

GENDER JUSTICE

The Disappeared and Invisible

Revealing the Enduring Impact of Enforced Disappearance on Women

March 2015



Cover Image: In Raddoluwa, Sri Lanka, a woman pays tribute at a memorial to the disappeared, during a commemoration ceremony held annually on October 27. In the 1980s, thousands of Sri Lankans were disappeared in a wave of politically motivated abductions, torture, and killings. (Photo by Vikalpa, www.vikalpa.org/)

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Polly Dewhirst and Amrita Kapur

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ICTJ assists societies confronting massive human rights abuses to promote accountability, pursue truth, provide reparations, and build trustworthy institutions. Committed to the vindication of victims’ rights and the promotion of gender justice, we provide expert technical advice, policy analysis, and comparative research on transitional justice approaches, including criminal prosecutions, reparations initiatives, truth seeking and memory, and institutional reform. For more information, visit www.ictj.org

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ACRONYMS

ANC	African National Congress (South Africa)
CED	International Convention for the Protection of all Persons from Enforced Disappearance
CEH	Historical Clarification Commission (Guatemala)
CONADEP	National Commission on the Disappearance of Persons (Argentina)
ESMA	Navy Petty-Officers School of Mechanics
FEDEFAM	Latin American Federation of Associations of Families of the Detained-Disappeared
ICRC	International Committee of the Red Cross
IACtHR	Inter-American Court of Human Rights
IER	Equality and Reconciliation Program (Morocco)
IRP	Interim Relief Program (Nepal)
NN	No Name
OHCHR	UN Office of the High Commissioner for Human Rights
PTSD	Post-traumatic stress disorder
TRC	Truth and Reconciliation Commission
UNWGEID	UN Working Group on Enforced or Involuntary Disappearances

ANNIVERSARY

by Ariel Dorfman

And every September 19th
(soon it will be four years,
can so many years have gone by?)
I will have to ask her again
if there is any news,
if they have heard anything,

and she will say no, thank you very much,
I appreciate your concern,
but her eyes will keep saying
wordlessly
what they said the first time
(soon it will be three years –
how is it possible?)
no, thank you very much,
I appreciate your concern,
but I am not a widow
so stay away from me,
don't ask me for anything,
I won't marry you,
I am not a widow,
I am not a widow
yet.

Executive Summary

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

The 2006 International Convention for the Protection of All Persons from Enforced Disappearance identifies both the disappeared and their family members as victims of enforced disappearance. This has important consequences for women, who comprise the minority of the disappeared, but the majority of family members who suffer exacerbated social, economic, and psychological disadvantages as a result of the loss of a male family member who is often a breadwinner.

Transitional justice refers to the range of ways that measures of acknowledgement, accountability, and reform are employed to address systematic abuses of fundamental human rights. This report identifies the specific ways enforced disappearance affects women and how transitional justice initiatives can better respond to them. It is informed by primary research with women victims, lessons learned, and best practices across diverse contexts, leading to several policy recommendations to promote greater gender sensitivity in justice, truth, and accountability measures that address enforced disappearance.

When disappeared, women are likely to suffer the same levels of torture, ill-treatment, and abuse as men. While it is true that men have also suffered sexual violence and torture while in detention, women are very likely to experience sexual violence and gendered abuse, including mistreatment in relation to their biological functions and their role as mothers. For example, in several instances, pregnant women have been forcibly separated from their babies after birth and, as in Argentina, children have been appropriated from the disappeared to be adopted by military families.

Wives, mothers, and daughters of the disappeared also face additional challenges: ongoing victimization in the private sphere as a result of poverty, family conflict, and psychological trauma augments the invisibility of their suffering. Economically, the loss of the family breadwinner or head-of-household forces women into low-paying, insecure jobs, often far away from their family, increasing their risk of exploitation and jeopardizing their children's well being and education.

The precarious legal status of the disappeared often results in the inability of their wives to access bank accounts, social services, or retain ownership of assets. Socially, women may be blamed for the disappearance, ostracized for financially burdening the family, and condemned

for challenging social norms if they actively seek the truth and advocate for the rights of the disappeared. Inevitably, these difficulties compound the emotional and psychological trauma stemming from the uncertain fate of their relative.

While enforced disappearance has been a primary focus of transitional justice mechanisms, the impact on women is not always effectively acknowledged or addressed. Establishing the truth about what happened to the disappeared is a key priority, but, as yet, no truth-seeking mechanism has adopted a gender-sensitive approach to its investigations. This is particularly problematic because exacerbating the under-reporting of disappeared women is a lack of awareness of women's needs and concerns, which inhibits women from testifying about gender-based violence and leads to a failure to situate patterns of violence within a broader gender analysis. Exhumations and reburials can be powerful forms of truth and reparation, by clarifying the fate of loved ones, providing critical evidence to hold perpetrators accountable, and allowing family members to perform grieving rituals essential for emotional healing. However, a gender-neutral approach to forensics may result in the failure to examine remains for signs of gender-based violence, in particular sexual violence.

States have offered diverse material reparations to victims of enforced disappearance, such as monetary compensation, psychosocial support services, healthcare, educational benefits, and housing. Not all reparations programs recognize relatives as victims themselves of enforced disappearance. However, not only is this required by international law, it is also practically important to avoid ignoring the profound hardship enforced disappearance causes relatives, including women, who experience compounding harms. It is equally important to ensure that access to reparations is not dependent on a declaration of death, because this forces wives in particular to make an emotionally difficult decision with long-term social and psychological consequences, including guilt about abandoning hope, blame by in-laws, and loss of social status by becoming a widow.

Legal and administrative measures can cause other barriers to access, including for female children, whose access to education may be deprioritized compared to male children in the wake of a disappearance, and older mothers of the disappeared, who are more vulnerable to poverty than their male counterparts in old age. Without outreach, sensitization, and precautions to protect against stigma, registration processes may prove too difficult for women who are unaware of their rights and ill-equipped to navigate them.

When done in consultation with family and community members, symbolic reparations can promote healing and restore social balance. Common forms include: lists of names, monuments, plaques and tombstones, remembrance sites, commemorative events, and spiritual or cultural rituals. Acknowledging the roles that women play as activists and advocates for truth and justice will mitigate the risk that such symbolic reparations will focus only on the disappeared or on women as passive victims.

The relevance of understanding women's experiences of enforced disappearance is underscored by its continuing practice, including in countries such as Kenya and Syria. A gender-sensitive approach promotes understanding about why women were disappeared, the range of crimes they experienced while disappeared, and the gender-specific challenges they face when trying to obtain the truth about disappeared relatives.

Women, in their roles as mothers and wives of the disappeared, activists, advocates for truth, and representatives of communities, are key to the success of transitional justice mechanisms seeking to provide truth, justice, and accountability for enforced disappearance.

Recommendations

1. Transitional justice mechanisms should adopt a gender-sensitive approach, including to investigations, exhumations, truth seeking, and reparations.
2. Legislators should create a legal category that does not require the disappeared to be declared dead for their relatives to access benefits, such as inheriting the disappeared person's wealth and assets or allowing spouses to dissolve marriages.
3. States should assist beneficiaries in proving their relationship to the disappeared and securing identity documents required for accessing social security benefits, inheritance, and property title, and allow relatives to formalize new relationships.
4. 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.
5. States should provide long-term psychosocial support to family members engaged in all stages of the investigative and exhumation process regarding the disappeared.
6. 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.
7. Reparations programs should recognize relatives of the disappeared as eligible, including by recognizing equality among all claimants who can prove dependency and violations inflicted during the search for disappeared loved ones.
8. Reparation programs should develop policies that overcome the gendered impact of enforced disappearance and structural disadvantages faced by many girl children victims and mothers at the forefront of the search for truth.

1. Introduction

Enforced disappearances impact hundreds of thousands of women and men around the world. The violation gained widespread notoriety in the 1960s as a tool of repressive regimes in Latin America. Guatemala's Historical Clarification Commission (CEH) registered 6,159 victims of enforced disappearance.¹ In Argentina alone, an estimated 30,000 people were disappeared between 1976 and 1983.² The first cases considered under the right of individual petition before the UN Human Rights Committee focused on allegations of enforced disappearance in Uruguay in the 1970s. The Inter-American Court's first case dealt with enforced disappearance in Honduras.

The practice has been reported in more than 85 countries.³ Sri Lanka is estimated to have had more than 30,000 cases since the 1980s,⁴ with similar numbers in Guatemala and Colombia for the same period. More recently in 2003 and 2004, Nepal is reported to have had the world's highest number of new cases of disappearance.⁵ Successive al-Assad regimes in Syria have used disappearances as a tool of fear since the 1970s.⁶ In South Africa hundreds of activists went missing after being detained by apartheid security forces.

One of the chief objectives of an enforced disappearance is to remove political opponents. The violation seldom leaves survivors, witnesses, or physical evidence, enabling perpetrators to hide behind a veil of secrecy and avoid the legal challenges, protests, and international pressure that can result from more "visible" violations. The systematic practice of enforced disappearance is also a devastating tool of fear, repression, and intimidation. It creates a climate of terror in which family members, friends, and other activists are afraid to speak out.

Enforced disappearance is defined in the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (CED) as

[T]he 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.⁷

1 Comisión para el Esclarecimiento Histórico, "Guatemala Memories of Silence," 17.

2 See Argentina Comisión Nacional sobre la Desaparición de Personas, "Nunca Más."

3 Since its inception in 1980, the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID) has documented over 54,000 cases. See U.N. Human Rights Council, "Report of the Working Group on Enforced or Involuntary Disappearances," 3.

4 Amnesty International Media Centre, "Sri Lanka."

5 Human Rights Watch, "Clear Culpability," 1.

6 Since the internal conflict began in March 2011, the United Nations reports that the pattern has been "widespread," and human rights groups calculate that 85,000 have been arbitrarily detained and 2,600 are already missing. See Rodgers and Irshaid, "Syria's disappeared."

7 International Convention for the Protection of All Persons from Enforced Disappearance [hereinafter *CED*], art. 2. As at January 2015, 94 states have signed and 44 states have ratified the treaty.

Further, enforced disappearance is one of the few crimes considered to be “continuous,”⁸ ending only when “the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual.”⁹

Under the CED, “any individual who has suffered harm as the direct result of an enforced disappearance” is considered a victim of the crime.¹⁰ This includes family members of the disappeared. As victims, they have a right to know the truth about the violation and what happened to their loved one. The CED refers to the right to truth in its preamble, noting “the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end.”¹¹ Indeed, relatives’ right to know the truth about the fate and whereabouts of the disappeared person is considered an “absolute right, not subject to any limitation or derogation.”¹²

The CED establishes the responsibilities of states in relation to enforced disappearance. This does not deny, however, that nonstate actors also engage in the practice. Truth commissions, inquiries, and unofficial truth-seeking projects have documented enforced disappearances by groups such as the Lord’s Resistance Army in Uganda, the Shining Path in Peru, Fuerzas Armadas Revolucionarias de Colombia (FARC) in Colombia, and the Inkatha Freedom Party in South Africa.

The Disappeared and “Missing Persons”

Under international law, the disappeared are distinct from missing persons. Humanitarian agencies, like the International Committee of the Red Cross (ICRC), use the term “missing persons” to refer to individuals whose fate and whereabouts are unknown as a result of armed conflict or internal violence.¹³ The term does not implicate or exclude the role of the state or the possibility that a crime has taken place. For instance, the missing may be those whose bodies were not collected or who were buried anonymously after a skirmish, massacre, or violent street protest.

However, the distinction is not always clear in application, especially where disappearances and armed conflict occurred simultaneously, as in Colombia, Guatemala, South Africa, and Uganda. Missing persons may end up in paupers’ graves alongside those who were forcibly disappeared, or the bodies of the disappeared may be found in mass graves or massacre sites. In some cases, family members may suspect that a politically active loved one has been detained and disappeared, when actually they were killed as a bystander or participant in an ambush or reprisal attack. Family members often make statements to truth commissions knowing little more than that their loved one vanished during a time of widespread violence. Truth commissions and other transitional justice mechanisms may do their best to differentiate between the disappeared and the missing, but that is not always possible.¹⁴

8 CED, art. 8. For the full definition of continuous crimes, see International Criminal Tribunal for Rwanda, *Nahimana Barayagwiza, Ngeze v Prosecutor* (Judgment), 721.

9 OHCHR, Working Group on Enforced or Involuntary Disappearances, General Comment on Enforced Disappearance as a Continuous Crime, 3.

10 CED, art. 24(1).

11 CED, Preamble, art. 24(2).

12 OHCHR, Working Group on Enforced or Involuntary Disappearances, General Comment on the Right to the Truth in Relation to Enforced Disappearances, 4.

13 See Martin, “The missing,” 723.

14 For instance, the South African Truth and Reconciliation Commission developed five categories of enforced disappearance including: disappearances in exile, disappearances during periods of unrest, and cases of indeterminate cause. Their use of the term “disappearance” in some cases refers to what would be considered a “missing persons” case under international law. See South African Truth and Reconciliation Commission, “Report of the Human Rights Violations Committee,” 519.

Enforced Disappearances and Transitional Justice

The movement for justice, which became known as the struggle against impunity in the 1970s and 1980s, grew significantly in response to systematic repression experienced in Latin America and notably as a response to the practice of enforced disappearance.¹⁵ Measures that are now seen as “transitional justice measures” were developed and applied to address these practices long before the term “transitional justice” came into use. Since 1974, at least 12 official investigative commissions have been established specifically to examine enforced disappearances.¹⁶ Transitional justice mechanisms with broader mandates to investigate a wide range of human rights violations have also focused on disappearances. Truth commissions typically conduct research, investigations, hearings, and exhumations related to enforced disappearances, which are often covered in their final reports.¹⁷

In many more countries efforts to uncover the truth about the disappeared were linked to a broader transition and heralded the beginning of longer-term efforts to deal with the past. Inquiries into enforced disappearances have arguably opened the door for investigations into a diverse range of violations and have been the foundation for establishing further transitional justice mechanisms. Such mechanisms are critical to facilitating an end to these crimes, while also addressing the varied needs of victims.

This paper reviews common strategies that transitional justice mechanisms use to deal with enforced disappearances and reflects on their ability to address the specific needs of women. Three areas of transitional justice are explored here: truth, reparations and relief, and criminal justice. Each of these measures directly impacts relatives of the disappeared during their search for truth about their loved ones. Additionally, though not researched here, institutional reform is critically important to ending the practice of enforced disappearance and ensuring nonrecurrence. It includes explicitly reforming security sector institutions as well as empowering and obliging public officials to report instances of the crime.

