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## The Disappeared and Invisible: Revealing the Enduring Impact of Enforced Disappearance on Women

### Introduction

This briefing paper provides a summary of a comprehensive study by the International Center for Transitional Justice across 31 countries that identifies impacts and government responses to enforced disappearances as they relate to women, “The Disappeared and the Invisible: Revealing the Enduring Impact of Enforced Disappearances on Women.” The report highlights the specific ways that enforced disappearance affects women and how transitional justice efforts can better respond to women’s needs and experiences. The report is informed by primary research, including interviews with women victims in Nepal and Lebanon, and lessons learned across diverse contexts. Its eight key recommendations, which appear at the end of this paper, are intended to help governments design programs and set up institutions to successfully address the enduring impact of enforced disappearance on women victims, and their communities.

In at least 80 countries around the world, tens of thousands of individuals have been disappeared in contexts of conflict or repression. Enforced disappearances are typically used by state and nonstate actors to eliminate political opponents in secrecy, without witnesses, survivors, or physical evidence. Relatives and targeted communities are left in fear and perpetual uncertainty, risking abuses themselves when they search for the truth about the fate of their missing loved ones.

The use of enforced disappearance during the 1970s, particularly by repressive regimes in Latin America, sparked the initial struggle against impunity.<sup>1</sup> Subsequently, the Inter-American Court followed the UN Human Rights Committee in requiring states to address disappearances with a series of steps: they had to investigate seriously what had happened and make sure relatives received the results of the investigation; if there was evidence to justify a prosecution, a trial had to be brought; reparations should be paid; measures had to be implemented to stop abusive institutions and organizations from committing enforced disappearances. All of these measures feature in what is now recognized as the field of transitional justice.

Cases of enforced disappearance have been significantly addressed by truth commissions, which may involve research, investigations, public hearings, and exhumations. Since 1974, at least 12 official investigative commissions have been established specifically to examine enforced disappearances.

The 2006 International Convention for the Protection of All Persons from Enforced Disappearance (CED) identifies both the disappeared and those who have suffered harm as the direct

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<sup>1</sup> See Revised final Report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, Question of the impunity of perpetrators of human rights violations (civil and political), UN Doc. E/CN.4/Sub.2/1997/20/Rev.1 (2 October 1997).

result of an enforced disappearance as victims of the crime.<sup>2</sup> This has important implications for women, who comprise the majority of those left behind to pick up the pieces after a disappearance, haunted by the hope that their loved one is still alive. Moreover, due to prevailing gender inequalities, the report finds that across contexts women experience exacerbated economic, legal, social, and psychological harms as a result of losing a male family member who is often the breadwinner and head-of-household.

### How Do Enforced Disappearances Impact Women?

The report acknowledges that men comprise between 70–94 percent of those who have been disappeared globally,<sup>3</sup> but that when women are targeted for enforced disappearance, it is often for the same reason as men: a real or perceived opposition to repressive regimes. However, women have also been disappeared because of their relationships with activists, particularly as a spouse.

When disappeared, women, in addition to facing the same forms of torture and abuse as men, are much more likely to experience sexual violence and gendered forms of abuse. In Morocco, many female detainees were gang raped;<sup>4</sup> in South Africa they suffered humiliation and abuse around biological functions, such as menstruation and childbirth;<sup>5</sup> and in Argentina, pregnant women were executed shortly after giving birth, and their child raised by a military family in ignorance of their heredity.<sup>6</sup> Uncovering these gendered violations is an essential first step to designing remedies capable of redressing harm suffered by victims.

In several countries, the disappearance of a male family breadwinner and head-of-household forces female relatives into the workforce, often for the first time. Lacking experience and skills, most take low-paying and insecure jobs, often far away from their family; this increases their risk of being exploited, and even resorting to sex work,<sup>7</sup> while jeopardizing their children's welfare, health care, and education. Boys are often prioritized within the family for limited educational opportunities, older female siblings may be forced to drop out of school to care for siblings, and in Uganda, some girl children were married off as a means of economic survival.<sup>8</sup>

The uncertain legal status of wives of the disappeared causes families significant hardships when wives are unable to access to family assets, bank accounts and property in their husband's name. The only option may be to declare their husband dead, which many are reluctant to do, and even then, death certificates may not be available until a long period of time has passed since the disappearance.

