GLOBAL REPORT ON MISSING PERSONS 2021

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Foreword

This year we are marking the 25th anniversary of the International Commission on Missing Persons (ICMP). The organization was established at the initiative of US President Bill Clinton during the 1996 G-7 Summit in Lyon, France, with a mandate to secure the cooperation of governments and assist them in locating missing persons, originally following the wars in the former Yugoslavia.

This mandate, to ensure governmental cooperation and assist governments in their efforts, may seem unremarkable today, but at the time it was innovative: it reflected a new understanding of the necessity of official and effective investigations of persons going missing and disappearing. This was different from what had existed before and in other parts of the world. Working with the rule-of-law institutions of states – courts, law enforcement and other specialized public law agencies – reinforces the credibility of these institutions and the public trust in them. This is distinct from the often strictly humanitarian approach that had been customary until then.

It is an approach that has been shown to work. In the former Yugoslavia by 2009, ICMP had helped the responsible state institutions to account for around 70 percent of the 40,000 missing persons from the conflicts of the 1990s. ICMP’s mandate to support the investigative obligations of public authorities also allowed it to assist justice processes for war crimes, crimes against humanity and genocide. ICMP has been active in more than 40 countries, in conflict and post-conflict situations and also where large numbers of people have gone missing for other reasons such as disasters, organized crime and irregular migration.

In 2014, a group of states took the decision to establish ICMP as an intergovernmental organization with headquarters in The Hague – and we look forward to more states joining this effort, to which the recent accession of Afghanistan in 2019 and Germany in 2021 may serve as an inspiration.

The Global Report on Missing Persons, which is published with the support of the United Kingdom, examines how the issue of missing persons is being addressed around the world. Among other things, this inaugural edition explores human rights and rule-of-law perspectives on the issue, reflecting a general consensus that effective investigations under the law play an essential role in countering revisionism, advancing social cohesion and strengthening human security. This in turn means that State responsibility in finding all missing and disappeared persons, regardless of their social or economic status, their race or creed, their gender or sexuality, their political beliefs or any other factor, and securing the human rights of all survivors, regardless of the circumstances of the disappearance of the missing person is an indispensable investment in peace, and in human development and societal well-being.

I am honored to introduce this first edition of the Global Report, which will now be published annually. It will enable the development of approaches and methodologies that reinforce, and where necessary rebuild confidence in public governance. It will deepen understanding of underlying problems and it will enhance abilities to define practical responses. Last but not least, the Global Report will fulfil a crucial function by providing benchmarks, examining standards and exploring political and geographical dimensions of persons going missing and disappearing, at the global, regional and national levels.

The first Edition of the Global Report examines the broad range of underlying causes of disappearances and the possible reasons for a failure to investigate missing persons cases, such as the deleterious impact of institutionalized discrimination and xenophobic trends including in the world’s leading democracies, where accountability and respect for human rights and the rule of law are heralded as the cornerstone of systems of government, and elsewhere. It discusses how irregular migration in the Mediterranean, Central America and East Asia represent a significant and as yet unaddressed challenge to states, in terms of fulfilling their obligations to advance social cohesion and uphold human rights. It covers the issue of disappearances in the context of violent conflicts in Africa and South Asia, as well as crime and political repression.

This edition of the Global Report is the beginning of what is intended to be a process of sustained and applicable research. Future editions will examine a wide range of focus areas related to this global challenge, many of which have until now received very little attention. This includes the link between disappearances and sexual violence, which all of the Chapters in the present edition identify as a driver of disappearances and a phenomenon that must be addressed as a matter of urgency. Through this process, a series of Indicators on Missing Persons will also be developed: this an important research area that is still in the early stages and for which the present edition of the Global Report lays a solid foundation.

Rt. Hon. Alistair Burt
Member of the ICMP Board of Commissioners
# Table of Contents

## ABBREVIATIONS  
7

## INTRODUCTION  
11

### MIDDLE EAST AND NORTH AFRICA  
16

#### INTRODUCTION  
16

#### PART 1: MIDDLE EAST AND NORTH AFRICA: POLITICAL, SOCIAL, AND LEGAL CONTEXT  
16

#### PART 2: SUPPRESSION OF DISSENT: DISAPPEARING POLITICAL DISSIDENTS  
17
  - Disappearances Following Public Protest  
  - Targeting Human Rights Defenders and Journalists  
  - Government Response  

#### PART 3: CONFLICT-RELATED DISAPPEARANCES  
19
  - Indiscriminate Attacks Against Civilians  
  - Targeting Civilian Dissidents  
  - Families of Those Missing During Conflict  
  - Government Response  

#### PART 3: MISSING MIGRANTS  
22
  - Mediterranean Migration Routes  
  - Intercepting Migrants and Refugees in Countries of Transit  
  - Locating and Identifying Remains of Missing Migrant and Refugees  
  - Transnational Cooperation  
  - Civil Society Support  

#### PART 4: ACCOUNTABILITY  
25
  - Addressing Enforced Disappearance  
  - Post-Conflict Mechanisms  
  - Government Institutions  
  - Civil Society and Family Associations  

#### PART 5: THE GENDERED IMPACT OF MISSING AND DISAPPEARED PERSONS  
27
  - Missing and Disappeared Women  
  - Female Relatives of Missing Persons  