15 See Joinet, “Question of the impunity of perpetrators of human rights violations (civil and political).”

16 These include: Uganda: Commission of Inquiry into the Disappearance of People in Uganda since 25 January 1971 (1974); Bolivia: National Commission for Investigation for Forced Disappearances (1982–1984); Argentina: National Commission on the Disappeared (CONADEP) (1983–984); Uruguay: Investigative Commission on the Situation of Disappeared People and its Causes (1985); Nepal: Commission of Inquiry to Locate the Persons Disappeared during the Panchayat Period (1990–1991); Honduras: Independent Inquiry undertaken by the National Commissioner for the Protection of Human Rights (1993–1994); Sri Lanka: three geographically distinct Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons (1995–1997), and “All Island” Commission of Inquiry into Involuntary Removal or Disappearance of Persons (2001–2002); and Lebanon: two Commissions on Disappearances and Abductions (2001 and 2002). See United States Institute of Peace, “Truth Commission Digital Collection” and Amnesty International, “Truth Commissions.”

17 For example, Chile: National Commission for Truth and Reconciliation (1990–1991) and National Commission on Political Imprisonment and Torture (2003–2005); Chad: The Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré, His Accomplices and/or Accessories (1991–1992); Ghana: National Reconciliation Commission (2003–2004); Guatemala: Commission for Historical Clarification (1997–1999); South Africa: Commission of Truth and Reconciliation (1995–2002); Morocco: Equity and Reconciliation Commission (2004–2005); and Peru: Truth and Reconciliation Commission (2001–2003). See United States Institute of Peace, “Truth Commission Digital Collection.”

2. The Gendered Impact of Disappearances

Women are considered victims of enforced disappearance not only when they themselves are disappeared, but also when they are relatives of a disappeared person. While men are usually the primary targets of enforced disappearance, women relatives also suffer diverse, lasting consequences and often human rights violations as a result of the crime. Gender inequalities steeped in tradition, race, culture, religion, and class often mean that women experience the social, economic, and psychological consequences of disappearances differently than men. In many countries, women relatives of the disappeared have emerged as activists, leading social struggles for the truth about enforced disappearances and working at the forefront of advocacy for human rights and accountability.

How Disappearances Differ by Gender

Although no exact figures exist, according to the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID), most reported cases of disappearances are of men.¹⁸ Inquiries that have conducted gender analyses confirm this pattern, with men comprising between 70 and 94 percent of the disappeared.

Table 1: Gender Breakdown of Enforced Disappearances, in Select Countries¹⁹

COUNTRY	WOMEN	MEN
Argentina	30%	70%
Chile	6%	94%
Guatemala	12%	78%
Peru	15%	85%
South Africa	10%	90%

In certain circumstances there may be a problem of under-reporting of women's disappearances, or of under-recording by authorities when reported. In the "Cotton Field" case, which examined the disappearance of women in Ciudad Juárez in Mexico,

¹⁸ UN Working Group on Enforced or Involuntary Disappearances, *General comment on women*, 2.

¹⁹ *Argentina*: Argentina Comisión Nacional sobre la Desaparición de Personas, "Nunca Más," Part II ("The Victims: The disappeared according to sex"). *Chile*: Corporación Nacional de Reparación y Reconciliación, "Informe sobre calificación de víctimas de violaciones de derechos humanos y de la violencia política," 549. Data was not disaggregated between victims of killings and enforced disappearances in terms of gender. Thus, out of 3,197 total reported victims (including 1,102 who were forcibly disappeared), 3,002 (94%) were men. *Guatemala*: Paz y Paz Bailey, "Guatemala," 96. *Peru*: Derived from information provided directly to ICTJ from the Executive Secretary of the Reparations Council of Peru, August 8, 2013. *South Africa*: South African Truth and Reconciliation Commission, "Report of the Human Rights Violations Committee: Abductions, Disappearances and Missing Persons," 519.

the Inter-American Court of Human Rights (IACtHR) found that police and judicial officials did not consider crimes committed against women to be as important or as serious as crimes against men. The IACtHR called on Mexico to address the bias in its systems and fulfill its obligation to treat men and women equally under the law.²⁰ Further study is required on whether under-reporting is more likely to occur where disappearances are committed in the context of political repression rather than in other contexts of organized crime.

Like their male counterparts, women victims are most often targeted because of their real or perceived opposition to repressive regimes—through their work with social justice organizations, women’s movements, armed resistance groups, or political parties. In some contexts women activists are targeted as a form of punishment for challenging gender norms by participating in the public sphere: women who work with victims or who are engaged in searching for truth about the disappeared are especially at risk.

Women are also targeted because of violations they may have witnessed, their relationships with activists, or as part of broader reprisals against communities. In Chile, women were sometimes disappeared if they were apprehended with a targeted activist. For example, Maria Olga Flores Barraza was disappeared after being arrested with her husband, Communist leader Bernardo Araya.²¹

Women who disappear face the same forms of torture, ill-treatment, and abuse as men. However, they face a higher risk of sexual violence and gendered forms of abuse, such as “humiliation and abuse around biological functions such as menstruation and childbirth.”²² In Guatemala, disappeared women were frequently subjected to rape, beatings, and electric shocks. In Argentina a reported case of enforced disappearance involved repeated rape that led to hemorrhage.²³ In Morocco, many female detainees were gang raped, sometimes repeatedly; female detainees lived in constant fear of sexual violence.²⁴

In many countries, relationships with children and maternal instincts have been used to psychologically torture women detainees and their families. In Argentina, elderly mothers and girl children as young as five years old were brought to detention centers to witness the torture of family members.²⁵ In Morocco, some women were detained with their infants and had to watch them suffer from hunger, heat, and cold.²⁶

Pregnant women and their unborn children face enormous risks while in detention. In Argentina, the National Commission on the Disappearance of Persons (CONADEP) estimated that at least 10 percent of disappeared women were pregnant.²⁷ Of the estimated 500 children born to them, the Abuelas (Grandmothers) of the Plaza de Mayo have helped to identify 115 since 1977.²⁸ It is believed that many women were kept alive until their babies were born and executed shortly afterwards. Their children were then likely given to military families and raised without knowing their true identity. In South Africa, apartheid-era policemen seeking amnesty from the Truth and Reconciliation Commission

20 Inter-American Court of Human Rights, González et al. (“Cotton Field”) v. Mexico, Series C, No. 205, Judgment (Preliminary Objection, Merits, Reparations, and Costs), ¶¶ 390, 398–402, 521–525, 602.

21 National Commission for Truth and Reconciliation, “Report of the Chilean National Commission on Truth and Reconciliation,” 650.

22 Goldblatt, “Evaluating the Gender Content of Reparations,” 54.

23 Case file number 1583. See Argentina Comisión Nacional sobre la Desaparición de Personas, “Nunca Más,” Part I (“The Repression: Health Conditions”).

24 Guillerot, ICTJ, “Morocco,” 11–12.

25 Argentina Comisión Nacional sobre la Desaparición de Personas, “Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas,” Part II (“The Victims: The effects on children”).

26 See Guillerot, ICTJ, “Morocco,” 12.

27 Argentina Comisión Nacional sobre la Desaparición de Personas, “Nunca Más,” Part II (“The Victims: The disappeared according to sex”).

28 *RTE News*, “Grandmothers of the Plaza de Mayo find another child.” For more information about the Abuelas de Plaza de Mayo, see www.abuelas.org.ar

(TRC) admitted to detaining and torturing young African National Congress (ANC) activist Nokuthula Simelane, who was pregnant at the time.²⁹

Women Relatives of the Disappeared

The disappeared are not the only persons considered direct victims of the crime, but also their spouse, parents, children, and even entire extended families. The International Convention for the Protection of All Persons from Enforced Disappearance defines a victim as “the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.”³⁰ Therefore, a single enforced disappearance can create many victims.

Because of traditional gender roles and structural inequalities, women relatives of the disappeared confront intersecting economic, social, and psychological harm in different ways than male relatives. Women experience more severe poverty and victimization when the disappeared is the family’s main or even sole breadwinner. In many countries, persons from the poorest segments of the population, for whom day-to-day survival is already tenuous, are easier targets for enforced disappearance. Thus, the violation can push families into extreme poverty.

Women relatives of the disappeared are frequently thrust overnight into the role of family breadwinner and single head-of-household, a role held by men in most societies. For many women, this necessitates entering the workforce for the first time. Lacking experience and skills, most are forced to take low-paying and insecure jobs, sometimes in distant urban centers. While relocating may open economic opportunities for women, it can also serve to further isolate them from community support and increase their risk of exploitation,³¹ or even sex work,³² and unsafe practices, putting them at greater risk of violence and transmission of HIV and other sexually transmitted diseases. Homelessness awaits many of those who struggle to find employment or who are turned out of the home by their in-laws. Handouts and assistance from charitable organizations may be some women’s only means of survival.

Women who are able to avoid extreme poverty often do so at the cost of educating and providing adequate health care for their children. For example, a Nepali woman “struggled for seven years to send her son to school and seek assistance for her young daughter’s epileptic condition” after the disappearance of her husband.³³ When a family has limited resources, boys are often prioritized for educational opportunities, further marginalizing girl victims. Older children, especially older daughters, are often forced to drop out of school to support the family or to care for their siblings. In Uganda some families of the disappeared married off girl children as a means of economic survival.³⁴

Some interviewees in a recent ICTJ report on the wives of the disappeared in Lebanon indicated that they had had to forgo their own educational goals as a result of a disappearance.³⁵ Similarly, in a research report from Colombia, wives and female relatives of the disappeared spoke at length about giving up their careers and longer-term dreams of education.³⁶

Disappearances can also have a disproportionately negative economic effect on older women. In many cultures, children, particularly male children, are expected to support their parents in old

29 Despite testimony from amnesty applicants, including conflicting testimony that she had been killed, there is no information about the location of Nokuthula or her remains. Sekeleni, “Mum wants to give her a proper burial,” South African History Online, “Nokuthula Orela Simelane.”

30 CED, art. 24(1).

31 Elena Alvites Alvites and Lucía Alvites Sosa, “Mujer y Violencia Política,” 121–137.

32 Duggan et al., “Reparations for Sexual and Reproductive Violence,” 196.

33 Perera, “War Widows Struggle in a ‘Man’s World.’”

34 Mazurana et al., Feinstein International Center and ISIS Women’s International Cross Cultural Exchange, “Making Gender-Just Remedy and Reparation Possible,” 53.

35 Yakinthou, ICTJ, “Living with the Shadows of the Past,” 14.

36 Bedoya González, “Impacto de la Violencia en la Población Vulnerable.”

age. Elderly parents are therefore at great financial risk when a son disappears. This was a primary concern of many of the mothers attending disappearance support groups near Johannesburg, South Africa. They expressed anger and bitterness about losing their children and the financial support they would have provided in their senior years.³⁷ Further, a women's inability to provide educational opportunities for her children after an enforced disappearance often means that their children do not have the same earning power to support them as they grow older.³⁸

Administrative expenses and obstacles linked to the uncertain legal status of the disappeared further strain the financial situation of families left behind, particularly for spouses. Bank accounts of the disappeared can be frozen, leaving women unable to access unspent salaries, savings, social security payments, and pensions of their husbands. In Mexico, some wives are cut off from social services that are only accessible to households with someone who is employed.³⁹ Women relatives are also adversely affected by discriminatory laws in some countries that make it difficult for women to own land, homes, and other forms of property or to transfer assets into their name. For example, in Lebanon, authorities require large sums of money to transfer land into the name of a wife or child of the disappeared, which often means family assets such as homes remain unsettled and cars go unused.⁴⁰

The government wants me to pay 50,000,000LL (approximately USD \$33,000) to transfer this land from the name of the father to the name of my children. If I want to sell it, I cannot sell it as such a price. So I had to stop this transfer since I only have 50,000LL out of the 50,000,000LL. I asked my kids to leave it as is.

– *Woman whose husband was disappeared, Lebanon*⁴¹

Often the only way for family members to access frozen funds and property is to declare a missing husband, son, or father dead. Further complicating matters, in many countries, obtaining a death certificate or presumption of death certificate for a missing person is only possible after the passage of a significant amount of time. Even when a declaration of death is possible, many family members are reluctant to request one; women may not believe that their husband or loved one is dead or they may feel guilt or fear about being seen to have abandoned the search. Further, compelling women to declare a loved one dead in order to resolve administrative and legal difficulties may force them to relive the initial trauma of the enforced disappearance.⁴²

Women may also face systemic challenges to procuring death certificates and other legal and administrative support due to their unequal access to education and basic services. For example, women heads-of-household who are illiterate will have great difficulty in filing necessary claims, if they can do so at all. Additionally, women and families in rural areas are often unable to access administrative services from official institutions, the courts, and the police.⁴³

The search for information about the whereabouts and fate of a disappeared loved one also compounds a family's financial hardship. Travel costs for repeated trips to police stations, army barracks, and the homes of witnesses are additional and unanticipated costs. Searching also requires an investment of time, reducing the number of hours that a woman can earn money.

37 Dewhirst, interviews with victims.

38 Yakinthou, ICTJ, "Living with the Shadows of the Past," 14.

39 Human Rights Watch, "Mexico's Disappeared," 82–88.

40 Yakinthou, ICTJ, "Living with the Shadows of the Past," 14.

41 *Ibid.*, 12.

42 Martín Beristain, Hegoa, "Manual sobre perspectiva psicosocial en la investigación de derechos humanos," 46, 71–75.

43 Mazurana et al., Feinstein International Center and ISIS Women's International Cross Cultural Exchange, "Making Gender-Just-Remedy and Reparation Possible," 54.

Our immediate concern at that time 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. Mountains of problems have increased after the disappearance of our husbands.

– *Woman whose husband was disappeared, Kanchanpur, Nepal*⁴⁴

Extortionists, blackmailers, and con artists, seeing an opportunity to profit from a family's desperate need for information, often prey on vulnerable relatives of the disappeared. Wives may be asked to pay bribes; they can be subjected to elaborate and ongoing scams, sometimes even by those responsible for the disappearance. In Lebanon, 15 of the 23 women interviewed by ICTJ disclosed that they had been a victim of one or more extortion attempts, with lost sums ranging from USD \$2,000 to \$100,000. In some of these cases extortion had continued over years, even decades.⁴⁵

Many women also spend money invoking the assistance of spiritual healers or guides. In Kashmir, wives of the disappeared make costly visits to holy men (darweshs) and provide offerings at Sufi shrines.⁴⁶ In South Africa, some female relatives of the disappeared reported making costly repeated visits to fortune-tellers and traditional healers for information, rituals, and herbal remedies to assist the search.⁴⁷

Women face economic hardships within the constraints of traditional gender roles. Wives often remain in the homes of their in-laws, where they may be seen as, and consider themselves, an economic burden. In Nepal, ICTJ research found that when there is mistrust in the family, the wife of a disappeared person may be viewed as a threat to family property and family lineage through the children,⁴⁸ leading to increased tension and family conflict.