Additionally, in several countries, including Lebanon,<sup>9</sup> discriminatory laws make it difficult for women to own land, homes, other property, or to transfer assets into their names. After a disappearance, women and their children are therefore far more susceptible to poverty, dispossession, and further human rights infringements. As one Nepalese woman recounted, “[O]ur immediate

<sup>2</sup> CED, art. 24(1).

<sup>3</sup> U.N. Working Group on Enforced or Involuntary Disappearances, 98th session. General comment on women affected by enforced disappearances, 2013 (Geneva: Official Record A/HRC/WGEID/98/2, 2013), 2, [www.ohchr.org/EN/Issues/Disappearances/Pages/GeneralComments.aspx](http://www.ohchr.org/EN/Issues/Disappearances/Pages/GeneralComments.aspx)

<sup>4</sup> Julie Guillerot, ICTJ “Morocco: Gender and the Transitional Justice Process” (2011), 11–12, [www.ictj.org/publication/morocco-gender-and-transitional-justice-process](http://www.ictj.org/publication/morocco-gender-and-transitional-justice-process)

<sup>5</sup> Beth Goldblatt, “Evaluating the Gender Content of Reparations: Lessons from South Africa” in *What Happened to the Women? Gender and Reparations for Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Social Science Research Council, 2006), 54.

<sup>6</sup> Argentina Comisión Nacional sobre la Desaparición de Personas, “Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas” (1984), Part II (“The Victims: The disappeared according to sex”), [web.archive.org/web/20031014131519/http://nuncamas.org/english/library/neveragain/neveragain\\_211.htm](http://nuncamas.org/english/library/neveragain/neveragain_211.htm)

<sup>7</sup> Colleen Duggan, Claudia Paz y Paz Bailey and Julie Guillerot, “Reparations for Sexual and Reproductive Violence: Prospects for Achieving Gender Justice in Guatemala and Peru,” *International Journal of Transitional Justice* 2(2) (2008): 196.

<sup>8</sup> Dylan Mazurana et al., Feinstein International Center and ISIS Women’s International Cross Cultural Exchange, “Making Gender-Just Remedy and Reparation Possible: Upholding the Rights of Women and Girls in the Greater North of Uganda” (2013), 53, [fic.tufts.edu/publication-item/making-gender-just-remedy-and-reparation-possible/](http://fic.tufts.edu/publication-item/making-gender-just-remedy-and-reparation-possible/)

<sup>9</sup> Christalla Yakinthou, ICTJ, “Living with the Shadows of the Past: The Impact of Disappearance on Wives of the Missing in Lebanon,” 2015, 15, [www.ictj.org/publication/living-shadows-past-impact-disappearance-wives-missing-lebanon](http://www.ictj.org/publication/living-shadows-past-impact-disappearance-wives-missing-lebanon)

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concern . . . was living under threats and fear, and then after some time we started spending our money to search. But the money was spent in vain, and from then onward we faced the need for food and clothing. We had lost our family breadwinner.”<sup>10</sup>

Within the private sphere women are also more prone to victimization and intrafamilial harassment, because they may be seen as a financial burden or divert resources from domestic duties to search for the disappeared. Outside the home, the desire to search exposes women to extortion and exploitation.<sup>11</sup> Members of the well-known Mothers of the Plaza de Mayo in Argentina were targeted for violence and disappearance themselves;<sup>12</sup> in Guatemala the military targeted female relatives of the disappeared for rapes.

The social implications of disappearance resemble widowhood: Kashmiri women use the term “half-widows” to describe wives’ loss of social status after a disappearance;<sup>13</sup> while in several patrilocal cultures, including Kashmir and Sri Lanka, remarriage carries a stigma. Consequently, wives of the disappeared may stay with families who resent their presence, including because they risk losing child custody if they leave. Psychologically, early diagnoses of post-traumatic stress disorder for relatives have been superseded by the term “ambiguous loss,”<sup>14</sup> which recognizes that the source of stress is external and ongoing, rather than from a discrete earlier traumatic experience.