## CONCLUSIONS AND RECOMMENDATIONS  
31

### AFRICA  
33

#### INTRODUCTION: HISTORICAL AND LEGAL CONTEXT  
33
  - Historical Context  
  - Legal Context  

#### PART 1: ARMED CONFLICT AND VIOLENT EXTREMISM  
38

#### PART 2: ENFORCED DISAPPEARANCE AND ILLEGAL DETENTION  
40

#### PART 3: MIGRATION  
42

#### PART 4: HUMAN TRAFFICKING  
44

## CONCLUSION  
46
  - Recommendations for Governments  

### EUROPE  
50

#### INTRODUCTION  
50
  - Historical Context  

#### PART 1: MIGRATION  
52
  - CASE STUDY  

## GLOBAL REPORT 2021  
4
PART 2: TRAFFICKING AND ORGANIZED CRIME 57
PART 3: WAR, POLITICAL UNREST AND OPPRESSION 59
CASE STUDY: MH17 61
CONCLUSION AND RECOMMENDATIONS 62

AMERICAS 66
INTRODUCTION 66
PART 1: THE DISAPPEARED. LATIN AMERICA AS A SITE OF INNOVATION 66
Case study: Abuelas de Plaza de Mayo and the development of the “grandpaternity index” 67
Transition of enforced disappearances and the emergence of new forms of violence by new actors 69
Disappearance of women in Ciudad Juarez, Chihuahua 70
The “War on Drugs” 71
The role of families 72
Case study: Ciudadanos en Apoyo a los Derechos Humanos, CADHAC. Citizens in Support of Human Rights A.C., CADHAC 73
Case study: Fuerzas Unidas por Nuestros Desaparecidos en Nuevo Leon, FUNDENL. United Forces for our Disappeared in Nuevo Leon, FUNDENL 74
Colombia and Operation Ciriri 75
PART 2: MISSING MIGRANTS ALONG THE MEXICO-US CORRIDOR 77
Case Study: Colibrí Center for Human Rights 79
Case Study: Proyecto Frontera (Border Project) 79
PART 3: MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS IN THE US AND CANADA 80
Families’ expertise: “When an Indigenous person goes missing, those closest to her are the experts”. 81
“The National Inquiry as a beginning, not the end” 82
An agenda for the future 82

ASIA AND PACIFIC 84
INTRODUCTION 84
PART 1: CONTEXTS AND PATTERNS OF MISSING PERSONS CASES AND DISAPPEARANCES IN ASIA AND THE PACIFIC 85
Domestic and international conflicts, civil wars, and other military activities 85
Counter-terrorism, internal security, and political instability 85
Non-State actors 86
Migration and human trafficking 86
Covid-19, tsunamis, natural disasters, and other public emergencies 86
Other patterns of missing persons cases and disappearances, and government efforts 87
PART 2: SELECTED COUNTRY SITUATIONS IN ASIA AND THE PACIFIC 87
Northeast Asia 88
i. China 88
ii. North Korea 90
Southeast Asia 91
i. Socialist Republic of Vietnam 91
ii. The Philippines 92
iii. Thailand 93
iv. Myanmar 93
v. Indonesia 94
**THE DEVELOPMENT OF INDICTORS ON MISSING PERSONS**

**INTRODUCTION**

<table>
<thead>
<tr>
<th>PART 1: MISSING PERSONS DATA</th>
<th>99</th>
</tr>
</thead>
<tbody>
<tr>
<td>International mechanisms and institutions as providers of data</td>
<td>99</td>
</tr>
<tr>
<td>Data on reporting and investigation</td>
<td>100</td>
</tr>
<tr>
<td>Civil Society, victim groups and community information</td>
<td>101</td>
</tr>
</tbody>
</table>

| PART 2: The rationale for Missing Persons Indicators | 101 |
| PART 3: DEVELOPING INDICATORS ON MISSING PERSONS: THE LEGAL FRAMEWORK | 103 |
| PART 4: FIRST STEP TOWARDS THE DEVELOPMENT OF MISSING PERSONS INDICATORS | 106 |
| Working towards Structural Missing Persons Indicators | 106 |
| A cautious approach towards charting Process Indicators on Missing Persons | 106 |
| Working towards Output Missing Persons Indicators | 107 |

