaces of Memory in Mexico and the Liminality of Transitional Justice », *American Quarterly*, 2014, vol.66, n°3, pages. 727-748.

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