### How Can and Do Transitional Justice Mechanisms Respond to Women?

The second part of the report explores how various measures—truth, reparations, and criminal justice—have acknowledged and responded to the various dimensions of women’s experiences and needs. Truth-seeking initiatives have often focused on bodily harm and men’s experiences. However, the Chilean, Argentinian, and Peruvian truth commissions also focused on sexual abuse against women detainees; also notable is the specific attention to pregnant disappeared women in the Chilean and Argentinian reports.<sup>15</sup>

Resolving the ambiguous legal status of wives of the disappeared is a key remedy: South African and Moroccan policies granting or accelerating access to death certificates provided one solution, but problematically still required wives to declare their husbands dead. Argentina pioneered an alternative approach of creating a special legal status, “absence by reason of enforced disappearance,” which required relatives only to establish the date of disappearance and the last time there was news of the disappeared.<sup>16</sup> The status conferred multiple practical benefits on wives, including access to frozen bank accounts, the legal capacity to transfer and own property, and the ability to dissolve marriages without divorce papers. The success of Argentina’s approach is reflected in its adoption in Peru, Bosnia and Herzegovina and more recently in 2009 in Chile.

Research by ICTJ, including in Morocco,<sup>17</sup> confirms that women’s testimony on disappearances increases the general understanding that families are also victimized by the crime. Over time, truth commissions have incorporated strategies to encourage women to share their stories, in order to overcome the exclusionary effect of gender-neutrality. These include solving challenges unique to women with regard to travel, financial resources, and childcare; providing women-

10 Lucia Withers, ICTJ, “To Walk Freely with a Wide Heart: A Study of the Needs and Aspirations for Reparative Justice of Victims of Conflict-Related Abuses in Nepal,” 35, [www.ictj.org/publication/nepal-reparations-walk-freely-wide-heart](http://www.ictj.org/publication/nepal-reparations-walk-freely-wide-heart)

11 See for example, Christalla Yakinthou, ICTJ, “Living with the Shadows of the Past: The Impact of Disappearance on Wives of the Missing in Lebanon,” 2015, 11–12.

12 *Democracy Now*, “As Ex-Argentine Dictator Sentenced to Life in Prison, Mother of “Disappeared” Children Recounts Decades-Long Struggle for Justice,” December 23, 2010, [www.democracynow.org/blog/2010/12/23/as\\_ex\\_argentine\\_dictator\\_sentenced\\_to\\_life\\_in\\_prison\\_mother\\_of\\_disappeared\\_children\\_recounts\\_decades\\_long\\_struggle\\_for\\_justice](http://www.democracynow.org/blog/2010/12/23/as_ex_argentine_dictator_sentenced_to_life_in_prison_mother_of_disappeared_children_recounts_decades_long_struggle_for_justice)

13 Association of Parents of Disappeared Persons, “Half Widow, Half Wife? Responding to Gendered Violence in Kashmir” (2011), 1, [www.hks.harvard.edu/cchrp/sbhrap/projects/kashmir/Half\\_Widow\\_Half\\_Wife.pdf](http://www.hks.harvard.edu/cchrp/sbhrap/projects/kashmir/Half_Widow_Half_Wife.pdf)

14 Ambiguous loss is a “situation of unclear loss resulting from not knowing whether a loved one is dead or alive, absent or present.” See Pauline Boss, *Ambiguous Loss: Learning to Live with Unresolved Grief* (Harvard University Press, 1999), 3, 6.

15 National Commission for Truth and Reconciliation, “Report of the Chilean National Commission on Truth and Reconciliation” (as published by University of Notre Dame Press, 1993), 648, [www.usip.org/publications/truth-commission-chile-90](http://www.usip.org/publications/truth-commission-chile-90)

16 Law No. 24.321 of Argentina on the Law of Absence by Forced Disappearance (Ley de Ausencia por Desaparición Forzada), May 11, 1994, art. 1.

17 Julie Guillerot, ICTJ, “Morocco: Gender and the Transitional Justice Process” (2011), 11–12.

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only spaces for women to testify in order to avoid the possibility of stigma related to sexual abuses; and training interviewers to interview women using supportive and sensitive techniques. Locally driven, women-led truth-telling processes that continue after the truth commission has concluded have been particularly valuable for indigenous women, and women in traditional and rural communities, for whom access is especially difficult.