| PART 5: SERVING MISSING PERSONS AND THEIR FAMILIES BETTER | 108 |

**REFERENCES**

| 109 |

**THE AUTHORS**

| 126 |
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACLU</td>
<td>American Civil Liberties Union</td>
</tr>
<tr>
<td>AFAD</td>
<td>Disaster and Emergency Management Presidency of Turkey (Afet ve Acil Durum Yönetimi Başkanlığı)</td>
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<tr>
<td>ALRC</td>
<td>Asian Legal Resource Center</td>
</tr>
<tr>
<td>AMORES</td>
<td>Group of Women Organized for Those Executed, Kidnapped, and Disappeared in Nuevo León (Agrupación de Mujeres Organizadas por los Ejecutados, Secuestrados y Desaparecidos de Nuevo León)</td>
</tr>
<tr>
<td>ASFADDES</td>
<td>Associations of Relatives of the Detained - Disappeared (Asociación de Familiares de Detenidos Desaparecidos)</td>
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<tr>
<td>BBC</td>
<td>British Broadcasting Corporation</td>
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<td>BIP</td>
<td>Border Industrialization Program</td>
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<tr>
<td>CADHAC</td>
<td>Citizens in Support of Human Rights A.C. (Ciudadanos en Apoyo a los Derechos Humanos)</td>
</tr>
<tr>
<td>CARE</td>
<td>Cooperative for Assistance and Relief Everywhere</td>
</tr>
<tr>
<td>CAT</td>
<td>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>CCP</td>
<td>Chinese Communist Party</td>
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<td>CED</td>
<td>UN Convention for the Protection of All Persons from Enforced or Involuntary Disappearances</td>
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<td>CEAV</td>
<td>National Executive Commission for Victim Support (Comisión Ejecutiva de Atención a Víctimas)</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination Against Women</td>
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<tr>
<td>CENSC</td>
<td>UN Committee on Economic, Social, and Cultural Rights</td>
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<tr>
<td>CIA</td>
<td>Central Intelligence Agency</td>
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<tr>
<td>CIEDP</td>
<td>Commission of Investigation on Enforced Disappeared Persons</td>
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<tr>
<td>CILHI</td>
<td>Central Identification Laboratory, Hawaii</td>
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<td>CIRNAC</td>
<td>Crown-Indigenous Relations and Northern Affairs Canada</td>
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<td>CNB</td>
<td>National Search Commission</td>
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<td>CNMH</td>
<td>National Center for Historical Memory (Centro de Memoria Histórica)</td>
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<td>COI</td>
<td>UN Commission of Inquiry on Human Rights in North Korea</td>
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<tr>
<td>COLMEX</td>
<td>College of Mexico (El Colegio de México)</td>
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<tr>
<td>COFAMIDE</td>
<td>Salvadoran Committee of Relatives of Killed or Disappeared Migrants (Comité de Familiares de Migrantes Fallecidos y Desaparecidos)</td>
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<tr>
<td>COFAMIPRO</td>
<td>Committee of Relatives of Migrants from El Progreso</td>
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<td>CONADEP</td>
<td>National Commission on Disappeared Persons (Comisión Nacional sobre la Desaparición de Personas)</td>
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<td>CONADI</td>
<td>Comisión Nacional por el Derecho a la Identidad</td>
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<td>CONAVIM</td>
<td>National Commission to Prevent and Eradicate Violence against the Women of Ciudad Juárez and Chihuahua (Comisión Nacional para Prevenir y Erradicar la Violencia Contra las Mujeres)</td>
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<tr>
<td>CPA</td>
<td>Comprehensive Peace Agreement</td>
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<td>CSO</td>
<td>Civil society organization</td>
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<td>DNA</td>
<td>Deoxyribonucleic acid</td>
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<td>DMZ</td>
<td>Demilitarized Zone</td>
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<tr>
<td>DPAA</td>
<td>Defense POW/MIA Accounting Agency</td>
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<tr>
<td>DPRK</td>
<td>Democratic People’s Republic of Korea</td>
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<tr>
<td>EAAF</td>
<td>Argentine Forensic Anthropology Team (Equipo Argentino de Antropología Forense)</td>
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<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<td>ECLAC</td>
<td>United Nations Economic Commission for Latin America and the Caribbean</td>
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<td>ECOSOC</td>
<td>Commission on Human Rights established by the Economic and Social Council</td>
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<td>ECOWAS</td>
<td>Economic Commission of West African States</td>
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<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<tr>
<td>EMAF</td>
<td>Mexican Forensic Anthropology Team (Equipo Mexicano de Antropología Forense)</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>EMSC</td>
<td>European Migrant Smuggling Centre</td>
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<tr>
<td>EPAF</td>
<td>Peruvian Forensic Anthropology Team (Equipo Peruano de Antropología Forense)</td>
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<tr>
<td>ERC</td>
<td>Equity and Reconciliation Commission</td>
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<tr>
<td>ESMAD</td>
<td>Mobile Anti-Disturbances Squadron (Escuadrón Móvil Antidisturbios)</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EUDEBA</td>
<td>Buenos Aires University Press (Editorial universitaria de Buenos Aires)</td>
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<tr>
<td>Europol</td>
<td>European Union Agency for Law Enforcement Cooperation</td>
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<tr>
<td>FAFG</td>
<td>Guatemalan Forensic Anthropology Foundation (Fundación de Antropología Forense de Guatemala)</td>
</tr>
<tr>
<td>FARC</td>
<td>Revolutionary Armed Forces of Colombia</td>
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<tr>
<td>FDRP</td>
<td>Forensic Document Review Project</td>
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<tr>
<td>FIDH</td>
<td>International Federation for Human Rights (Fédération internationale des ligues des droits de l’homme)</td>
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<tr>
<td>FIND</td>
<td>Families of Victims of Involuntary Disappearance</td>
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<td>FMLN</td>
<td>Farabundo Martí National Liberation Front</td>
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<td>FUNDENL</td>
<td>United Forces for our Disappeared in Nuevo Leon (Fuerzas Unidas por Nuestros Desaparecidos en Nuevo Leon)</td>
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<tr>
<td>GASIMP</td>
<td>General Authority for the Search and the Identification of Missing Persons</td>
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<tr>
<td>GCC</td>
<td>Gulf Cooperation Council</td>
</tr>
<tr>
<td>GIAF</td>
<td>Investigative Group on Forensic Anthropology</td>
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<tr>
<td>GIEI</td>
<td>Interdisciplinary Group of Independent Experts (Grupo Interdisciplinario de Expertos y Expertas Independientes)</td>