Social and Physical Impact

Enforced disappearances create a climate of widespread fear and suspicion in which talking about the disappeared person or what happened can put others at risk. Neighbors, friends, and family members, out of fear for their own safety, may shun those closest to the disappeared, leading to further isolation and stigmatization within families and communities.⁴⁹ Moreover, women are sometimes blamed for disappearances, being seen to have failed in their motherly or wifely duties or by bringing bad luck to the family.

Family problems, or “intra-familial harassment,” after an enforced disappearance are widely reported by researchers around the world.⁵⁰ The main cause is usually economic, with mothers, daughters, wives, and even extended female family members perceived as burdens after the sudden disappearance of a male relative (who is usually the breadwinner). Disrupted family hierarchies and the challenging of traditional gender roles can also lead to tension. Women who take up work may be criticized for abandoning their traditional duties. Mothers who prioritize searching for the disappeared or conducting advocacy work over domestic tasks and raising children may find themselves in conflict with family members. In one extreme example, a mother of a disappeared woman in South Africa

44 Withers, ICTJ, “To Walk Freely with a Wide Heart,” 35.

45 Yakinthou, ICTJ, “Living with the Shadows of the Past,” 11.

46 Association of Parents of Disappeared Persons, “Half Widow, Half Wife?,” 7.

47 Dewhirst, interviews with victims.

48 ICTJ, “Beyond Relief,” 8.

49 Recent research in Uganda also points to a tendency of women and families of the disappeared to self-isolate. In Uganda, this was partly in response to being verbally abused about their disappeared spouse or child by members of the community at community events. See Dylan Mazurana et al., Feinstein International Center and ISIS Women's International Cross Cultural Exchange, “Making Gender-Just Remedy and Reparation Possible, 54.

50 Beristain, “The value of memory,” 24–26.

reported being beaten by her children because they resented the time and attention she devoted to searching for her missing daughter.⁵¹

Women and girls are also more prone to being victimized as a result of losing a loved one to enforced disappearance. In many cultures, without the protective presence of a father or husband, women and girls are at higher risk of abuse and sexual violence, including from male family members. Extortionists and scam artists also pose a threat; some may demand sexual favors in return for information about the disappeared. Women-headed households are especially vulnerable during times of ongoing conflict.

One man offered to help me. He has political influence. He took me to different places to find my husband. And then he started asking me to come and meet him in hotels at night.

– *Woman whose husband was disappeared, Nepal*⁵²

Women put themselves at risk when they seek the truth and advocate for the rights of the disappeared. In Guatemala, some female relatives of the disappeared were targeted for “selective rapes” by the military.⁵³ Members of the Mothers of the Plaza de Mayo in Argentina (“the Madres”) have been subjected to a wide range of violence and harassment. The group was formed during the darkest days of Argentina’s Dirty War (1976–1983), when an estimated 30,000 opponents of the military junta were detained and disappeared. Initially, the group comprised a small number of housewives who joined forces to ask questions at local police stations and military barracks. Later, the Madres became highly visible activists through their weekly marches at the Plaza de Mayo in Buenos Aires. Their public demonstrations demanding the truth about their loved ones were at times violently suppressed by police, who used weapons, dogs, and tear gas against protestors.⁵⁴ Three founding members of the Madres, Azucena Villaflor, Esther Careaga, and María Eugenia Bianco, were disappeared in December 1977, immediately after the Madres published a newspaper advertisement listing the names of their disappeared children. In April 2013, unknown assailants attempted to kidnap human rights defender Sofia Lopez while she was working on cases of enforced disappearances in Cauca, Colombia.⁵⁵

Wives of the disappeared also face unique social challenges linked to personal, familial, and societal pressure to conform to the traditional role of either a widow or a wife. Women in Kashmir have coined the term “half-widows” to capture their plight.⁵⁶ In some countries, bodily markings and rituals used to signify the status of marriage and widowhood place additional pressure on wives of the disappeared to choose a role. In Tamil culture in Sri Lanka, married women are expected to wear *thali* (a sacred chain similar to an engagement ring) and *kungumappottu* (a red mark on the forehead). Young unmarried women, divorced women, and widows are not allowed to wear these symbols; when they do so, the symbols are considered inauspicious. As a result, wives of the disappeared do not enjoy the same privileges as their married peers, including social gestures, such as being able to move to the front of the line at public events.⁵⁷

Similarly, in Nepal, married women have a higher social status and are more visible by wearing bangles and *sindhur* (red powder in the hair). Widows are expected to remove these symbols, resulting in the loss of privileges and experiencing “a social death.”⁵⁸ Wives of the disappeared may be reticent to remove social markers of marriage out of loyalty to their

51 Dewhirst, interviews with victims.

52 ICTJ, “Beyond Relief,” 13.

53 Comisión para el Esclarecimiento Histórico, “Guatemala Memoria del Silencio” (1999), Volume III, 51 (¶2469).

54 Tonner, “How has grief tourism re-defined the social and judicial progress of the Madres de Plaza de Mayo?,” 30–31.

55 Reliefweb, “Enforced Disappearances Continue in Colombia.”

56 Association of Parents of Disappeared Persons, “Half Widow, Half Wife?,” 1.

57 Somasundaram et al., “Individual, Familial and Social Impacts of Enforced Disappearances,” 16.

58 Robbins, “Ambiguous loss in a non-Western context,” 256.

husbands or reluctance to give up the benefits associated with a married status. At the same time, women who retain the markers are sometimes viewed with suspicion; some relatives and community members stigmatize wives, seeing them as predators or even prostitutes.⁵⁹

Wives of the disappeared also face judgment, questions, and pressure about remarriage. For some groups, such as the Marionites in Lebanon⁶⁰ and high-caste Nepalese, remarriage is strictly forbidden. Among lower-caste Nepalese and other patrilocal cultures, as in Kashmir and Sri Lanka, women who remarry bring stigma to their in-laws. As a result, wives of the disappeared may be trapped in families that resent their presence but do not want them to leave due to the social stigma that would follow. Wives who live in less restrictive societies where women do not typically live with their in-laws also experience pressure to remarry. Conflictingly, some women in Lebanon reported feeling compelled not to remarry in order to put their children first, while others felt pressure to remarry and move on with their lives.⁶¹

Enforced disappearances also require women to make difficult choices around childcare and child custody. Mothers in patrilocal cultures who decide to elope or remarry are expected to leave their children with their in-laws.⁶² This increases the likelihood that women will remain with their in-laws, even if there is inter-familial conflict. In Lebanon, where courts largely view men as the sole guardians of children, women in the absence of a husband struggle to obtain passports and other identification documents for their children. Some women are able to persuade sympathetic judicial officials and male relatives to grant them custody; others remain in legal limbo.⁶³

In many cultures, disappearances can also have a spiritual impact, particularly when the spirit world is understood to be as real and important as the physical world. Spirits of the disappeared interact with, and can impact, individuals, families, and communities. In Zimbabwe, the living maintain important relationships with relatives they believe to be deceased. Spirits of the disappeared are thought to be at unrest and can cause personal problems, like preventing the marriage of a relative, and community problems, like droughts.⁶⁴ Spirits of the disappeared and dead may also cause problems for perpetrators. For example, in Uganda a former military officer was said to have been possessed by a *cen*, or a vengeful spirit of a person who died violently or was not given a proper burial. He supposedly transformed himself from human to non-human form (as a “cat man”) and terrorized his community, attacking civilians.⁶⁵ In some cultures, the spirits are only appeased when certain rituals are conducted, especially those associated with the recovery of remains or the performance of burial rites. Where this is not possible, the spiritual impact of disappearances on entire communities can be deep and long-lasting. In Timor-Leste, spirits of the disappeared may be perceived as haunting families and communities if proper burial rituals have not been performed; they can cause sickness in the family or even the death of livestock.⁶⁶

Psychological Impact

Enforced disappearances negatively affect women’s mental health. Common reported symptoms include nightmares, anxiety, depression, guilt, anger, numbing of emotions,

59 Robins, “Towards Victim-Centred Transitional Justice,” 75–98.

60 Yakinthou, ICTJ, “Living with the Shadows of the Past,” 21.

61 *Ibid.*, 21.

62 International Committee of the Red Cross, “Accompanying the Families of Missing Persons,” 34.

63 Yakinthou, ICTJ, “Living with the Shadows of the Past,” 15–16.

64 Eppel, unpublished presentation.

65 Ojok, unpublished presentation.

66 Robins, Post-War Reconstruction and Development Unit, “An assessment of the needs of families of the Missing in Timor-Leste,” 49–50.

avoidance, constant alertness, and disturbed sleep.⁶⁷ For many women, the stress of a disappearance is also expressed somatically as high blood pressure,⁶⁸ chronic tiredness,⁶⁹ and chronic pain.⁷⁰ Some women in Nepal also reported mental impairment;⁷¹ women in Guatemala reported lapses in memory.⁷²

The ongoing uncertainty about the fate of the disappeared increases stress, with family members experiencing everything from anguish over the possible death of the loved one to the hope that they may someday miraculously return alive. Women, who are often at the forefront of the search for missing loved ones, are especially prone to cycles of hope and despair. The report of Chile's National Commission for Truth and Reconciliation (Rettig Commission) describes the typical experience of families: "For long years the relatives have lived with their hope continually frustrated. They have tried to maintain it, partly so as not to betray the missing person, partly out of their own need, but it is ever being denied them."⁷³

While some early researchers linked the psychological challenges faced by families of the disappeared to post-traumatic stress disorder (PTSD), a more appropriate description is that women and other family members are dealing with "ambiguous loss."⁷⁴ The ambiguous loss model recognizes that the source of stress for families of the disappeared is external and ongoing, differing greatly from PTSD, which stems from discrete earlier traumatic experiences.

Others have framed the psychological impact of enforced disappearances as frozen, interrupted, or complicated grief. Unlike those whose loved ones were killed outright through state violence, relatives of the disappeared are deprived of certainty and the remains of their loved ones; they, therefore, feel unable to adequately mourn or perform grieving rituals.⁷⁵ For example, Argentinian women reported that their inability to grieve prevented them from moving on with their lives.⁷⁶ Women in Lebanon reported that they had to internalize their grief and "become strong like a man," which at times led to feelings of isolation.⁷⁷

In many countries, frozen grief manifests itself in the home, as certain spaces become both memorials and a visual representation of the ongoing uncertainty. "Mummification" became epidemic in Argentina, where family members preserved the bedrooms and offices of the disappeared just as they left them, sometimes for decades.⁷⁸ In South Africa, some women still keep the clothing of the missing person,⁷⁹ and in Brazil, some families refuse to move homes in case their loved one returns.⁸⁰

Physical and mental health problems emanating from enforced disappearances can persist if left untreated, with the potential to develop into more serious conditions, such as heart disease and psychosis.⁸¹ Women are particularly at risk due to unequal access to healthcare.

67 For more information, see International Committee of the Red Cross, "Accompanying the Families of Missing Persons: a Practical Handbook."

68 This was widely reported by mothers of the disappeared in South Africa.

69 The Families of Victims of Involuntary Disappearance et al., "And They Shall Cry No More," 110.

70 Robins, "Towards Victim-Centred Transitional Justice," 75-98.

71 *Ibid.*

72 Chirix García, "La lucha de las mujeres mayas kaqchiqueles por la recuperación de la memoria de los desaparecidos," 31-43.

73 National Commission for Truth and Reconciliation, "Report of the Chilean National Commission on Truth and Reconciliation," 1004.

74 Ambiguous loss is a "situation of unclear loss resulting from not knowing whether a loved one is dead or alive, absent or present." See Boss, *Ambiguous Loss*, 3, 6.

75 Blaauw and Lähteenmäki, "'Denial and silence' or 'acknowledgement and disclosure,'" 768.

76 Arnoso et al., "Mujeres jujeñas y sobrevivientes," 141-161.

77 Yakinthou, ICTJ, "Living with the Shadows of the Past," 2015, 16.

78 Hamber and Wilson, "Symbolic Closure through Memory," 35-53.

79 Hahn and Segal, *Khulamani: Speak Out!* (Video).

80 Hamber and Wilson, "Symbolic Closure through Memory," 35-53.

81 The Families of Victims of Involuntary Disappearance et al., "And They Shall Cry No More," 109.

Women as Advocates and Seekers of Truth and Justice

Despite economic hardships, social stigma, and mental health challenges, many women are able to transform their lives after a disappearance to assume roles as activists and community and movement leaders. Pushed into the public sphere by the need to seek work and the truth about the fate of their missing loved ones, women's civic participation can increase after a disappearance. This may prompt new ways of thinking about the social roles of women.⁸²

The Madres of the Plaza de Mayo is the most well-known example of women creating new models of activism in the wake of disappearances.⁸³ Much has been written about their use of their roles as mothers and women to conduct protest activities. In an environment where young men (and to a lesser extent, young women) were targets for enforced disappearance, being older women initially gave the Madres a shield of protection when conducting searches and demonstrations. Using their positions as mothers, or “performing” motherhood,⁸⁴ was essential to their effectiveness. Presenting their protests as a “natural” maternal response,⁸⁵ rather than a political response, galvanized broader public support for their efforts. The core of their mission also involved transforming traditionally private grief into public protest. They have been described as modelling themselves on the Virgin Mary, “the ultimate mother who transcends the public/private bind by carrying her privacy with her even in public.”⁸⁶ The effect was a provocative and moving spectacle of protest that made the Madres one of the most successful nonviolent protest movements in the twentieth century.

The Madres have become a model for human rights movements around the world, specifically those struggling against disappearances. Some organizations have followed the Madres' tactics very closely. In Kashmir, mothers and other female relatives meet weekly to protest in Srinagar's municipal park.⁸⁷ Since 1995, the Saturday Mothers have gathered every week in Istanbul, Turkey, outside the Galatasaray High School for a 30-minute silent protest against enforced disappearances.⁸⁸ From 1988 to 1994, a number of Israeli women formed the Women in Black movement and began holding weekly vigils in Jerusalem.⁸⁹ The Tiananmen Mothers in China consciously chose to identify themselves as mothers and held peaceful protests—after the 1989 killing of pro-democracy demonstrators in Beijing's Tiananmen Square—until they were placed under house arrest.⁹⁰ The Madres, and other women activists who have followed in their footsteps, continue to drive the global struggle against enforced disappearances and shape transitional justice processes around the world.

