



## Enforced disappearances: universal responses to a worldwide phenomenon

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*Enforced disappearances remain an issue of profound seriousness, with lasting consequences for the families of those affected. These realities continue to raise complex legal and practical questions in criminal and human rights law at national, regional, and international levels. This issue remains a priority for UN treaty bodies, Special Procedures, and the International Committee of the Red Cross.*

In this post, Milica Kolaković-Bojović, PhD, a Former Vice President of the UN Committee on Enforced Disappearances and Prof. Grażyna Baranowska, the Vice-chair of the UN Working Group on Enforced and Involuntary Disappearances, analyse a multidimensional approach to the phenomenon of enforced disappearance, its causes and roots, phenomenology, contexts of occurrence, and approaches to its eradication as being addressed in the edited volume [Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon](#), recently published by Cambridge University Press.

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The disappearance of a person opens [a dark circle of uncertainty](#). This uncertainty goes far beyond the unknown fate of a missing person and from lacking the information about the circumstances of the disappearance. It directly affects the lives of family members, relatives and other people close to the missing person. It causes stress, pain, suffering and emotional imbalance. Furthermore, such a situation results in a legal vacuum, because the unknown fate and whereabouts of a disappeared person has legal consequences, such as the impossibility of entering into a new marriage, inheriting or disposing of property.

The diverse patterns of enforced disappearances, the growing community of those who have 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 at the national, regional and international level. This puts the UN system, regional organizations and national authorities to a major test of ensuring both access to truth, justice and reparations for victims and the accountability of those responsible for enforced disappearances.<sup>[i]</sup>

Published by Cambridge University Press in 2025, and edited by Professor Grażyna Baranowska<sup>[ii]</sup> and Milica Kolaković-Bojović, PhD <sup>[iii]</sup>, the book [Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon](#) discusses the UN human rights (both treaty bodies and special procedures) response to key challenges related to missing persons cases and enforced disappearances. It discusses search and identification processes, different contexts of disappearances such as migration and armed conflicts, involvement of non-state actors, reparations, family rights, and the role of NGOs. The book explores regional and global developments from the first steps towards legal recognition of enforced disappearances to the present mechanisms of international human rights law and international criminal law, including the provisions of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED, Convention) and the role of the UN Committee on Enforced Disappearances (CED) and the UN Working Group on Enforced or Involuntary Disappearances (WGEID).

## The contexts and modalities of enforced disappearances worldwide

Armed conflicts result not only in mass deaths confirmed during or after, but also in large numbers of people who are considered missing or disappeared. They may be soldiers considered as “missing in action”, civilians whose bodies are not recovered and who are killed in massacres, individual executions, or civilians not targeted as such but who die during hostilities. Very often they may be civilians and combatants still alive but are later forcibly displaced or arrested and denied contact with families or their own party. This opens the issue of applicability of the legal protection regime as provided in the ICPPED.

The ICPPED applies in times of peace and armed conflicts alike, as does its universal and treaty-based definition of enforced disappearances, which presupposes, first, unlawfulness of how the disappearance occurred and, second, direct or indirect involvement of state. Due to this definition, not all persons going missing during an armed conflict are victims of enforced disappearances: some may be missing as a result of military or other actions that are lawful in light of applicable rules of IHL, and/or they may be disappeared by non-state actors.

Enforced disappearance is not among the grave breaches (war crimes) of the Geneva Conventions and Additional Protocol I. They are not included in war crimes under the Rome Statute (Article 8) either. International criminal tribunals and hybrid courts have not developed jurisprudence on prosecuting enforced disappearance as such as a war crime. While [Rule 98](#) of the Customary IHL Study also entails a duty to investigate enforced disappearances, the Study does not include enforced disappearance among war crimes explicitly enumerated in its [Rule 156](#) on definition of war crimes. What the Study does, though, is that it refers, at the end of its commentary to Rule 156, to enforced disappearance as an example of a composite war crime – as conduct that is criminal because it consists of a combination of several war crimes amounting in practice to depriving a person of a fair trial and often also to murder. Considering this, by introducing the obligation to incorporate in the national legislation a standalone crime of enforced disappearance the ICPPED fills the gap in customary IHL.<sup>[iv]</sup> However, a still insufficient number of ratifications (especially in Asia) limits the possible impact of the ICPPED in this regard.<sup>[v]</sup>

International or non-international armed conflicts, together with persecution, natural hazard-induced disasters, difficult economic situation, discrimination, high crime rate or even the risk of being subjected to enforced disappearance are among the most common causes of massive migration movements globally.<sup>[vi]</sup> A synergy of these factors resulting in the multiple vulnerability of migrants is even more visible in some regions of the world, such as Africa.<sup>[vii]</sup> Regardless of the reasons that trigger the migration, a large number of migrants are at risk of disappearing en route to reach their destination country or even in the destination or a country of their return. The seriousness of the problem triggered a comprehensive response of the UN CED that adopted its [First General Comment on Enforced Disappearances in the context of Migration in 2023](#) tackling various risks of migrants being subjected to enforced disappearances, but also providing a number of guidelines to the State Parties on how to prevent, respond to and punish enforced disappearances in the context of migration.