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<tr>
<td>HLA</td>
<td>Human leukocyte antigens</td>
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<tr>
<td>HRC</td>
<td>Human Rights Campaign</td>
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<tr>
<td>HRW</td>
<td>Human Right Watch</td>
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<tr>
<td>IACHR</td>
<td>Inter-American Court of Human Rights</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<tr>
<td>ICMP</td>
<td>International Commission on Missing Persons</td>
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<tr>
<td>ICPPED</td>
<td>International Convention for the Protection of All Persons from Enforced Disappearance</td>
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<tr>
<td>ICRC</td>
<td>International Committee of the Red Cross</td>
</tr>
<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for the former Yugoslavia</td>
</tr>
<tr>
<td>IER</td>
<td>Equity and Reconciliation Commission</td>
</tr>
<tr>
<td>INTERPOL</td>
<td>International Criminal Police Organization</td>
</tr>
<tr>
<td>IOM</td>
<td>International Organization for Migration</td>
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<tr>
<td>JFA</td>
<td>Joint Field Activity</td>
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<tr>
<td>KIA</td>
<td>Killed in Action</td>
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<tr>
<td>LGTBQ+</td>
<td>Lesbian, gay, bisexual, and transgender</td>
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<tr>
<td>Lao PDR</td>
<td>Lao People’s Democratic Republic</td>
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<tr>
<td>LKA</td>
<td>Last Known Alive</td>
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<td>LRA</td>
<td>Lord’s Resistance Army</td>
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<tr>
<td>LRCS</td>
<td>Libyan Red Crescent Society</td>
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<tr>
<td>LSJ</td>
<td>Law Society Journal</td>
</tr>
<tr>
<td>LTTE</td>
<td>Liberation Tigers of Tamil Eelam</td>
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<tr>
<td>MCPPHR</td>
<td>Mexican Commission for the Promotion and Protection of Human Rights</td>
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<tr>
<td>MEIF</td>
<td>Extraordinary Mechanism of Forensic Identification</td>
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<td>MENA</td>
<td>Middle East and North Africa</td>
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<td>MIA</td>
<td>Missing in action</td>
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<td>MILF</td>
<td>Moro Islamic Liberation Front</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>MMM</td>
<td>Mesoamerican Migrant Movement (Movimiento Migrante Mesoamericano)</td>
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<td>MMIP</td>
<td>Montana Missing Indigenous Persons</td>
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<tr>
<td>MND</td>
<td>Ministry of National Defense</td>
</tr>
<tr>
<td>MoLISA</td>
<td>Ministry of Labor – War Invalids and Social Affairs</td>
</tr>
<tr>
<td>MPFA</td>
<td>Migration Policy Framework for Africa</td>
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<tr>
<td>MPJD</td>
<td>Movement for Peace with Justice and Dignity (Movimiento por la Paz con Justicia y Dignidad)</td>
</tr>
<tr>
<td>MPP</td>
<td>Migrant Protection Protocol</td>
</tr>
<tr>
<td>MSF</td>
<td>Doctors Without Borders (Medecins Sans Frontieres)</td>
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<tr>
<td>NAFTA</td>
<td>North American Free Trade Agreement</td>
</tr>
<tr>
<td>NCMPUR</td>
<td>National Center for Missing Persons and Unidentified Remains</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organization</td>
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<tr>
<td>NHRC</td>
<td>National Human Rights Commission</td>
</tr>
<tr>
<td>NLDP</td>
<td>National League for Democracy</td>
</tr>
<tr>
<td>NN</td>
<td>No name (nomen nescio)</td>
</tr>
<tr>
<td>NPA</td>
<td>New People's Army</td>
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<tr>
<td>NSC</td>
<td>National Supervision Commission</td>
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<tr>
<td>NSL</td>
<td>National Supervision Law</td>
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<tr>
<td>NSS</td>
<td>National Security Service</td>
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<tr>
<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
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<td>PAHRA</td>
<td>Philippine Alliance of Human Rights Advocates</td>
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<td>PCOME</td>
<td>Pima County Office of the Medical Examiner</td>
</tr>
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<td>POW</td>
<td>Prisoner of war</td>
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<td>PPP</td>
<td>People Power Party</td>
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<td>RCMP</td>
<td>Royal Canadian Mounted Police</td>
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<td>RNPDRN</td>
<td>Registro Nacional de Personas Desaparecidas y No Localizadas</td>
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<tr>
<td>ROC</td>
<td>Republic of China</td>
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<tr>
<td>RSDL</td>
<td>Residential Surveillance at a Designated Location</td>
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<tr>
<td>SEF</td>
<td>Straits Exchange Foundation</td>
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<td>SGVB</td>
<td>Sexual and gender-based violence</td>
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<tr>
<td>SIJS</td>
<td>Special Immigrant Juvenile Status</td>
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<td>SJMM</td>
<td>Servicio Jesuita a Migrantes Mexico</td>
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<td>SNB</td>
<td>National Search System</td>
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<tr>
<td>SRV</td>
<td>Socialist Republic of Vietnam</td>
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<td>SSA</td>
<td>Sub-Saharan Africa</td>
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<td>TRC</td>
<td>Truth and Reconciliation Commission</td>
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<tr>
<td>UAE</td>
<td>United Arab Emirates</td>
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<tr>
<td>UBPD</td>
<td>Search Unit (Unidad de Búsqueda de Personas Dadas por Desaparecidas)</td>
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<tr>
<td>UNAM</td>
<td>National Autonomous University of Mexico (Universidad Nacional Autónoma de México)</td>
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<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<td>UNICEF</td>
<td>United Nations Children's Emergency Fund</td>
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<td>UN OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
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<td>UNSC</td>
<td>United Nations Security Council</td>
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<td>UPR</td>
<td>Universal Periodic Review</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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<tr>
<td>USD</td>
<td>United States Dollar</td>
</tr>
<tr>
<td>USG</td>
<td>United States Government</td>
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VAST Vietnamese Academy of Science and Technology
VNOSMP Vietnamese Office Seeking Missing Persons
WGEID Working Group on Enforced or Involuntary Disappearances
WOLA Washington Office of Latin America
WTO World Trade Organization
2SLGBTQQIA+ Two-spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual people
Introduction