82 Alvites Alvites and Alvites Sosa, “Mujer y Violencia Política,” 121–137.

83 Peluffo, “The Boundaries of Sisterhood,” 79.

84 Taylor, “Making a Spectacle,” 102.

85 Burchianti, “Building Bridges of Memory,” 133, 139.

86 Taylor, “Making a Spectacle: The Mothers of the Plaza de Mayo,” 102.

87 Interview with Khurram Parvez of the Jammu and Kashmir Coalition of Civil Society, 21 August 2013 (Srinagar, Kashmir).

88 For more information, see Memorialize Turkey, “Saturday Mothers.”

89 Warschawski, “Women in Black, Jerusalem.”

90 For testimonies of the Tiananmen Mothers, see Human Rights in China, “Tiananmen Mothers.”

3. Truth

A key aim of transitional justice mechanisms that address enforced disappearance is to establish the truth about what happened to an individual who was disappeared and clarify his or her fate. For most relatives of the disappeared, the need to obtain the truth about what happened is a top priority. To do this, most mechanisms—in the form of truth commissions or commissions of inquiry—conduct investigations, gather archival evidence, and collect testimony from victims, survivors, and witnesses. Their findings are generally published in final reports.

In order to establish peace and harmony in the state, it's of utmost importance to find out the truth. Our children will know how and why their father disappeared, otherwise they might end up doing something bad.

– *Woman whose husband was disappeared, Bardiya, Nepal*⁹¹

A gendered approach to truth-seeking initiatives has evolved over time. While early truth commissions, such as in Chile and Argentina, took a gender-neutral approach, later commissions in South Africa, Guatemala, and Peru took some steps to include a gender perspective in their work. Further, truth commissions in Morocco and Timor-Leste explicitly included gender in their mandates. However, significant challenges remain in properly revealing the gender-related aspects of enforced disappearances.

A common gender critique of truth-seeking initiatives is that they focus too narrowly on bodily harm, at the expense of social and economic harms, which, as described above, disproportionately impact women in the wake of enforced disappearance.⁹² Because the majority of those who are disappeared are men, the focus is mainly on men's experiences. However, women's experiences as victims of disappearance are important to understanding the full and lasting impacts of the violation. For instance, ICTJ found in Morocco that obtaining the testimony of women affected by disappearances increased the general understanding that enforced disappearances also victimized the families of the disappeared.⁹³ Truth commissions, therefore, must ensure that the voices and needs of women are properly captured.

Given the risk that disappearances of women are under-reported, investigation and research units should incorporate a gender-sensitive approach in their work. This may include educating investigators about the particular challenges in documenting the disappearances of women, providing training to more proactively probe for cases, and conducting a gendered analysis of the crime.

91 Withers, ICTJ, "To Walk Freely with a Wide Heart," 40.

92 For more discussion, see Nesiah et al., ICTJ, "Truth Commissions and Gender."

93 Guillerot, ICTJ, "Morocco," 30.

Reporting on Disappeared Women

Despite the lack of gender-focused investigations, most truth commissions have reported to some extent on disappearances of women. In the final reports of truth commissions in Chile, Guatemala, and Argentina the experiences of female disappeared-detainees are integrated into the general accounts of conditions at secret detention centers. Women's testimonies illustrate that they suffered similar violations as men, including interrogations, beatings, electric shocks, and sleep deprivation. In Peru, accounts of female disappeared detainees appear throughout various chapters. This includes both in gender-neutral chapters on violations, such as torture and enforced disappearance, and in the chapter focused specifically on gender-based sexual violence.

These reports also highlight gender-based violations perpetrated against female detainees, albeit, with the exception of the Peruvian report, only in a limited way. The Argentine report includes an account of the rape of a woman detainee that resulted in a hemorrhage.⁹⁴ That case, however, is not included to highlight sexual violence against female detainees, but rather to draw attention to abysmal medical treatment available in detention centers. The Chilean report makes a brief but broader reference to gender-based violence in detention, stating “[t]orture for women prisoners was sexual, and took many and bizarre forms.”⁹⁵ Likewise, the Guatemalan report concludes that many women victims of enforced disappearance likely experienced sexual violence. In fact, one of the published testimonies notes that “women were raped day after day. What is certain is that every woman that was detained, no matter her age, was raped.”⁹⁶ As with the Argentine report, some instances of rape and other forms of sexual violence against female disappeared-detainees are referenced when reporting on other patterns of abuse, like being forced to watch the torture of others.⁹⁷ By contrast, in the Peruvian report, cases of torture, sexual violence, and rape during detention are described more explicitly throughout the text, detailing instances of horrific violence against numerous women.

One exception to the tendency of most reports to generalize about cases of female detainees is the reporting on pregnant disappeared women, who received specific attention in several reports. The Chilean⁹⁸ and Argentinian reports contain two longer sections on “Births in Captivity” and “Children and Pregnant Women Who Disappeared” that expose horrific violations suffered by women and children. However, given the above instance of rape to highlight inadequate access to medical treatment and in the absence of a broader gender analysis, this focus may suggest that the treatment of women drew attention because of their role as mothers and child bearers.

In some countries, civil society organizations have shared information and submitted reports to add gender perspectives to commission research and findings.⁹⁹ In Morocco, the commission contracted local academics to draft a report on women's experiences, including enforced disappearances and detention. Unfortunately, the women's report was commissioned too late in the process to be included in the final report.¹⁰⁰

Gathering the Stories of Women Victims

There are still challenges in how truth commissions and other transitional justice mechanisms approach the impact of enforced disappearance on female relatives of the disappeared. While family associations and activist groups working on the issue of enforced disappearances have

94 Argentina Comisión Nacional sobre la Desaparición de Personas, “Nunca Más,” Part I (The Repression: Health Conditions).

95 National Commission for Truth and Reconciliation, “Report of the Chilean National Commission on Truth and Reconciliation” 160.

96 Comisión para el Esclarecimiento Histórico, “Guatemala Memoria del Silencio,” Volume III, 23, ¶2389.

97 *Ibid.*, Volume II, 487, ¶2261.

98 National Commission for Truth and Reconciliation, “Report of the Chilean National Commission on Truth and Reconciliation,” 648.

99 Nesiya et al., ICTJ, “Truth Commissions and Gender,” 13, 15, 34.

100 Guillerot, ICTJ, “Morocco,” 23.

played a key role in broader outreach to ensure that as many stories as possible are collected, truth commissions often face challenges in accessing women, especially rural and indigenous women who live far from statement-taking centers and do not speak dominant languages. In Timor-Leste, as many as 60 percent of family members of the missing who were interviewed had little or no knowledge of the Commission for Reception, Truth and Reconciliation.¹⁰¹ Many victims struggle to engage with the rights-based language used by truth commissions and find their mandates out of step with their everyday needs.¹⁰² The stigma, fear, and trauma associated with the crime of enforced disappearance may compel some victims to stay silent. Other women may not immediately have enough trust to reveal their story to a commission. In many countries, truth commissions are only able to document a fraction of the cases believed to have taken place.¹⁰³

Women who experienced sexual and gender-based violence in the context of an enforced disappearance have generally been reluctant to share their stories with commissions.¹⁰⁴ Others only speak out after many years. In Argentina testimonies of sexual violence only surfaced decades after the truth commission. As one survivor expressed, “At first we spoke of fellow detainees who we had seen alive in the secret centers and who were still missing, then we identified the perpetrators that we were able to recognize, now it is time to talk about each and every one of us.”¹⁰⁵ Women who experienced sexual violence as a result of a disappearance (for example, while searching for a loved one) may feel that talking about their violation is less important than talking about—and getting answers about—the disappearance itself.

Truth commissions and other transitional justice mechanisms need to provide encouragement for women’s participation and create a suitable space for them to speak about their own victimization and the impact of enforced disappearance on their own lives. Women should be assured that doing so will not compromise a truth commission’s capacity or willingness to clarify the fate of the disappeared. This message must be included in a commission’s outreach strategy so that women’s groups, the media, and disappearance organizations can raise awareness about the importance of women’s testimony and prepare interviewees appropriately.¹⁰⁶ To encourage women to speak out, gender-sensitive interview questionnaires must be developed, along with training for interviewers on how to respectfully prompt women about their own experiences. Commission staff must also be trained to take a gender-sensitive approach at public hearings and to provide safe spaces (such as women-only hearings) for female survivors to talk about their experiences.

Even with improved outreach strategies and extensions of timelines, truth commissions will not be able to take statements from all women affected by enforced disappearances, especially in countries where the violation was perpetrated on a large scale. Even fewer women will have the opportunity to testify at public or women-only hearings. In light of this, truth commissions and other transitional justice mechanisms should make recommendations for locally driven, women-led truth-telling processes to continue after they have finished their work. Timor-Leste has had some success in this, with groups of victims (men and women) actively constructing their own histories through local memory practices. These initiatives correspond with long-standing local

101 Robins, “Challenging the Therapeutic Ethic,” 16.

102 *Ibid.*, 21.

103 For instance in South Africa, the Khulumani Support Group claims to have documented close to 2,000 cases of enforced disappearance, well above the 477 people named in the 1,500 statements submitted to the Truth and Reconciliation Commission. See Enforced Disappearances Information Exchange Center, “Enforced disappearances in South Africa.”

104 According to South African researcher Beth Goldblatt, some of these reasons include the difficulty in talking about rape, unwillingness to betray comrades who perpetrated sexual violence, desire to move on with their lives, and fear of public shame as they adopted prominent roles in society. See Goldblatt, “Evaluating the Gender Content of Reparations,” 54–55.

105 Balardini, “Gender-based violence in secret detention centers.”

106 After the TRC process in South Africa had already commenced, women’s groups demanded that the TRC validate women’s experiences and encourage more women to speak about themselves. Even when Commissioner Yasmin Sooka asked women about their own experiences, she reported that many refused to speak about them. See Goldblatt, “Evaluating the Gender Content of Reparations,” 53–55.

traditions in rural communities and appear to be a “more valuable coping mechanism than public testimony.”¹⁰⁷ Transitional justice mechanisms should foster and recommend the long-term support of local or indigenous forms of truth-telling to provide women with a space to share their stories if they choose to do so after an official process has ended.

Lack of Gender Analysis About Women Victims in Final Reports

Truth commission final reports have thus far at best partially analyzed the experiences of women partners of the disappeared. Early truth commissions lacked any gender analysis. The final report of Chile’s commission, released in 1993, includes a section on the treatment of families (of the disappeared and other victims of human rights violations), yet it fails to differentiate between the impacts on women and men.¹⁰⁸ The Argentine report, of 1983, contains rich testimony from female relatives of the disappeared, but there is no over-arching analysis of the impact of the crime on women. While the South African TRC final report devotes an entire chapter to disappearances, the focus is primarily on patterns and types of disappearances; the only specific reference to women is made in the TRC’s recommendation that special attention be given to women facing difficulties as single heads-of-household.¹⁰⁹ Likewise, there is little analysis of the specifically gendered dynamics of disappearance in the relevant chapters of the Guatemalan report. The report’s conclusions, however, both acknowledge the differential socioeconomic effects of enforced disappearance on women and recognize the activist role that many women have played in the search for the truth about the disappeared and killed.¹¹⁰

There is a more nuanced analysis in the Peruvian report, which might be a model for future commissions. The report analyzes certain patterns of violence beyond just sexual violence through a gender lens. It considers, for example, reasons why women may have been less likely to be subjected to enforced disappearance and more likely to fall victim to more direct forms of violence, such as execution and massacre. It concludes that armed agents could act with greater impunity against more marginalized members of society, like women, as they were less likely to report a violation, had less access to justice, and were less likely to be believed or listened to if they made a complaint. Thus, the less “visible” the actor is in the public sphere, the lower the perceived need is to take the necessary precautions inherent in enforced disappearance to continue to operate with impunity.¹¹¹ Further, in recognizing that the families of the disappeared must be considered direct victims, the Peruvian TRC also recognizes that women suffered this form of victimization to a different—and greater—degree than others. For instance, it is recognized throughout the text that women had to take on the role of head-of-household while searching for their loved ones and faced abuse, harassment, and continued mistreatment. Importantly, the specific chapter on the unique impacts of violence on women analyzes the multitude of ways in which they experienced conflict in Peru and critically challenged the norms and structures that made so much of the violence against women possible.

Following a model such as the Peruvian commission’s would help to reduce the risk that the particular victimization of women is marginalized and inadequately addressed.

Exhumations and Reburials

Exhumations and reburials can be powerful forms of truth and reparation for families of the disappeared. If done properly, they can provide many benefits for women, such as clarifying the fate of their loved ones, lifting the burden of the search, and providing evidence to hold

107 Robins, “Challenging the Therapeutic Ethic,” 21.

108 National Commission for Truth and Reconciliation, “Report of the Chilean National Commission on Truth and Reconciliation,” 170–171.

109 South African Truth and Reconciliation Commission, “Report of the Human Rights Violations Committee,” 539.

110 Comisión para el Esclarecimiento Histórico, 23, paras. 29–30.

111 Comisión de la Verdad y Reconciliación, “Informe Final” VI (2003), 105.

perpetrators accountable. Returning the remains of the disappeared also provides women with the opportunity to perform burial and grieving rituals—assisting them to privately and publicly deal with the psychological impact of frozen grief and ambiguous loss. Such rituals may also assist women victims to rehabilitate their social status and restore the social fabric of communities.

Exhumations have been conducted in most countries where transitional justice mechanisms have occurred, including Argentina, Brazil, Chile, Colombia, El Salvador, Ghana, Guatemala, Mexico, Morocco, Paraguay, Peru, South Africa, and Uruguay. In most Latin American countries, families have advocated for them before, during, and after a truth commission or inquiry.¹¹² Government-led exhumations have sometimes emanated from truth commissions, with some states (including Chile, Peru, and South Africa) establishing forensic teams to continue the work on a more permanent basis. The vast majority of exhumations are conducted post-conflict, with the exception of Colombia, where government forensic teams have been working in areas of active conflict since the mid-2000s.

Despite a wealth of field experience and practice, minimal research is available on the impact of exhumations on women,¹¹³ especially on how (or if) exhumation teams integrate a gender perspective into their work. In Morocco, researchers surmised that there was an absence of a gender lens in the team's methodology,¹¹⁴ the same has been concluded in Peru,¹¹⁵ and is likely to be the case elsewhere as well. Using a gender perspective does not mean prioritizing the exhumation of women. It instead requires taking into account the gender of the person to be exhumed in the examination of remains, including looking for evidence of gender-based violence.