An unprecedented increase of disappearances associated with organized crime and drug trafficking in different parts of the world contributes to discussing how these practices fit within the concept of enforced disappearances, taking into account differences in the perception of responsibility of non-state actors for committing enforced disappearances, as provided in [Article 7 of the Rome Statute](#) and [Article 3 of the ICPPED](#).

In addition to the attribution criteria of authorization, support, or acquiescence listed in the definition of enforced disappearance, the ICPPED contains a separate provision dealing explicitly with disappearances that do not reach this threshold. After much discussion during the drafting process, the inclusion of Article 3 of the ICPPED was a compromise to address the reality that in certain contexts non-state actors were perpetrating disappearances, without diluting the responsibility of the state by calling such crimes ‘enforced disappearances’.<sup>[viii]</sup> Article 3 establishes obligations of states to “take appropriate measures to investigate” and “bring to justice” the perpetrators of disappearances committed by non-state actors acting “without the authorisation, support, or acquiescence of the State”.

Beyond this, disappearances falling within Article 3 are not explicitly mentioned in the Convention. In this way, Article 3 clearly indicates that there is a difference between enforced disappearances and disappearances committed by non-state actors falling within Article 3 of the ICPPED.<sup>[ix]</sup>

## Where are they: new approaches to search and identification

As the contexts and modalities of enforced disappearances evolve over the time, there is a strong need for approaches to the search and identification to keep up with those changes.

According to *Article 24 of ICPPED*, the right to be searched coupled with the state obligation to search for a disappeared person is the backbone of clarifying their fate and whereabouts. In responding to the need to provide clear guidelines to the national authorities on how to ensure efficient, inclusive and effective search, the CED adopted the Guiding Principles on the Search for Disappeared Persons in 2019. Within a few years of initial implementation, this document has already influenced national policies, but also case law, legislation, academic literature, and civil society.<sup>[x]</sup>

The Guiding Principles, among others, recognized an importance of use of modern technologies in making the search and identification processes more efficient. This was an important step towards in-depth elaboration of this issue by WGIED in 2023 through adoption of the *Study on New Technologies and Enforced Disappearances*.

The issue of application of new technologies in eradication of enforced disappearances is multidimensional, affecting the role of national authorities in improving search and identification processes, together with improving victims' involvement and access to justice for them, as well as the opportunities for regional and international organizations to use modern technologies as a tool for data cross check and exchange.

Even though they cannot and should not replace pre-existing strategies, new technologies should also be systematically included in the work of the main UN bodies dealing with enforced disappearances, namely the WGEID and CED in their activities aimed at monitoring the situation in the State Parties and communication with victims and NGOs. Last, but not least, this requires an increased technological literacy among the members of both UN bodies and their secretariats, which in practice means robust UN support to their work. <sup>[xi]</sup>

## Victims of enforced disappearances: the victimization, consequences and access to truth, justice and reparation

The consequences affecting the families and relatives of disappeared persons go beyond the psychological and emotional damage, causing serious challenges in accessing economic and social rights, such as access to property, health care, education, religious facilities, and other social and cultural rights for direct victims and their family members.<sup>[xii]</sup> Their attempts to take part in search and investigation are often followed by threats, assaults, and other forms of violence.

This issue also has a strong gender perspective. Namely, most of the disappeared are men, while most of those left behind are women, whose economic situation deteriorates after the disappearances, coupled with social stigmatization, fight to keep custody of their children and institutional negligence.<sup>[xiii]</sup> They are facing structural and historical barriers to accessing justice, especially the barriers for Black and Afro-descendant women, Indigenous women, migrants, women with disabilities, and women with diverse sexual orientations and gender identities.<sup>[xiv]</sup>

When enforced disappearances result from massive regional conflicts finished in changing the state borders as occurred in the Western Balkans region, where over 40,000 people went missing in the 1990s, victims are facing additional challenges as multiple legal regimes are applicable to them in the processes of search, identification and accessing reparation.<sup>[xv]</sup> A similar multiplication of legal regimes exists in exercising the victims' rights when disappearance occurred in the context of migration.<sup>[xvi]</sup>

Trapped in the legal, economic and social limbo, victims of enforced disappearances often need additional support in exercising their right to participate in search and investigation, but also in getting compensation and other means of adequate reparation. The NGOs' engagement plays an important role in this regard starting from mid-20<sup>th</sup> century to the present. <sup>[xvii]</sup>

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## See also

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