The Global Report is an annual international publication that examines the causes of persons going missing, the reasons why they often remain missing and the efforts to find them. The first edition lays the foundations, conceptually and practically, for advancing an international and transnational perspective. It illustrates the underlying principle that accounting for the missing and securing the human rights of survivors is a central component of good governance, advancing the rule of law and state responsibility.

In the context of state responsibility, including the obligation of states to cooperate with one another on safeguarding human rights, the Global Report seeks to maintain a trajectory for future, analysis. At the same time, it identifies possible remedial opportunities for states by advancing the rule of law and justice processes as primary instruments. It also aspires to provide a new and straightforward perspective on a phenomenon that has plagued humankind and that is often deliberately obscured, or over complicated by those who seek to weaponize, or silence the issue.

Today, in Central and South America, in the Mediterranean, and across South Asia, tens of thousands of people are missing as a result of irregular migration. More than 100,000 people have disappeared from the conflict in Syria, inside the country or on dangerous routes taken by desperate Syrian refugees, and thousands are reported missing as a result of the enforced disappearance and mass displacement of Rohingya from northern Myanmar. Countries such as Iraq, Sri Lanka, Burundi, Rwanda, and Vietnam are striving to address a huge and painful legacy of missing persons from past conflicts.

Accounting for the missing, after conflict and disaster or as a result of trafficking and organized crime, is fundamental to upholding and reinforcing the rule of law. Governments have legal obligations to take effective steps to establish the facts and help survivors to access their rights to truth, justice and reparations. Assisting authorities in this is an investment in peace – because accounting for missing persons is a central element in restoring public confidence in post-conflict and post-disaster societies and in consolidating global security.

Where national authorities address the issue in a transparent manner based on human rights and the rule of law, and when they place the needs of survivors first, they reinforce public trust in key institutions, including courts, prosecutors and law enforcement, and begin a process of rebuilding social cohesion.

Locating every missing person is a result that no authority can guarantee, promise, or be bound to. However, authorities are obliged to guarantee a process that meets the standards of effective investigations under the law. Resentment – and, in many instances, mass disaffection – of survivors is fueled by deliberate or negligent failure by authorities to conduct formal and meaningful investigations. There are numerous causes for this. For example, the authorities themselves may have been involved in disappearances and are consequently reluctant to investigate – whatever public assurances they may give to the contrary. Another common cause stems from unwillingness to recognize the legitimate demands of survivors or a refusal to accept the credibility of survivor testimony – and in many cases this testimony may be the only evidence that a person has gone missing. Testimony may be discounted for a number of reasons, including the gender, political affiliation, ethnicity or social standing of the witness. This is not confined to developing countries or those recovering from conflict. A majority of those who are missing on migration routes today are the poor, or minorities or people of color – and disappearances among minority groups, including, for example, Native American women, are significantly higher than among other communities in North America. Likewise, gender may be a major factor in the inability of witnesses to obtain satisfaction from authorities. Most of those who disappear in conflict, human rights abuses and migration are men. Female survivors are marginalized, or stigmatized and often face institutional sexism and legal discrimination if they seek to challenge governments or society when seeking to secure their rights. In other cases, women are the target of disappearances, such as Yazidi victims of Da'esh crimes, and in many cultures reporting women as missing is stigmatized, which leads to under-reporting.

An important way of addressing this, and helping states to meet their obligations, is to enhance the objectivity of evidence presented by survivors. It can be undertaken by collecting information securely, using database technology that makes it possible for data to be shared and analyzed and for evidence to be sifted and corroborated efficiently. This can be done in ways that uphold the right to privacy of those who provide the information, while ensuring that victims and their data can
contribute to efforts to end impunity for those responsible for persons going missing or disappearing. In addition, effective steps can be taken to protect and analyze crime scenes, mass graves, and other locations related to disappearances.

One of the key issues addressed in this edition of the Global Report is the challenge of tabulating meaningful and useful data on missing persons. When large numbers of persons go missing as a result of natural disasters, for example, governments may lack the resources to account for those who have disappeared – one example is Haiti after the earthquake of 2010, when tens of thousands of unidentified victims were buried in mass graves. In cases of enforced disappearance, the perpetrators are likely to try and cover up their own criminal responsibility and expunge any record of the victims’ existence – one example is the Srebrenica Genocide. In cases of migration, missing persons may be travelling without identity documents and they and their families may be reluctant to engage with authorities for fear of legal jeopardy – a common issue in regard to migration to Europe and North America today. This edition of the Global Report therefore includes an “Outlook on Indicators on Missing Persons”, which will develop a framework for indicators. One initial objective will be to assess the fitness for purpose of some key indicators.