In some countries, exhumations are conducted without the consultation or the involvement of women and other family members—sometimes because forensic teams see them as unnecessary or even obstructive.¹¹⁶ However, the participation of women victims is particularly important given their role as both victims and leading actors in the struggle to account for the disappeared. It also provides women with an opportunity to address the social impact of disappearances and rehabilitate their status in communities. Where exhumations provide solid proof that disappearances occurred, they can facilitate public acknowledgement of the suffering of women relatives of the disappeared.

Preliminary research suggests that there is, at best, limited psychosocial accompaniment during exhumations for women and survivors in most parts of the world, although the exhumation process is rife with potential sources of trauma,¹¹⁷ notably in that the inability to locate or positively identify remains can lead to bitter disappointment. Psychosocial accompaniment is critical to minimize potential harm and help women to deal with frozen grief and ambiguous loss.¹¹⁸ Organizations in some countries, like Peru, have provided support during the excavation phase;¹¹⁹ however, in most countries families drive investigations, attend exhumations, and organize reburials with little support.

112 See Navarro García et al., "Exhumation processes in fourteen countries in Latin America," 82–83.

113 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," 34. International conferences in 2007 (in Guatemala) and 2010 (in Bogota) brought together forensic professionals, psychosocial support staff and family members from around the world to share their experiences and identify best practices. The conferences produced the *Working Document for an International Consensus on Minimum Standards for Psychosocial Work in Exhumation Processes*.

114 Guillerot, ICTJ, "Morocco," 22.

115 Yarwood, *Women and Transitional Justice*, 195.

116 See Navarro García et al., "Exhumations in Latin America," 4–5, 10.

117 Some researchers have suggested that viewing the bodily remains can sometimes harm women and other family members. See Blaauw and Lähteenmäki, "'Denial and silence' or 'acknowledgement and disclosure,'" 779. However, in a review of fourteen countries in Latin America, this was not found to have been the case. Anecdotal evidence from South Africa also supports this view. See, generally, Navarro García et al., "Exhumation processes in fourteen countries in Latin America," 55.

118 Although there is increasing psychosocial support for families of the disappeared globally, there is not always support available during the exhumations process, especially in countries where exhumations are conducted by the state. See Navarro García et al., "Exhumation processes in fourteen countries in Latin America," 50.

119 Navarro García et al., "Exhumation processes in fourteen countries in Latin America," 55.

The working document on the International Minimum Standards for Psychosocial Work in Exhumations sets out “psychosocial accompaniment” as the model for survivor support whereby individual victims, families, and communities are supported and involved throughout all stages of the investigation and exhumation process.¹²⁰ Guatemala has become a model of best practice, with six institutions providing long-term psychosocial accompaniment to family members at all stages of the process. They spend months within communities to develop trust and facilitate discussions around reparation policies and possibilities for justice. They explain the forensic process in detail and manage expectations. Importantly, they continue to visit communities after exhumations have taken place to monitor their ongoing needs.¹²¹

¹²⁰ *Ibid.*, 49–50.

¹²¹ *Ibid.*, 50–52.

4. Reparations and Relief

The diverse and complex social, economic, psychological, and cultural consequences of enforced disappearance on women require a comprehensive reparative response. This may take different forms, such as monetary compensation, psychosocial support services, healthcare, educational benefits, and housing. Reparations packages that contain a diverse range of measures often more effectively address the harm suffered by victims.

Financial and Material Reparations

At the outset, it is important to acknowledge that no amount of money can ever bring back a person who was disappeared or “repair the irreparable,”¹²² thus material reparations will be largely symbolic in nature. Nonetheless, they still offer practical benefits to women, including easing some of the economic hardship resulting from the loss of a relative who may be the family breadwinner and reducing the guilt associated with being an economic burden on in-laws. Monetary reparations may also provide partial compensation for searches that were conducted or funds to continue the search.

Individual financial payments are the most common type of reparation provided to victims of enforced disappearance, with at least 15 states issuing once-only award payments and/or pensions to victims and family members. In addition, some transitional justice mechanisms have conceptualized and recommended the provision of a broad range of services to meet victims’ educational, medical, and social needs. Unfortunately, the gap between recommendations and actual implementation is immense.

Reparations, Truth, and Justice

Financial reparations for disappearances have been met with controversy and resistance from many women. Some see reparations as “blood money” or an attempt by the state to buy their silence. Some family associations have opposed or refused to apply for financial reparations, especially when the government is seen to be doing little to seek the truth or promote justice. Given that reparations programs in Argentina in the mid-1990s were implemented by the same administration that supported amnesty and had pardoned military officers found guilty of enforced disappearances and other human rights violations, Hebe de Bonafini, a leader of the Madres of the Plaza de Mayo, compared taking its money with prostitution.¹²³ In Brazil, the Commission for the Family Members of the Persons Killed or Disappeared for Political Reasons viewed government efforts to compensate families as attempts to “close the book on the past without revealing the facts of what happened.”¹²⁴ In Nepal, wives have expressed

122 Hamber, “Repairing the Irreparable,” 215–226.

123 Peluffo, “The Boundaries of Sisterhood,” 91.

124 Brandon Hamber, “Repairing the Irreparable,” 220.

concern that payments were designed to distract from the search for the truth about their husbands.¹²⁵ While these examples all deal with financial reparations, similar concerns could arise in accepting other forms of reparations without any matching truth or accountability effort by the state.

Justice will be achieved . . . when the state comes and inquires about the needs of the families, mothers, wives of the disappeared and helps them, and gives them all of the support they need, like social security for those who don't have it.

– *Woman whose husband was disappeared, Lebanon*¹²⁶

Undoubtedly some women have chosen to accept monetary reparations. In Argentina, most relatives of the disappeared adopted a pragmatic approach, understanding that accepting reparations did not hamper their ability to continue demanding justice.¹²⁷ However, linking reparations to broader truth and justice initiatives importantly ensures that more women victims of enforced disappearance will receive—and accept—reparations. It will also encourage women to participate and have confidence in reparations programs, leading to a more coherent and successful transitional justice process.

Recognizing Women as Victims of Enforced Disappearance and Addressing Gendered Harm

While international law recognizes female relatives as victims of enforced disappearance, many reparations programs have not provided such recognition. In Chile, Argentina, and Brazil family members were considered heirs to the disappeared and not victims in their own right. Both the legal language and conceptualization of these programs sent the message that financial compensation was being provided “for the lost loved one, rather than as a means for alleviating the surviving family members’ own suffering and harm.”¹²⁸ By including relatives of the disappeared as persons eligible for reparations in their own right, commissions in Guatemala and Peru have recognized their status as direct victims.¹²⁹

In South Africa mixed messages have prevailed. The legislative act that established South Africa’s TRC and the TRC’s Human Rights Violation Committee treated the disappeared and their affected relatives equally and did not presume that relatives and dependents suffered less. The TRC’s Reparations and Rehabilitation Committee, however, took the opposite stance, distinguishing between “primary” and “secondary” victims. Secondary victims (relatives and dependents) were only eligible for financial reparations if the primary victim had died.¹³⁰ A gender bias underpins these messages, entrenching the stereotype of women as passive or indirect victims who suffer less.

By acknowledging women relatives as direct victims, reparation programs are better able to acknowledge the psychological, social, and economic consequences for women that, although less visible, are equally challenging.

How to acknowledge and address the multiple and overlapping harms suffered by women as a result of disappearances is complex and still under discussion. For instance, one query is whether women’s harm can be fully recognized and addressed as part of a case of enforced disappearance or whether it would be more advantageous for them to report certain acts as separate violations. For example, if the mother of a disappeared person is raped by army officers while inquiring about the whereabouts of her missing son, should this be seen as harm caused by the enforced disappearance or should it be acknowledged and addressed as a separate violation?

¹²⁵ Robins, “Towards a victim-centred transitional justice,” 15.

¹²⁶ Yakinthou, ICTJ, “Living with the Shadows of the Past,” 24.

¹²⁷ Guembe, “Economic Reparations for Grave Human Rights Violations,” 46–47.

¹²⁸ Rubio-Marín, “Repairing Family Members,” 268.

¹²⁹ *Ibid.*, 268.

¹³⁰ Goldblatt, “Evaluating the Gender Content of Reparations,” 62–63.

Acknowledging and addressing gendered violations as elements of an enforced disappearance help to reveal the true extent and impact of the crime and, therefore, improve the capacity to adequately redress women victims. On the other hand, women may be able to receive additional compensation and access more services if they report certain violations separately. A further issue is whether such violations should entitle the victim to additional compensation, even if they occurred in the context of the search for a disappeared person. In Colombia, Guatemala, and Peru women (and men) can apply for reparations for multiple violations.

Trading Death Declarations for Reparations

Some reparation and relief programs only provide financial compensation to relatives of deceased persons. For example, Morocco defines beneficiaries as “successors (spouse, children, parents) of victims who *died* during enforced disappearance.”¹³¹ In Nepal, the Interim Relief Program (IRP) initially granted lump-sum awards of 25,000 NRs to the next-of-kin of the disappeared that were only 25 percent of the amount awarded to the next-of-kin of the deceased (100,000 NRs).¹³² With widespread poverty and social pressure from in-laws who perceived some wives of the disappeared as economic burdens, this placed many women in a difficult position of having to decide whether to declare their husband dead in order to receive higher compensation. At least one-fifth of wives interviewed by ICTJ reported that they had chosen to declare their missing husbands dead.¹³³ Although there may have been other factors involved, it is likely that some of these women made the decision out of economic pressure created by the design of the IRP. In 2009, the IRP amended its policy to equalize next-of-kin awards for the disappeared and deceased. However, by then, some of the disappeared had already been declared dead by their loved ones, in part, in order to access benefits.

Transitional justice approaches should not require women to trade declarations of death for reparations. Doing so forces them to make an unacceptable decision that can have long-term social and psychological consequences, especially for those who feel that declaring a loved one dead is tantamount to “killing” them.¹³⁴ Declaring a death may also seem to impede or remove the state’s incentive to investigate, sending a message that women must choose between reparations and truth.

Recognizing Partnerships

Although reparation and relief programs have generally recognized partnerships that go beyond legalistic concepts of matrimony,¹³⁵ some evidence of conservative notions of marriage and family remain. No reparations program has acknowledged same-sex unions, thereby denying compensation to female partners of disappeared women (and male partners of disappeared men). Common law partners also faced unequal treatment in some countries. In Brazil, common law partners were given lower priority than spouses. As a result, they were only able to receive financial payments if the spouse had died or was absent. Under initial legislation in Chile, common law partners of the disappeared were only entitled to reparations as mothers of out-of-wedlock offspring; the amount was restricted to a smaller percentage (15 percent) of pensions than their conventionally married counterparts (40 percent). Subsequent laws and “grace pensions” were largely successful at addressing these inequalities.¹³⁶

The treatment of women involved with disappeared men who had two or more partners differs widely across countries and cultures. In South Africa, where multiple partnerships are legally recognized and widespread, there was a lack of clarity surrounding policy and practice.

131 Guillerot, ICTJ, “Morocco,” 27 (emphasis added).

132 ICTJ, “Beyond Relief,” 12.

133 *Ibid.*, 12–13.

134 Suarez-Orozco, “The heritage of enduring a ‘dirty war,’” 496.

135 Nesiya et al., ICTJ, “Truth Commissions and Gender,” 37.

136 Rubio-Marín et al., “Repairing Family Members,” 274–279.

When a man left behind a wife and a domestic partner, formally only the wife benefited from reparations; however, there is also evidence that “girlfriends” were accommodated in practice.¹³⁷ Argentina adopted an egalitarian approach: if the disappeared man had a spouse and a common-law partner they shared the pension equally.¹³⁸ In Peru, where there are many de facto unions and many of the disappeared had two partners, the Truth and Reconciliation Commission recommended that reparations be paid to all claimants who could prove dependency.¹³⁹

While reparation programs have demonstrated the ability to flexibly and progressively accommodate a wide array of partnerships, more work needs to be done to ensure that no legitimate female partner is excluded.

Acknowledging Harms to Girl Children

Children of the disappeared have been recognized as beneficiaries by most reparations programs. There is, however, no distinction made between girl and boy children or recognition of the gendered impact of disappearances on children. In Argentina, children are at the top of the priority order for lump-sum awards. In other countries, payments are made to the surviving parent with the assumption that they will share it equitably with their children. This distribution policy may place girl children of the disappeared at risk where deep-rooted cultural beliefs and societal attitudes favor expenditure on boy children.

Most reparation programs classify children as people under the age of 18. Because reparation programs are not usually launched until years after an enforced disappearance has occurred, awarding compensation only to children under the age of 18 runs the risk of excluding those who suffered harm as children immediately after the disappearance but who are over 18 by the time that a reparation program is implemented.¹⁴⁰ This is particularly problematic for adult children of the disappeared who missed out on educational opportunities because of economic hardship caused by a disappearance. Since social and cultural attitudes in many countries where enforced disappearance takes place prioritize education for boys, it is probable that girls and young women are more affected in this way than their male counterparts.

Some countries have taken steps to provide a greater number of children of the disappeared with access to educational benefits. In Chile, children are able to access educational benefits until the age of 35.¹⁴¹ In Argentina, they are entitled to pensions until the age of 25 or until they receive a university degree.¹⁴² However, even these age extensions may be insufficient. For example, while Peru has made a limited number of scholarships available to children of both the disappeared and deceased under the age of 30, researchers found that the policy still excluded 74 percent of potential beneficiaries because they were above the age limit.¹⁴³

Reparation programs need to develop policies that overcome the gendered impact of enforced disappearances and structural disadvantages faced by many girl children victims. This requires, for example, reviewing distribution methods (notably “apportioning”) that earmark equitable payments specifically for each child and creating scholarship programs specifically for girls and young women victims.

137 Goldblatt, “Evaluating the Gender Content of Reparations,” 68.

138 Correa, “Reparation Programs for Mass Violations of Human Rights,” 422.

139 Guillerot, “Linking Gender and Reparations in Peru,” 155–156.

140 Rubio-Marín et al., “Repairing Family Members,” 280–281.

141 Law No 19.123 of Chile that Creates the National Corporation for Reparations and Reconciliation and Awards Benefits to those Persons Here Specified, art. 29.