Exhumations and reburials can be powerful forms of truth and reparation, by clarifying the fate of the disappeared, lifting the burden of the search, and allowing communities to perform burial and grieving rituals. However, there is little evidence to suggest a gender-sensitive approach has been adopted for these measures;<sup>18</sup> for example, in most contexts bodily remains are not being examined for evidence of gender-based violence. In Morocco and Peru researchers concluded the methodology used was gender-neutral. Similarly, apart from Guatemala and Peru, “psychosocial accompaniment,” where victims, families and families are consulted and involved in all stages of investigation and exhumation, has often been absent.

Victims have been offered and received various forms of reparation, usually in the form of financial or material, legal and administrative, and symbolic reparations. Without acknowledgment about the circumstances and causes of the enforced disappearance, including an accompanying truth-seeking process, victims may perceive reparations as “blood money”—an attempt by the state to buy their silence. Women in Argentina, Brazil, and Nepal often perceived reparations as an attempt by government to “close the book on the past without revealing the facts of what happened.”<sup>19</sup> In reparations programs in Chile, Argentina, and Brazil, family members were not recognized as victims in their own right, but rather as heirs to the disappeared: this contrasts with later practice in Guatemala and Peru, where commissions recognized relatives’ eligibility for reparations as victims themselves, including for multiple violations.

Problematically, some reparation programs have financially compensated only relatives of those confirmed to have been killed (as in Morocco)<sup>20</sup> or have provided more compensation to relatives of those declared dead than to the relatives of those who remain missing or disappeared (as was initially the case in Nepal).<sup>21</sup> Similarly, programs in countries including Argentina, Chile, Peru, and South Africa were confronted with multiple partners claiming dependency. In Argentina, spouses and common-law partners shared the pension equally, while the Peruvian commission recommended reparations be paid to all claimants who could prove dependency.

A gender-neutral approach is usually taken to age-related effects of the crime as well. For example, reparations in the form of educational access or funds for child beneficiaries often results in resources being allocated to boy children rather than girl children; scholarships or apportioning distribution are two methods to counteract this. Older women, who are often less literate and may be economically dependent on their family, face similar challenges with gender-neutral reparations programs. The Chilean and Peruvian approaches were sensitive to this, ensuring that mothers and women victims over the age of 50 received pensions.<sup>22</sup>

Notwithstanding their eligibility, women will still be unlikely to benefit if the process to access reparations is costly, complicated, or resource intensive. In Guatemala, some women went into debt applying for reparations because of the cost of hiring translators, collecting and photo-

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18 The ICRC and other international consortiums have begun to establish guidelines and standards to prevent exhumations from causing harm to families and communities. See International Committee of the Red Cross, “Accompanying the Families of Missing Persons: a Practical Handbook” (2013), 34, [www.icrc.org/eng/assets/files/publications/icrc-002-4110.pdf](http://www.icrc.org/eng/assets/files/publications/icrc-002-4110.pdf)

19 Brandon Hamber, “Repairing the Irreparable: dealing with the double-binds of making reparations for crimes of the past”, *Ethnicity @ Health* 5(3/4) (2000): 220, [www.brandonhamber.com](http://www.brandonhamber.com)

20 Julie Guillerot, ICTJ, “Morocco: Gender and the Transitional Justice Process” (2011), 27.

21 ICTJ, “Beyond Relief: Addressing the Rights and Needs of Nepal’s Wives of the Disappeared” (2013), 12, [www.ictj.org/publication/beyond-relief-addressing-rights-and-needs-nepal-wives-disappeared](http://www.ictj.org/publication/beyond-relief-addressing-rights-and-needs-nepal-wives-disappeared)

22 For more in-depth analysis see Ruth Rubio-Marín et al., “Repairing Family Members: Gross Human Rights Violations and Communities of Harm”, in *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations*, ed. Ruth Rubio-Marín (Cambridge: Cambridge University Press, 2009), 281.

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copying documents, and travelling distances to follow-up their application.<sup>23</sup> As was the case in Nepal if reparations are paid into bank accounts in lump sums or to families more generally, women typically lose control over how the amount is used. Conversely, while South African beneficiaries needed bank accounts to receive reparations, the truth commission helped women to access required documents and open bank accounts for this purpose.<sup>24</sup> Beyond typical financial reparations, Guatemalan victims qualified for psychosocial support services and housing, while Peruvian victims were offered educational and healthcare benefits.