When persons disappear or go missing, States are legally bound to conduct comprehensive and effective investigations. Multiple human rights abuses may be involved, including violations of the right to security and liberty and dignity of the person, the right to life, the right not to be subjected to torture or degrading treatment or punishment, the right to a family life and the right to recognition as a person before the law.

Enforced disappearance is defined as an international crime under the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), the Rome Statute of the International Criminal Court (ICC), and the UN Declaration on the Protection of all Persons from Enforced Disappearances. To date, 98 countries have signed the ICPPED.

The CED and the UN Declaration define enforced disappearance as having three constituent elements: deprivation of liberty (persons are arrested, detained or abducted against their will or otherwise deprived of their liberty); grounds for government responsibility (by officials of different branches or levels of government or by organized groups, or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of, the government); and continuous refusal by the state to take appropriate action (refusal to disclose the fate or whereabouts of the persons concerned or refusal to acknowledge the deprivation of liberty, which places persons outside the protection of the law).

International legal instruments relevant to the issue of missing persons and enforced disappearance include the Universal Declaration on Human Rights [1] (Article 3 – Right to life, Article 12 – Right to privacy), the International Covenant on Civil and Political Rights (ICCPR) (Article 6 – Right to life, Article 7 – Prohibition against torture, Article 17 – Right to privacy), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child (Article 16 – Right to Privacy).

Signatories to the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses [2], drawn up under the auspices of the International Commission on Missing Persons (ICMP), declare their commitment to addressing the issue of missing persons as a responsibility of the state, and they do this explicitly with the objective of ensuring lasting peace and promoting cooperation and reconciliation.

These universal provisions are supported by bilateral and multilateral treaties and conventions applicable in different regions of the world, including the European Convention on Human Rights (ECHR), the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention), which requires States to “take necessary measures, including the establishment of specialized mechanisms, to trace and reunify families separated during displacement and otherwise facilitate the re-establishment of family ties,” and the Inter-American Convention on Forced Disappearance of Persons [3]. Importantly, States have obligations to ensure and respect the rights of everyone within their territory and
subject to their jurisdiction, power and effective control. This means that not only its citizens but “all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State” are entitled to all human rights. (HRC, General Comment 31, paragraph 10 [4]).

During armed conflicts, International Humanitarian Law treaties provide for specific provisions concerning the issue of the missing, including the obligations that the parties to the conflict have when persons are reported missing, as well as those with regard to the treatment of the remains of the deceased (Additional Protocol I to the four Geneva Conventions of 1949).

While these provisions are applicable in a time of international armed conflict and occupation, they do not apply per se in the context of non-international armed conflict. Since its early codification, the rationale of International Humanitarian Law (IHL) has been to diminish ‘the evils of war, as far as military requirements permit’ [5] and to mitigate its ‘inevitable rigors’. [6]. This includes alleviating the suffering of families who are without news of their relatives. The lack of universal ratification of Additional Protocol I and the absence of a similar provision under the framework applicable in non-international armed conflicts also affect the scope of IHL.

The Global Report addresses issues that go beyond situations of ongoing armed conflict and the limited remit of IHL. It deals with rule-of-law-based measures that state authorities and societies put into practice to address the issue of missing and disappeared persons over the longer term and in times of peace.

In addition to global and regional conventions and the international courts and tribunals that are mandated to uphold these provisions, many countries have legislative provisions that specifically criminalize enforced disappearance. However, many more countries do not define enforced disappearance as a crime.

This edition of the Global Report shows very clearly that there are significant variations across different parts of the world and between countries when it comes to the scale of the problem of enforced disappearances and missing persons. However, there are also striking commonalities. Universally, failures to conduct effective official investigations into the fate and circumstances of persons going missing and disappearing contribute to political instability and cycles of violence. Nevertheless, governments often need to be reminded of their statutory obligations – officials may be unaware of the actions they are legally bound to take. This includes officials in countries where the issue may not have arisen as a domestic consequence of war or disaster, for example, European states that are bound by law to investigate the fate of migrants who may have disappeared on their territory. Also, survivors, including the families of the missing may be unaware of their rights – to effective investigation, to justice, to reparations, and to memorialization. Accordingly, many countries have not developed the technical capacities needed to fulfil their obligations.

Credible, transparent and impartial investigations of large numbers of missing persons are not possible during armed conflicts, because political will on the part of states is essential to locating missing and disappeared persons. This also often applies to locating persons believed to be in incommunicado detention.

In developed countries – as in less developed countries – a lack of political will persistently undercuts fundamental guarantees, including the right to effective investigations, especially where migrants, refugees and members of minority groups are concerned. This differential or even discriminatory treatment has been attributed to cultural attitudes, and may also be rooted in the legacy and vestiges of colonialism. Accordingly, across all countries, including developed countries, social and ethnic minorities are more likely to go missing or to be subject to enforced disappearance. In light of this, a considerable portion of the progress that has been made in addressing the issue of missing persons has been a result of political advocacy and legal efforts led by associations of families of the missing and civil society. In some cases, however, states and groups of states have taken the lead in addressing the issue very effectively, such as in the Western Balkans, and it demonstrates that large-scale missing persons and disappearance scenarios, whether from conflict or manmade or natural disasters, are transnational in nature and require an international response through cooperation between states.