142 Rubio-Marín et al., “Repairing Family Members,” 280.

143 Correa, ICTJ, “Reparations in Peru,” 22–23.

Recognizing and Addressing Harms to Mothers of the Disappeared

In the vast majority of countries, there is no differentiation between mothers and fathers, with little acknowledgement of the gendered impact of disappearances, the additional harms that many mothers face, and their additional vulnerabilities in certain contexts. As mentioned previously, many have become tireless activists, appearing at the forefront of the search for the disappeared and as leaders of advocacy campaigns and organizations. Yet these mothers are not treated as priority beneficiaries by most reparation programs. Although countries such as Brazil, Guatemala, and South Africa have set aside the rights of inheritance to include parents, mothers are often prioritized near the bottom for disbursement. In Chile and Peru, where awards are apportioned, parents receive a smaller share. These policies may give the impression that reparation programs perceive mothers (and fathers) to be less affected by disappearances than children and partners, or at least that they have less-significant reparation needs.¹⁴⁴

As exceptions, Chile and Peru affirm the unique role of mothers and older women. Under Law 19.980, the Chilean reparations program specifically assigns awards to mothers; fathers are only able to access awards in the case of the mother's death or absence.¹⁴⁵ In Peru, the Truth and Reconciliation Commission recommended a pension equivalent to one-half of the minimum salary for women victims over the age of 50 as "a form of acknowledgement for the mothers who had fought over so many years for truth and justice."¹⁴⁶ Thus, reparations programs should consider the gendered impact of disappearances on mothers when developing their policies.

Registering Women Victims of Disappearances

Women often face a number of challenges in registering and applying for reparations—and receiving them. Female relatives of the disappeared, especially wives and partners, face challenges because of the legal uncertainty surrounding the legal status of the disappeared.

The registration of women, particularly rural, indigenous women who live far from statement-taking centers and often do not speak dominant languages, for reparations programs can be particularly difficult. Female victims of enforced disappearance, like other women victims of human rights violations, may lack information about their rights; they are often unaware that reparations are available to them. Even when women are aware of their rights and government programs, they may still be reluctant to apply, due to the stigma, fear, and trauma associated with the crime of enforced disappearance. Others may not immediately trust a reparations program, especially in the context of amnesty negotiations or in the absence of investigations for the disappeared.

Family associations and activist groups working on the issue of enforced disappearance can play a key role in identifying and referring victims to reparation programs. These groups, most of whose members are women, may also provide a safe space for women to discuss personal and political concerns about engaging with such programs, perhaps leading to greater participation. State programs can also use existing disappearance networks to educate women about entitlements, procedures, and deadlines for reparations programs.

Transitional justice mechanisms in many countries have extended their application deadlines or set up permanent registries for victims.¹⁴⁷ This favorably impacts women, especially wives and other female relatives of the disappeared, who may need additional time to emotionally prepare to apply.

¹⁴⁴ For more in-depth analysis, see Rubio-Marín et al., "Repairing Family Members," 281.

¹⁴⁵ Law No 19.980 of Chile on Reparations to Extend Benefits for Persons Here Specified.

¹⁴⁶ Truth and Reconciliation Commission of Peru, Final Report, Tomo IV, 190–192.

¹⁴⁷ Rubio-Marín et al., "Repairing Family Members," 263–264.

The Burden of Proving a Secret Crime

In order to access reparations and relief in some countries, women must first prove that an enforced disappearance took place. Given the secretive nature of the crime, it can be incredibly difficult to find any evidence or witnesses, particularly when mass atrocities have occurred and there are a large number of missing persons. Women victims may face additional challenges in establishing that a disappearance occurred, given their lower rates of literacy and decreased access to public services compared to men.

Further, women, particularly wives and partners, face the additional burden of having to establish their relationship with the disappeared in order to access reparations and relief. This entails providing certificates of marriage or proof of common law partnerships, pushing women into the public sphere, sometimes for the first time, which can involve negative social consequences and discrimination. While procuring legal, political, or religious documentation, women are often forced to interact with males who are not part of their family—which is taboo in some communities.¹⁴⁸ Others may need to hire lawyers, as in Argentina, to prove in court their relationship status to the disappeared.¹⁴⁹ Reparations programs, therefore, need to streamline procedures to reduce the burden on women.

In Nepal women had to fill out lengthy forms in order to access relief from the IRP and obtain written confirmation from public and political party officials that the missing person was both absent and had been a member of a particular political organization. This forced women into public roles and interaction with male officials—spaces from which they were normally excluded, which proved particularly challenging. In a recent study, 74 percent of wives of the disappeared in Nepal who were interviewed by ICTJ reported that the burden of proving that an enforced disappearance took place was a challenge to accessing relief. The process also opened the door for abuse; at least one third of respondents reported discrimination based predominantly on gender, but also on economic, political, or ethnic grounds.¹⁵⁰ Far from reducing the burden carried by women victims, in some cases Nepal's IRP may have increased it.

However, unlike in Nepal, many reparation programs are linked to truth commissions that have research and investigation units responsible for the verification of cases of enforced disappearance. Yet, these units are not always able to fulfill this task. While some cases may prove especially challenging or even impossible to resolve, others remain unconfirmed due to the commission's limited tenure, resources, or investigative capacity. The burden of proof is then placed back on family members.

In Morocco, the Equity and Reconciliation Commission came under heavy criticism for its inability to resolve cases of enforced disappearance. Compounding the ill effects for victims, the reparations program that emerged from the truth-seeking process only provided benefits to families of the disappeared who were found to be deceased.¹⁵¹ The South African TRC's investigative team was also unable to clarify a number of cases submitted by families who believed that their loved ones had been disappeared during the apartheid era. The TRC chose not to confer victim status on the subjects of unresolved enforced disappearances out of concern that declaring the missing person as dead would close the door to future investigations. This lack of victim status resulted in family members being ineligible for reparations.¹⁵² It also put relatives in a double bind: they could appeal to the TRC to declare their loved one a victim (thus declaring him or her deceased) or hope that the government

¹⁴⁸ ICTJ, "Beyond Relief," 13.

¹⁴⁹ Rubio-Marín et al., "Repairing Family Members," 268.

¹⁵⁰ ICTJ, "Beyond Relief," 13–14.

¹⁵¹ Guillerot, ICTJ, "Morocco."

¹⁵² In South Africa, "secondary victims" (family members) could only receive reparations if the "primary victim" was deceased.

would fulfil its promise to implement the TRC's recommendation to set up a unit to conduct ongoing investigations. Women and relatives from support groups for families of the disappeared tried both options—they gathered evidence and drafted letters to the TRC appealing for confirmation of an enforced disappearance and victim status. Lacking investigatory powers, and often basic literacy skills, few women were successful in their appeals. A Missing Persons Task Unit, established in 2004, was mandated to investigate nearly 500 cases of missing persons.¹⁵³ Relatives in these cases have been able to apply for, and receive, reparations from the President's Fund. Yet many more cases remain unresolved, and for many women the process has been long and frustrating.¹⁵⁴

Additionally, there are often a number of unforeseen costs associated with applying for reparations that further deplete the already-stretched resources of many women victims. In Guatemala, some women went into debt while applying for reparations because they had to hire translators, collect and photocopy relevant documentation, and make follow-up inquiries with officials far from home.¹⁵⁵ In Nepal, one wife reported that she could only obtain relief by returning to the district from where she was forcibly displaced, a prospect that she considered too expensive.¹⁵⁶ Unless addressed, these costs will continue to be a barrier for female victims of enforced disappearance.

The reparations program set up by Morocco's Equality and Reconciliation Program (IER) provides examples of positive innovations for gender-sensitive payment of reparations for women affected by enforced disappearance. Although the IER failed to disclose the criteria it used for calculating award amounts, it did aim to take an affirmative action approach regarding women.¹⁵⁷ It broke from sharia inheritance law (which favors male heirs) in the apportioning of payments and promoted equal payment for both sexes: 40 percent for the spouse, whether man or woman; 10 percent for each parent; and 40 percent distributed equally among the descendants of both sexes.¹⁵⁸ This is a very significant development, especially for a majority Muslim country.

Disbursing Money to Women

Most reparation and relief programs distribute payments in the form of lump-sum awards, which many victims prefer, as it is sometimes harder to trust in or imagine the effectiveness of smaller installment payments over time.¹⁵⁹ With lower rates of financial literacy and access to banking institutions, women face increased challenges in procuring payouts. Female relatives of the disappeared may be at even greater risk because of intrafamilial tensions and the ambiguous legal nature of the disappeared. Preliminary research from South Africa found that many female grantees (for all types of human rights violations) requested that reparation payments be paid into the accounts of their male relatives or authority figures, giving them less control over how money was used.¹⁶⁰ Women affected by enforced disappearance may be even more likely to cede or lose control of payouts to in-laws and male authority figures if they have been made to feel like an economic burden on their family. Women may also feel more daunted in dealing with banking institutions after being refused access to frozen bank accounts of the disappeared.

The IRP in Nepal highlights some of the complications that arise when gender issues are not taken into account when distributing lump-sum awards. Some women reported that issuing authorities (without consultation) parceled out benefits meant entirely for wives of the disappeared to in-laws and children, in order to resolve family disputes. In other cases,

153 South Africa Department of Justice and Constitutional Development, Notice 1539 of 2008.

154 Dewhirst, interviews with victims.

155 Viaene "Life is Priceless," 7.

156 ICTJ, "Beyond Relief," 14.

157 Guillerot, ICTJ, "Morocco," 26–27.

158 *Ibid.*, 26, FN 128.

159 Correa, "Reparation Programs for Mass Violations of Human Rights," 425.

160 Goldblatt, "Evaluating the Gender Content of Reparations," 73.

authorities collaborated with wives who felt bound by tradition to share their benefits with others.¹⁶¹ In both instances, authorities undermined the autonomy of these women and infringed on their right to reparation.

The South African TRC adopted a gendered approach to distribution to ensure financial compensation made it into the hands of women beneficiaries for whom it was intended. The TRC required beneficiaries to have a bank account to receive reparations and assisted women in opening one. They also facilitated access to identity documents required to open bank accounts.¹⁶² While not specifically targeted at women affected by enforced disappearance, these actions certainly benefited them.

Further, in many countries, mothers, daughters, and partners of the disappeared have advocated for a wide range of services as reparations.¹⁶³ For example, victims in Guatemala qualified for not only lump-sum awards, but also psychosocial support services and housing. In Peru, educational and healthcare benefits were offered to victims in addition to monetary compensation.¹⁶⁴

Legal and Administrative Reparations: Death Certificates and Declarations of Disappearance

Several transitional justice mechanisms have taken steps to address the ambiguous legal status of the disappeared, and its consequences. Commissions in South Africa and Morocco implemented policies to grant or accelerate access to death certificates. While this may be helpful to women who are ready to declare their loved ones dead, it is harmful when presented as the only solution.

The creation of a special legal status for the disappeared has been widely welcomed by victims. Argentina pioneered the concept in 1994, enacting legislation that set out a new legal status for the disappeared, which described them as “absent by enforced disappearance,”¹⁶⁵ without mentioning the possible death of the victim or a presumed date of death. Relatives applying for the status are only required to establish the date of detention/deprivation of liberty and the last time there was news of the victim.¹⁶⁶ This legal status has provided a wide array of practical benefits, particularly to women, including access to frozen bank accounts, property transfer/ownership, and the ability to formalize new partnerships. It also contributes to repairing the social impact of enforced disappearance on wives and partners by publicly acknowledging their loss and officially providing them with a status that transcends the traditional roles of either widow or wife.

When my husband was disappeared my children were quite young. I always thought if I had my husband's property, I would find a way to improve my children's lives. But my brothers-in-law were not supportive. Through my struggle, I managed to transfer my husband's share into my name. I feel more confident now. I can invest anywhere I want to. Those who were not ready to help me in the past are close to me these days. It makes me think how the wives of the disappeared have suffered for lack of property. There should be an easy mechanism for the kind of problem that I faced.

– *Wife of Disappeared Victim, Nawalparasi District, Nepal*¹⁶⁷

161 ICTJ, “Beyond Relief,” 14.

162 Goldblatt, “Evaluating the Gender Content of Reparations,” 73.

163 For a more detailed discussion on this topic and examples, see Ruth Rubio-Marín et al., “Repairing Family Members,” 284.

164 Correa, “Reparation Programs for Mass Violations of Human Rights,” 7, 23–24.

165 Law No. 24,321 of Argentina on the Law of Absence by Forced, art. 1.

166 Family members could make a request for the application of this status for all people who disappeared before 10 December 1983, the date formally acknowledged as the transition to democracy. Subsequent to the request, the receiving judge published an edict for three consecutive days. After sixty days, the status was then conferred. Guembe, “Economic Reparations for Grave Human Rights Violations,” 36.

167 Withers, ICTJ, “To Walk Freely with a Wide Heart,” 7.

Bosnian legislators in 2004 passed a Law on Missing Persons, which confers on disappeared persons a status similar to that under Argentine law and on family members the right to temporarily make use of the property of the disappeared person.¹⁶⁸ Proclamations of death do not change or remove the status; it is only terminated when the tracing process is completed and a disappeared person is identified. Family members can obtain this status for a disappeared relative by providing basic information.¹⁶⁹ Unfortunately, article 27 of the same law presumes death after three years without consulting the family, which undermines the beneficial value of this category.¹⁷⁰

Peru also established a new legal category of “absence by reason of forced disappearance” in 2004.¹⁷¹ Like Argentina, Peru’s legislation enabled women to access social security benefits, inherit, hold title on property, and formalize new relationships. Although this legislation is undoubtedly a step forward, there are still challenges in its implementation. The process is complex and requires legal assistance. Also it is not sufficiently accessible, particularly for families living in rural areas.¹⁷² Such geographical barriers have a greater effect on women than men, because of economic and structural inequalities leading to lower levels of (legal) literacy among women.

Building on these experiences, the Chilean government under Michele Bachelet enacted similar legislation in 2009.¹⁷³ The declaration of disappearance confers benefits such as allowing relatives of the disappeared to inherit wealth and assets without a death certificate and spouses to dissolve marriages without divorce papers, if desired.¹⁷⁴ Chile’s law also expressly recognizes that such a declaration has no effect on criminal investigations or the eventual application of statutes of limitation for criminal prosecutions. Many Chilean women have welcomed this move.

Reparation and relief programs should offer women relatives both the option of obtaining declarations of enforced disappearance and procuring a death certificate, in order to fully guarantee their rights. Further, programs should simplify their procedures to make them more accessible to women, particularly disadvantaged women.

Memorialization and Other Forms of Symbolic Reparations

Since 1990, transitional justice mechanisms have recommended a wide range of symbolic reparations for human rights violations. These include: erecting monuments, issuing apologies, establishing commemorative days, renaming buildings or streets, and converting prisons into museums or sites of conscience. Most recommendations do not specify the type of symbolic act that should take place; nor do many mention the issue of gender.¹⁷⁵ Few make specific suggestions for activities to address enforced disappearance.¹⁷⁶

168 Law No. 109/04 of Bosnia and Herzegovina on the Law on Missing Persons, art. 18.

169 *Ibid.*, art. 2(4), which contains the minimum information required: “name and surname of the person, name of one parent, place and date, or only year, of birth, supposed date and place, or only year, of disappearance and circumstances of disappearance.”