Consulting relatives and communities is key to designing memorialization and symbolic reparation efforts, such as monuments, remembrance sites, and commemorative days, which sensitively facilitate the public grieving and healing process. Otherwise there is a risk of retraumatization and communal rejection. For example, many Nepalese women requested that their disappeared loved ones' names be removed from the "Martyrs' Gates," because the inscriptions identified rebels considered deceased, not disappeared.<sup>25</sup> There are several examples of memorials devoted to those at the forefront of the search for truth, including the Flame of Courage in the Philippines and the Mujeres en la Memoria monument in Santiago de Chile.



Women in Memory (*"Mujeres en la Memoria"*), Santiago, Chile. © Nicolás Rupcich

The Inter-American Court of Human Rights has found victims' relatives have rights to judicial guarantees and to a criminal investigation to identify and when possible, prosecute and punish those responsible; and that only a criminal trial provides this remedy. For criminal prosecutions, there are several important considerations, including defining the crime of enforced disappearance as "continuous"<sup>26</sup> until the fate of the victim is determined and ensuring victims are adequately supported and protected to minimize the risk of retraumatization. Argentinian courts' recent jurisprudence is particularly progressive, including in identifying crime analysis with a gender perspective as an "obligatory consideration,"<sup>27</sup> considering sexual violence against a female detainee as a crime against humanity when it was part of a widespread or systematic attack, and recognizing sexual violence as distinct from other violations, including torture.

Enforced disappearance continues to be used around the world as a tool of terror and repression, including in Kenya and Syria. Lessons learned about how to take a gender-sensitive approach

23 Lieselotte Viaene, *Life is Priceless: The Work of the National Reparations Program in Guatemala* (2007), 7.

24 Beth Goldblatt, "Evaluating the Gender Content of Reparations: Lessons from South Africa" in *What Happened to the Women? Gender and Reparations for Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Social Science Research Council, 2006), 73.

25 Simon Robins, "Constructing meaning from disappearance: Local memorialisation of the Missing in Nepal," paper presented at the ISA Conference ("In Search of Truth and Reconciliation" Panel) (San Diego, USA, Apr. 3, 2012), 11–12, [www.simonrobins.com/](http://www.simonrobins.com/)

26 CED, Article 8.

27 See *Gregorio Rafael Molinas/recurso de casación*, Causa no. 12.821 (Cámara Federal de Casación Penal 2011) (Argentina), 83. The ruling makes specific reference to the Convention on the Elimination of All Forms of Discrimination against Women.

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to truth, exhumations, reburials, reparations, criminal justice, and reform are crucial to redressing harms suffered by victims and their broader communities. Ultimately, the degree to which programs and measures are effective in addressing the legacy of enforced disappearances depends on whether they respond to women and their specific experiences. This report offers both an analysis of the challenges and guidance on how they may better fulfill this objective.

### Recommendations

- 1. Transitional justice mechanisms should adopt a gender-sensitive approach, including to investigations, exhumations, truth-seeking, and reparations.** Ideally, states should endeavor to link reparations to truth-seeking mechanisms in order to increase the number of victims identified as eligible.
- 2. Legislators should create a legal category that does not require the disappeared to be declared dead for relatives to access benefits, such as inheriting the disappeared person’s wealth and assets, or for spouses to dissolve marriages.**
- 3. States creating truth commissions and providing symbolic reparations, including memorialization sites, remembrance days and events, and conducting reburials after exhumations should consult the community and women relatives to ensure these initiatives are meaningful to victims and their communities.**
- 4. States should provide long-term psychosocial support to family members engaged in all stages of the investigative and exhumation process regarding the disappeared.**
- 5. Truth commissions should assure women that speaking about their own experiences will not compromise the institution’s capacity or willingness to clarify the fate of the disappeared, and broaden their investigative focus to encompass psychological and economic harm in addition to physical harm.**
- 6. Reparations programs should recognize relatives of the disappeared as eligible, including recognizing equality among all claimants who can prove dependency and violations inflicted during the search for disappeared loved ones.**
- 7. Reparation programs need to develop policies that overcome the gendered impact of disappearances and structural disadvantages faced by many girl children victims, and mothers at the forefront of the search for truth.**
- 8. States should assist beneficiaries in proving their relationship to the disappeared and securing identity documents required for access to social security benefits, inheritance, and property title, and allow relatives to formalize new relationships.**