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The contemporary causes of persons going missing or disappearing are diverse. Climate change is becoming an important driver in situations where it prompts mass migration. Trafficking in human beings, or modern-day slavery, affects an estimated 25 million people globally and is also a key driver of persons going missing. In armed conflicts, as well as in cases of human rights abuse and migration, a majority of those who go missing are men, which subsequently increases the vulnerability of women, especially in societies where they will face entrenched obstacles in asserting their human and civil rights.

There are also commonalities in the steps that should be taken in order to address this global challenge in an effective and timely way. Countries increasingly recognize persons going missing and disappearing as a rule-of-law issue that engages state responsibility for ensuring effective coordination of law enforcement, judicial bodies, medical-legal services and other domestic institutions whose work is relevant to locating missing persons and securing the rights of survivors. However, more effective domestic legislation is needed that secures the rights of families of the missing, including the right to justice, truth and reparations, and recognizes the societal importance in the longer term of redressing any past failures to uphold the rule of law and human rights. More attention must be given to ensuring that efforts to account for missing persons and victims of enforced disappearance contribute to longer-term societal development and well-being, including by ensuring accountability and ending impunity.

Many states are also stepping up their investigative technical capacities to give effect to policies based on the rule of law, including through advanced informatics technologies, the use of forensic sciences, for example DNA-based kinship matching, and setting up centralized and secure data processing systems.

More remains to be done. States that have not signed or ratified the ICPPED should do so. States that have not already created criminal laws that specifically outlaw the crime of enforced disappearance should do so. States should also ensure that any specialized institutions tasked with locating missing persons are free from partisanship and cooperate effectively with judicial institutions and law enforcement. They must ensure transparency of the processes of accounting for the missing and provide credible, reliable and accurate information regarding efforts to establish the whereabouts of missing persons and the circumstances of their disappearance. And they must make it easier for families to report a missing person and obtain information on any progress that has been made. States should adopt measures to ensure a clearer legal status for missing persons and their families in order to assist them with administrative issues that may arise in cases where the legal status of survivors is indeterminate, and they must prevent gender-specific harms that women often experience, both as victims of disappearance and as relatives of the disappeared.

The Global Report, which is part of the Global Forum on Missing Persons stipulated in ICMP’s founding treaty, reflects a new international consensus that the issue of missing persons cuts across judicial and national jurisdictions and can only be tackled effectively by applying dedicated techniques as part of a coordinated multinational approach that respects human rights. Through this publication, ICMP has brought together distinguished academics and experts to shed light on the issue of missing persons and enforced disappearances. Future editions of the Global Report will sustain this wide-ranging and necessary international debate.
INTRODUCTION
Countries in the Middle East and North Africa (MENA) region have faced a significant rise in the number of missing persons as a result of conflict and political repression. As state actors have frequently been the primary perpetrators of disappearances and persons going missing in the MENA region, progress on resolving the issue has been impeded by lack of political will and in many instances a refusal to acknowledge enforced disappearances. In some states in the region, enforced disappearance is not specifically defined as a criminal offence. Additionally, only four states – Iraq, Morocco, Oman, and Tunisia – have ratified the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), while Lebanon has signed but has not yet ratified the Convention. Moreover, when perpetrators of disappearances are held to account, the process is often politicized, and only victims who meet certain criteria have their rights protected.

This chapter will address drivers of persons going missing throughout the MENA region, identifying who the missing are, why people have gone missing, and why they remain missing. The first section will lay out the legal, political, and social context surrounding the issue of missing persons in the region. The second section will discuss how governments and political leaders have used enforced disappearance as a method to suppress dissent. The third section will address the role of conflict in large numbers of persons going missing or disappearing in the region. The fourth section will discuss the role that migration has played throughout the region, and in particular, across North Africa and to Europe. The fifth section will explore efforts towards accountability, and the sixth section will address the gendered impact of persons going missing or disappearing. The chapter will conclude with recommendations for MENA region states to address the issue of missing persons.

PART 1: MIDDLE EAST AND NORTH AFRICA: POLITICAL, SOCIAL, AND LEGAL CONTEXT

The MENA region has high numbers of missing persons as a result of conflicts throughout the region, government suppression of dissent, migration and atrocities committed against members of national or religious groups. Iraq is sometimes cited as a state with one of the highest numbers of missing persons around the world as a result of decades of conflict and human rights abuses [7]. The conflict in Syria as well as decades of repression under both Hafez and Bashar Al-Assad has also contributed to large numbers of missing persons in the region, with reports that almost 100,000 Syrians have gone missing just since 2011 [8]. A wave of revolutions and protest movements in 2011 triggered government repression and conflicts across the region. Governments have used – and in some states this is increasing – enforced disappearance as a tool of repression, disappearing human rights defenders, activists, journalists, and even humanitarian and medical workers in conflict situations.