170 For a detailed discussion on challenges associated with such legislation, see Citroni, “Pitfalls of Regulating the Legal Status of Disappeared Persons Through Declaration of Death.”

171 Law No. 28.413 of Peru, art. 2.

172 Correa, “Reparations in Peru,” 21.

173 Law No. 20.377 of Chile on the Disappearance of People.

174 Long, “Chile’s military rule ‘disappeared’ on electoral roll.”

175 Hamber and Palmay, “Gender, Memorialization, and Symbolic Reparations,” 329.

176 The Peruvian TRC does recommend that relevant municipalities and la Beneficencia Pública place plaques or some other form of memorialization at the entrance of cemeteries to commemorate the dead and disappeared. It also recommends that relevant private cemeteries do the same.

Monuments, Plaques, and Tombstones

Monuments to disappeared persons and survivors have been erected in several countries, including Argentina, Bosnia, Chile, Indian-controlled Kashmir, the Philippines, Switzerland, Sri Lanka, and Uruguay. In some cases, monuments were constructed with government support in connection with a transitional justice process, while in other countries they were the result of family- or civil society-led initiatives.

Commemorative Days

There are currently two annual international commemorations for the disappeared. The International Day of the Disappeared, on August 30, was initiated by the Latin American Federation of Associations of Families of the Detained-Disappeared (FEDEFAM) to publicize the plight of the disappeared on an annual basis. The origins of the International Week of the Disappeared, commemorated during the last week of May, are less well known, but are also attributed to FEDEFAM. National days of remembrance for all victims of human rights violations, including disappearances, have been established in Chile (April 9), Peru (August 28), and Sri Lanka (October 27).

Sites of Remembrance and Conscience

Some countries have opted to create public parks—or convert and dedicate existing sites—in honor of the disappeared. The Garden of the Disappeared in Geneva was established in 2000 to honor those who have disappeared around the world. Many consider Argentina's Plaza de Mayo as a memorial not only to the disappeared but also to the Madres. In some countries, notorious detention centers or prisons where disappearances occurred have been transformed into sites of remembrance: the Villa Grimaldi Peace Park in Chile and the Navy Petty-Officers School of Mechanics (ESMA) in Argentina are two well-known examples.

Lists of Names

One of the most common ways that families and transitional justice mechanisms choose to remember the disappeared is to compile and publish their names. Many truth commissions publish a list of names of victims in their final reports. Family associations and civil society organizations also attempt to compile and publicize their own lists. Several attempts have been made to create consolidated archives.

Rituals, Reburials, and Healing Events

Rituals for the disappeared take a wide array of forms, reflecting the religious and cultural practices of the cultures and societies where they take place. Examples include candlelight vigils, prayer sessions, cleansing rituals, and tree-planting ceremonies. They can occur at the private, family, community, or national level. Many are broadly linked to raising awareness around the disappeared while others are more personal and may be designed to honor a specific person. The lines between the past and the present—and between protest and commemoration—can be blurry at these events: a candlelight vigil to remember a loved one may evolve into a demonstration calling for investigations, while a speech calling for exhumations may also become a moving tribute to the heroism of a disappeared activist.

Gender Issues in Memorializing the Disappeared

While memorialization projects have multiple and overlapping potential benefits for women affected by enforced disappearance, they also run the risk of marginalizing, misrepresenting, or retraumatizing them. Reburials and grieving rituals can be powerful ways for women to privately and publicly deal with the psychological impact of frozen grief and ambiguous loss. They may also play a role in assisting women victims to rehabilitate their social status and restore the social fabric of communities.

Further, reburials can provide a significant symbolic vehicle for indigenous women and their communities. As discussed previously, in some cultures, such as the Matabeles of Zimbabwe and the Mayans of Guatemala, the dead are still considered present in another form and can play an active role in the community.¹⁷⁷ Locating remains and performing proper funeral rites for a disappeared person can be a way to “heal the dead” and restore balance to a community.¹⁷⁸

Consultation with women and other family members about the design and form of symbolic reparations is crucial. In some countries, governments and communities have attempted to erect memorials in cemeteries or monuments that resemble or serve the function of tombstones, but many women have rejected these because they see them as another example of the state trying to prematurely bring closure to cases of enforced disappearance without proper investigations. Others may find tombstones inappropriate because they continue to hope that their loved ones will be found alive. In Nepal, many communities have erected “Martyrs’ Gates” inscribed with the names of Maoist rebels who died in the struggle. Many women reported wanting to remove the names of their missing loved ones from the gates to emphasize that they were disappeared, and not dead.¹⁷⁹ Clearly, women must be consulted so that memorials meet their needs.

Some researchers contend that women prefer “living memorials,” such as gardens, community centers, and even roads, over “dead memorials,” such as statues, obelisks, and arches.¹⁸⁰ There is certainly evidence of this in Latin America, where the Madres and other family associations have prioritized the establishment of archives, oral history projects, and cultural centers that focus on documentation and raising awareness about enforced disappearance and human rights. These types of reparative initiatives may more accurately capture the ongoing impact of the crime of enforced disappearance and provide an avenue for women to continue their search for the truth. Ultimately, the content, structure, and format of symbolic reparations initiatives for enforced disappearance should be decided by victims.

Further, victimization of women and their involvement in conflict is often overshadowed in the conceptualization and design of memorialization projects.¹⁸¹ The fact that women experience the bulk of ongoing victimization emanating from enforced disappearance, including poverty, family conflict, and psychological trauma, outside the public sphere also leads to the invisibility of their suffering. Moreover, the housing of disappearance memorials within former detention centers may further entrench the public/private male/female divide, highlighting the more public physical acts of an enforced disappearance, such as torture and detention, and privileging the narrative of men as victims of enforced disappearance.

While no consolidated research has been undertaken on this issue, there is promising evidence that some memorial sites for the disappeared do adequately reflect disappeared women’s experiences. This has been accomplished by both integrating women’s stories into general exhibits and creating stand-alone spaces that focus only on women’s experiences. In Argentina, ESMA, a former detention center, has been transformed into a museum and cultural center, providing detailed information on disappearances during the “Dirty War.” The testimony of female detainees is displayed alongside that of their male counterparts throughout the center. At the same time, the former maternity ward focuses only on the experiences of pregnant detainees and their children. A monument in front of the building also commemorates women detainees.¹⁸² Similarly, Chile’s Villa Grimaldi, a former detention center transformed into a peace park, provides detailed descriptions and oral history

177 Beristain, “The value of memory,” 26.

178 Eppel, “Healing the dead,” 259–288.

179 Robins, “Constructing meaning from disappearance,” 11–12.

180 Hamber and Palmary, “Gender, Memorialization, and Symbolic Reparations,” 358–369.

181 For further discussion, see Hamber and Palmary, “Gender, Memorialization, and Symbolic Reparations,” 359.

182 For more information, see *Espacio Memória y Derechos Humanos (Espaço Memória e Direitos Humanos)*.

testimony about women's experiences; yet, instead of their names being listed alongside male victims in the park's Wall of Names, female disappeared detainees are given their own separate memorial in the Garden of Roses.



Monument to Pregnant Women Who Were Disappeared at ESMA. (Wikimedia)

The Monument for the Disappeared in Seeduwa, Sri Lanka, comprises a stone slab containing the outline of a human shape that is neither overtly male nor female. Photos of some of Sri Lanka's estimated 60,000 disappearances, predominantly men, are included on the structure.¹⁸³

There is also a risk that memorials, documentation centers, and sites may reinforce the tendency of women relatives to focus on the harms suffered by the disappeared and downplay their own struggles. The stories of violations that women have suffered must be collected to give a complete picture of the ongoing crime of enforced disappearance. Women must be seen as more than just narrators of the disappeared: their experiences must be part of the narrative itself.

Acknowledging Women's Agency

While some symbolic reparations initiatives represent women as passive or disengaged victims,¹⁸⁴ fortunately, this does not appear to be the norm with memorials and sites of conscience for the disappeared. More research into the depiction of women at disappearance sites is needed, but an initial survey suggests that women are often depicted as activists and agents of change. One example is the Flame of Courage monument in the Philippines.¹⁸⁵ Unveiled on July 13, 1994, it depicts a mother carrying a torch, accompanied by a young child holding a photo of his disappeared father. Standing tall and gazing firmly ahead, the figure of the woman is clearly one of strength, determination, and action.

Although more abstract, the *Mujeres en la Memoria* ("Women in Memory") monument in Santiago de Chile goes beyond portraying women as passive victims of enforced disappearance.¹⁸⁶ Initially envisioned in 1992 as a memorial to the 72 women who disappeared and 118 who were executed under the dictatorship, the conceptualization of the monument evolved to depict the activism of female victims of political repression

183 Kanagasabapathipillai, "Disappearance Is a Crime Against Humanity."

184 Hamber and Palmay, "Gender, Memorialization, and Symbolic Reparations," 339.

185 Asian Federation Against Involuntary Disappearances, "Remembering the Filipino Desaparecidos;" Medina, "Families remember missing loved ones."

186 Remember Our Sisters Everywhere, "Mujeres en la memoria, Chile."

in Chile and abroad. Erected in 2006, the glass structure is meant to evoke posters of the disappeared and candlelight vigils, which became symbols of the struggle for truth and justice in Chile.¹⁸⁷ The monument serves as both a remembrance of those lost and a testament to the activism of women.



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

While exploring the strength of women, some disappearance memorials and sites of conscience also reflect on women's use of traditional gender roles in their mobilization and activism. For example, the Flame of Courage clearly identifies the searcher as a mother. There is a danger that these types of memorials can entrench or glorify the traditional roles of women without acknowledging women activists who stepped outside of these roles or even how disappearance movements have sought to completely transform traditional roles. Consultation is key to ensuring that women's experiences are reflected appropriately.

¹⁸⁷ Marín, "Monumento Mujeres en la Memoria."

5. Criminal Justice

Criminal convictions contribute to nonrecurrence of violations and help to reestablishing the rule of law in societies emerging from conflict and repression. They serve long-term, broad societal benefits while offering an appropriate remedy to surviving relatives. Presently there is little, if any, literature on the gender dimensions of enforced disappearance in legal cases. As a high proportion of the disappeared are men, women relatives frequently become the main advocates for justice, including through prosecuting those responsible for disappearances.

Best practice includes considering the crime of enforced disappearance as “continuous,” meaning that the crime continues from the date of the disappearance until determination of the fate of the victim. The language used should not assume the death of the victim, but rather acknowledge that he or she is absent due to enforced disappearance. In jurisdictions where the criminal code contains no specific crime of enforced disappearance, prosecutors can pursue charges of kidnapping, abuse of power, torture (if there is relevant evidence available), and murder, particularly if the remains of the victim are found. There may be other associated crimes committed by authorities in relation to denials of detention or, even, the survival of the disappeared. In the case of disappeared pregnant women, these crimes may include forced abortion, kidnapping, or murder of the children, and identity substitution.

In legal systems where victims may be parties to criminal proceedings, such as in civil law countries, authorities must take steps to ensure the basic rights of women complainants. This includes providing access to legal representation and public records, examining evidence and challenging its admissibility or relevance where victim interests are concerned, ensuring access to hearings and the entire process, and giving victims the ability to make opening and closing statements and initiate special proceedings.

Important support measures include a comprehensive outreach process that ensures victims are aware of their rights, with a particular focus on the poor, illiterate, ethnic or social minorities, and those living in rural or remote communities. Women tend to be over-represented in many of these groups.

The failure to consider the specific needs of victims who participate in criminal trials risks their retraumatization and undermines the integrity of proceedings, and ultimately, the likelihood of convictions. These factors apply with equal force to prosecutions for enforced disappearances, where witnesses are likely to be female relatives. Valuable protective measures, when more-effective methods are not available, include ensuring the anonymity of victims at all stages of proceedings. This can be achieved through voice distortion, testimony via video link, or the use of screens in courtrooms.

Disappearances and the Inter-American Court of Human Rights

The relationship between criminal prosecutions and enforced disappearances has been addressed several times by the Inter-American Court of Human Rights. Initially, the court refused to consider the alleged violation of a right to a fair trial under article 8(1) of the American Convention on Human Rights (the “American Convention”)¹⁸⁸ brought by family members of victims of enforced disappearance. It limited the application to the rights of defendants in criminal trials.¹⁸⁹ Then in 1997 the court recognized that article 8(1) also includes respecting the “accusing party’s” procedural rights in the criminal trial.¹⁹⁰ Soon after, and in subsequent cases, the court held that article 8(1) extends to include the right of victims’ relatives to judicial guarantees and specifically to a criminal investigation to identify and, when possible, prosecute and punish those responsible.¹⁹¹

In other cases, the court reinterpreted article 25 of the American Convention (the right to judicial protection) to mean that access to simple, prompt, and effective recourse before a competent tribunal for protection against violations of fundamental rights includes access to criminal proceedings for surviving victims.¹⁹² Only a criminal trial can provide the appropriate remedy, the punishment of the perpetrators.¹⁹³ More recently, the court has found that fulfilling the duty to guarantee surviving human rights victims’ right to know the truth in cases of enforced disappearance requires criminal trials to determine the circumstances of the crime and the responsible perpetrators.¹⁹⁴ In general, the gender dimensions of prosecuting such cases do not seem to have been explicitly considered.

Exhumations Leading to Court Cases

In many countries, public institutions view exhumations as private affairs that only serve to help women and their families mourn.¹⁹⁵ The focus is on the recovery and, where possible, identification of remains. While this can be beneficial for women victims, the failure to link exhumations to other transitional justice processes that provide criminal accountability and public acknowledgement of the truth might result in a woman’s suffering being confined to the private sphere as well as denying her fundamental rights to justice.

Conversely, in some countries exhumations have focused only on gathering evidence or proving that a human rights violation occurred.¹⁹⁶ There is little consultation with family

188 American Convention on Human Rights, “Pact of San José, Costa Rica,” art. 8(1).

189 See, for example, *Neira Alegria et al. v. Peru*, Series C, No. 20, Inter-American Court of Human Rights, Judgment (Merits), ¶86 (Jan. 19, 1995); *Caballero Delgado and Santana v. Colombia*, Series C, No. 22, Inter-American Court of Human Rights, Judgment (Merits), ¶64 (Dec. 8, 1995).

190 “Accusing party” in Latin America refers to the role of private prosecutor that victims generally have in criminal trials. See *Genie-Lacayo v. Nicaragua*, Series C, No. 30, Inter-American Court of Human Rights, Judgment (Merits, Reparations and Costs), ¶75 (Jan. 29, 1997).

191 *Blake v. Guatemala*, Series C, No. 36, Inter-American Court of Human Rights, Judgment (Merits), ¶¶96–97 (Jan. 24, 1998); “*White Van*” (*Paniagua-Morales et al. v. Guatemala*, Series C, No. 37, Inter-American Court of Human Rights, Judgment (Merits), ¶156 (Mar. 8, 1998); “*Street Children*” (*Villagran-Morales et al. v. Guatemala*, Series C, No. 63, Inter-American Court of Human Rights, Judgment (Merits), ¶227 (Nov. 19, 1999); *Durand and Ugarte v. Peru*, Series C, No. 68, Inter-American Court of Human Rights, Judgment (Merits), ¶130 (Aug. 16, 2000); *Bámaca-Velásquez v. Guatemala*, Series C, No. 70, Inter-American Court of Human Rights, Judgment (Merits), ¶182 (Nov. 25, 2000).

192 See *Castillo-Páez v. Peru*, Series C, No. 43, Inter-American Court of Human Rights, Judgment (Reparations and Costs), ¶¶104–107 (Nov. 27, 1998).

193 *Durand and Ugarte v. Peru*, Series C, No. 68, Inter-American Court of Human Rights, Judgment (Merits), ¶¶121–130 (Aug. 16, 2000); *Bámaca-Velásquez v. Guatemala*, Series C, No. 70, Inter-American Court of Human Rights, Judgment (Merits), ¶¶191–195 (Nov. 25, 2000); “*Street Children*” (*Villagran-Morales et al. v. Guatemala*, Series C, No. 63, Inter-American Court of Human Rights, Judgment (Merits), ¶¶221–234 (Nov. 19, 1999); *Barrios Altos v. Peru*, Series C, No. 75, Inter-American Court of Human Rights, Judgment (Merits), ¶¶45–49 (Mar. 14, 2001).

194 See, for example, *Bámaca-Velásquez v. Guatemala*, Series C, No. 70, Inter-American Court of Human Rights, Judgment (Merits), ¶201 (Nov. 25, 2000); *Castillo-Páez v. Peru*, Series C, No. 43, Inter-American Court of Human Rights, Judgment (Reparations and Costs), ¶¶105–106 (Nov. 27, 1998); *Barrios Altos v. Peru*, Series C, No. 75, Inter-American Court of Human Rights, Judgment (Merits), ¶48 (Mar. 14, 2001); *Trujillo-Oroza v. Bolivia*, Series C, No. 92, Inter-American Court of Human Rights, Judgment (Reparations and Costs), ¶¶100, 112–116 (Feb. 27, 2002).

195 Navarro García et al., “Exhumations in Latin America,” 4.

196 *Ibid.*, 3, 50–52.

members and remains are not always identified. In Brazil, Colombia, Mexico, Peru, and Venezuela some remains from clandestine graves were exhumed and reburied in legal graves marked “NN” (“no name”), effectively leading to a “double disappearance.”¹⁹⁷ These exhumations not only deny women the right to the truth, but they may retraumatize them by perpetuating the initial violation.

For women to enjoy their rights, exhumations must provide space for both truth and justice. At a minimum, forensic teams must not only aim to identify and return remains but also properly collect evidence that can be used to hold perpetrators accountable.

Case Study: Pursuing Justice in Argentina

Proceedings in Argentina could be considered an exception to the general absence of a gendered approach to prosecuting enforced disappearances. This is perhaps unsurprising as enforced disappearances account for a large percentage of violations committed in Argentina overall. More specifically, approximately 30 percent of the disappeared in Argentina are estimated to be women.¹⁹⁸ Thus, they make up a far higher proportion of the total number of the disappeared in Argentina than in most other countries.

Over the last decade, Argentina’s courts have made substantial advances in their treatment of cases of enforced disappearance of women. Much of this headway is due in part to the fact that in 2005 Argentina’s Supreme Court declared the country’s primary amnesty laws to be unconstitutional. Since then, multiple cases have sought to bring to justice perpetrators of disappearance and other crimes. Importantly, in many of these cases, women disappeared are included in victim lists.

Significantly, in May 2011, Argentina’s Federal Court of Tucumán No. 1 ruled that gender was to be considered an aggravating factor for torture. In so doing, the court noted the particular vulnerability of women detainees in Villa Urquiza Prison.¹⁹⁹ Then in February 2012, the Argentine Federal Court of Criminal Appeals set further precedent when it upheld a guilty verdict convicting Gregorio Molina of rape as a crime against humanity. Molina was convicted of sexual violence perpetrated against female detainees when he worked as a guard in a clandestine detention center. This marked the first time a defendant was convicted of an international crime of sexual violence in Argentina. In the verdict, the ruling judges affirmed that women victims in the case were targeted for rape specifically because of their status as women; they also noted that analyzing crimes with a gender perspective is an “obligatory consideration” in light of Argentina’s numerous international legal obligations.²⁰⁰ The decision cited the Rome Statute of the International Criminal Court and decisions of the international criminal tribunals of both Rwanda and the former Yugoslavia to show that sexual violence as a stand-alone crime should be considered a crime against humanity. It stated that this norm, with origins in common law, had existed since “at least the second half of the twentieth century.”²⁰¹

Also in 2012, the Federal Tribunal of Argentina found Jorge Rafael Videla and several others guilty of crimes against humanity for appropriating the minors of detained mothers held

197 *Ibid.*, 3.

198 Argentina Comisión Nacional sobre la Desaparición de Personas, “Nunca Más,” Part II (“The Victims: The disappeared according to sex”).

199 Villa Urquiza Prison was a secret detention center in Tucumán Province that was operated under the dictatorship. See *Fernández Juárez, María Lilia y Herrera and Gustavo Enrique, s/ su denuncia por privación ilegítima de la libertad, Expte. no. 133/05 y causas conexas* (Tribunal Federal No. 1 de Tucumán, 2011) (Argentina).

200 The ruling makes specific reference to the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. See *Gregorio Rafael Molina s/recurso de casación*, Causa no. 12.821 (Cámara Federal de Casación Penal 2011) (Argentina), 83.

201 *Gregorio Rafael Molina s/recurso de casación*, Causa no. 12.821 (Cámara Federal de Casación Penal 2011) (Argentina), 67.

in secret detention centers.²⁰² Videla was sentenced to 50 years in prison; the others were sentenced to periods ranging from 5 to 40 years.

Building on the Molina case in March 2013, the Federal Criminal Court of Santiago del Estero set new precedent in *Aliandro, Juana Agustina et al.* when it deemed crimes of sexual violence to be stand-alone crimes, separate from other violations, including torture. The case focused on the enforced disappearance of members of the civilian population of Santiago del Estero Province between 1974 and 1979.²⁰³ Moreover, the court affirmed that sexual violence crimes are crimes against a victim's sexual freedom, which extends far beyond the physical act of the violation itself. This acknowledgement means that both material perpetrators and accomplices can be held criminally liable for such crimes. As a result, the defendants in the case, which included accomplices, were given sentences ranging from five years to life in prison.²⁰⁴

It is important to acknowledge that these cases cover only a fraction of all gender-related crimes committed in the context of enforced disappearance in Argentina. Many gender-based crimes have been subsumed under gender-neutral charges, such as torture, harassment, or execution; countless other gender-based crimes have not been prosecuted at all. Still, in the important precedents they establish, these cases are certainly exemplary of the type of prosecutions that could occur in other contexts.

²⁰² *Rubén O. Franco et al., s/sustracción de menores de diez años*, no. 1351 (Tribunal Oral Federal no. 6 de Buenos Aires 2012) (Argentina).

²⁰³ *Juana Agustina Aliandro et al., s/ desaparición forzada de personas, violación de domicilio, privación ilegítima de la libertad, tormentos, etc.* Imputados: *Musa Azar et al.*, Causa 960/11 (Tribunal Oral Criminal Federal de Santiago del Estero 2013) (Argentina), 12–13.

²⁰⁴ *Ibid.*, 613–614.

6. Conclusions

The important gender dimensions of enforced disappearance encompass women who are disappeared and women who are victims by virtue of their familial ties to the disappeared. In both cases, gender roles and inequalities steeped in tradition, race, culture, religion, and class mean that women's experiences differ from those of men.

Women may be disappeared because of their relationship to men, but also because they take on activist roles, which in some cases attracts additional negative attention by challenging gender norms that inhibit women's political participation. Further, while women may be less likely to be disappeared, they are more likely to experience direct human rights violations when disappeared because of their subordinate status and social vulnerability. Compared to men, their treatment while disappeared is far more likely to include various forms of sexual assault and the exploitation of maternal relationships.

Female relatives of the disappeared suffer devastating social, economic, and psychological consequences as a result of the loss of male family members who tend to earn more, be more literate, and have greater access to justice. Despite this, or because of this, many women victims become activists, presenting themselves as wives and mothers searching for the truth about the disappeared. Combined with the necessity to enter the public sphere in search of work, sometimes for the first time, this increases women's civic participation and may contribute to transforming their social status and roles in positive ways.

Important lessons have been learned across time and contexts, and from different transitional justice mechanisms, about how to address enforced disappearance in a gender-sensitive manner. While truth-seeking initiatives are becoming increasingly gender-sensitive, challenges remain, such as counteracting the under-reporting of disappeared women and identifying traits of women who may be more likely to be disappeared. Understanding the gender dimensions of accessing and interviewing survivors to increase the likelihood of full disclosure, including about sexual violence, is critical for a comprehensive record of truth. This, in turn, is likely to extend gender-sensitive reporting of human rights violations inflicted on women beyond the former focus on pregnancy-related violations in truth commission reports.

Exhumations and reburials can provide both truth and reparative relief for family members of the disappeared, particularly if accompanied by psychosocial support, which must become standard practice. If those conducting such operations understand this, they are more likely to consult and involve family members. Compensation as well as legal, administrative, and symbolic reparations will be more effective if they are understood not to preclude or obstruct the search for truth.

Family members of the disappeared must be regarded as primary beneficiaries of reparations, consistent with the internationally accepted definition of a victim of enforced disappearance.

For women who experience additional human rights violations when searching for the disappeared, unresolved questions remain about which violations give rise to a right to reparation. To avoid compounding the trauma experienced by family members, access to benefits should not be contingent on declaring the disappeared person deceased. In addition, experience shows that the creation of a special legal status for the disappeared can provide a range of practical benefits to families of the disappeared, such as access to bank accounts and pensions as well as the transfer of ownership of property.

Reparations initiatives need to acknowledge several other gender dynamics to ensure that those who are most vulnerable receive benefits. These include minimizing the disadvantages faced by women who are not a victim's sole partner, girl children who are less likely to be able to access education than their male counterparts, and mothers and older women who, despite likely enduring additional suffering in their search for truth, may be treated as less of a victim than wives or children. Ensuring gender equality in access to reparations is as important as the substance of reparations. It requires gender-sensitive approaches to outreach, procedural rules that do not rely on literacy or proof of the enforced disappearance, removing gender bias in pre-existing laws, and overcoming gender blindness to women's access to, and capacity to control, finances. Similarly, symbolic reparations that have meaning and value for affected communities are contingent on consultations with family members. Their involvement enhances the prospect that memorials will appropriately recognize disappeared women alongside men and acknowledge women's agency, activism, and multiplicity of roles, including in the search for the truth.

Many of the gender-specific considerations of prosecuting the crime of enforced disappearance extend to the generalized flaws of criminal justice systems' treatment of victims, and women victims in particular. Broader gender inequalities mean issues of witness protection, psychosocial support, and the risk of retraumatization and stigma all disproportionately affect women's experiences of the legal system. Notwithstanding these general inadequacies, Argentina's recent case history demonstrates that it is possible to improve the prosecution of crimes of sexual violence in the context of enforced disappearance.

Given unfortunate contemporary practices of enforced disappearances by several governments, including Kenya,²⁰⁵ Mexico,²⁰⁶ and Syria,²⁰⁷ lessons learned about the importance of considering gender when addressing enforced disappearance through transitional justice mechanisms will remain relevant. A gender-sensitive approach promotes a more nuanced and comprehensive understanding of why women were disappeared and the range of crimes they experienced while disappeared. Consultations with family members of the disappeared will maximize the positive impact of exhumations, reburials, and material and symbolic reparations. While women may comprise the minority of the disappeared, they are the majority of those at the forefront of the search for disappeared loved ones.

Thus, the degree to which transitional justice mechanisms are effective in addressing enforced disappearances depends on their inclusiveness of women and their gendered experiences.

205 Human Rights Watch, "Kenya: Killings, Disappearances by Anti-Terror Police."

206 Amnesty International, "Mexico: Enforced disappearance of 43 students."

207 OHCHR, "Without a trace: Syria."

Recommendations

While there are significant gender gaps in current approaches to enforced disappearance, there are many positive examples and experiences of gender-sensitive recognition and reparations for the crime. This section identifies how some key lessons learned could be applied to future transitional justice mechanisms to incorporate a gender perspective in addressing enforced disappearance.

- 1. Transitional justice mechanisms should adopt a gender-sensitive approach, including to investigations, exhumations, truth seeking, and reparations.** For example, exhumations should incorporate an examination of remains for signs of sexual violence, investigators should be trained in gender-sensitive interviewing, and truth commissions should incorporate a gendered analysis throughout their reports.
- 2. Legislators should create a legal category that does not require the disappeared to be declared dead for their relatives to access benefits, such as inheriting the disappeared person's wealth and assets or allowing spouses to dissolve marriages.** Following the examples of Peru, Argentina and Bosnia and Herzegovina, this could be termed "absence by enforced disappearance."
- 3. States should assist beneficiaries in proving their relationship to the disappeared and securing identity documents required for accessing social security benefits, inheritance, and property title, and allow relatives to formalize new relationships.**
- 4. 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.**
- 5. States should provide long-term psychosocial support to family members engaged in all stages of the investigative and exhumation process regarding the disappeared.**
- 6. 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.** A commission's outreach strategy should include these messages so that women's groups, the media, and organizations working on enforced disappearances can raise awareness about the importance of women's testimony and prepare interviewees appropriately.
- 7. 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.** Establishing permanent registries will ensure wives and other female relatives of the disappeared who may need extra time to emotionally prepare to apply for reparations are still able to access them.
- 8. Reparation programs should develop policies that overcome the gendered impact of enforced disappearance and structural disadvantages faced by many girl children victims, and mothers at the forefront of the search for truth.** This includes looking at apportioning and distribution methods that earmark payments specifically for each child and creating scholarship programs for girls and young women victims.

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