Disappearances and instances that result in missing persons cases impact not only the person who is missing but also family members. Every family in Iraq is reported to have been affected by a missing persons case either because a family member is missing or because a friend or associate has a missing family member. Most cases of missing persons are men and as a result the family members of the missing who are most impacted are the mothers and wives and children of missing persons. Women whose male family members are missing or disappeared in the MENA region face many difficulties as a result of social and legal issues that arise relating to the loss of the male head of household. Due to legal constraints, women face difficulty in completing administrative tasks and maintaining guardianship of their children. They also face social issues such as being isolated from the rest of the community, among other things because other families may be reluctant to associate with families that have missing persons. Moreover, family members of the missing face years – and even lifetimes – of mental anguish as a result of not knowing the fate of their loved ones.

However, many family members of missing persons in the region have organized to provide one another with social support and to advocate for government action to investigate the fate of missing persons and seek accountability. Family associations have taken it upon themselves to do the work that governments sometimes fail to do, such as documenting missing persons cases, providing support and services to families of the missing, locating the remains of victims, and memorializing the missing. Family associations, including associations of mothers of the missing, push for official investigations even decades after their family members have disappeared and provide support to criminal investigations and prosecutions of those accused of responsibility for disappearances.
In many instances across the region, lack of political will, a widespread sense of impunity and plain indifference have hollowed out families’ rights. In many MENA states, the legal system has failed to strengthen accountability. States lack legal and institutional protections for the missing and their families. In many instances, accountability mechanisms are politicized, defining martyrs in a manner that confers more rights on their families than on others. Additionally, in some states, enforced disappearance is not specifically criminalized; sometimes laws relating to accountability for disappearances only apply in certain contexts or, in effect, to certain perpetrators regarding specific armed conflicts and actions of former regimes.

Lack of political will often also stems from the fact that those responsible for disappearances remain in power and consequently refuse to address the issue in a meaningful way or hold direct perpetrators to account. This results in large numbers of disappearances either being left unacknowledged or being subject to amnesties that prevent perpetrators from being held to account. However, this has also resulted in increasingly widespread dissent by civil society and continued calls for democratic reform and accountability for perpetrators of human rights abuses [9]. Moreover, those impacted by disappearances, including families of the missing, have grown increasingly frustrated with the lack of action regarding the issue of missing persons and are fearful that the missing will not be found.

PART 2: SUPPRESSION OF DISSENT: DISAPPEARING POLITICAL DISSIDENTS

One of the drivers of persons going missing or disappearing in the MENA region has been the suppression of dissent and opposition. Governments and non-state actors in positions of power throughout the MENA region have been systematically suppressing dissent and opposition through the use of enforced disappearance [10]. Victims are typically human rights defenders, lawyers, journalists, humanitarian and medical actors and activists. In some contexts, those who are perceived to be opposed to the government or opposed to a political party in power, based on their socioeconomic status or religious or ethnic affiliation, for example, are subjected to enforced disappearance. Enforced disappearances are used to silence dissent and to spread fear.

Disappearances Following Public Protest

In Syria, during the first two years of the revolution, prior to becoming an armed conflict, many protesters and peaceful demonstrators were detained arbitrarily and subsequently disappeared. In the case of demonstrators, family members have regularly been denied information regarding their missing relatives’ whereabouts and have been unable to contact them. The vast majority of these disappearances have been perpetrated by government security and intelligence officers [11]. When family members approach security branches for information regarding missing loved ones, officials deny that the family member is there [11].

Fadwa Mahmoud is a Syrian activist and a founder of Families for Freedom [12], a Syrian women-led family association. Fadwa, an Alawite Syrian like the Assads, was detained along with her husband in 1992 and served a 14-month sentence in a Syrian government prison for involvement with an opposition party. Her husband remained detained for 13 years [13]. In 2012, after her son went to pick her husband up from the airport, neither returned. They have both been missing since then. When Fadwa has requested information from the authorities, her requests have been denied [14].

In Egypt, the practice of enforced disappearance as a means of silencing dissent has only increased since the revolution of 2011 and the subsequent 2013 military coup. Although in many cases disappeared activists are released after several months in detention, in others they are found dead or are never heard from again. Reportedly, since 2013, more than 1,000 persons have disappeared in Egypt [15]. Disappearances during or following protest are also an issue in Iraq, where between October 2019 and March 2020, 154 instances were reported, many of which concern journalists and photographers documenting protests [16].
Targeting Human Rights Defenders and Journalists

There have also been reports of journalists and human rights defenders being disappeared in Gulf Cooperation Council (GCC) countries, and sometimes even abroad [17]. Family members of those perceived to be opposed to governments and political leaders are also targeted for enforced disappearance to pressure them to cease public opposition [18].

SECRET DETENTION FACILITIES

Many of those forcibly disappeared for acts or statements of dissent are subjected to incommunicado detention in secret or undisclosed detention centers or facilities without judicial oversight or legal protections. In Egypt, for instance, conservative Muslims, often members of the Muslim Brotherhood, suspected of being involved in militant attacks carried out in support of deposed President Mohamed Morsi, have been disappeared into the Azouli military jail where they are reportedly subjected to torture. Only a few have “reappeared” from Azouli [19]. There have even been reports of instances in which other countries would send persons, through extraordinary rendition, to countries in the region to be disappeared and tortured [20].

Families of those forcibly disappeared for their role in protests or as human rights defenders or journalists have advocated for the acknowledgment of their missing relatives. In Baghdad, family members of missing protesters posted banners all over the city in 2019 to draw more attention to the issue [21]. In Egypt, families of disappeared persons have taken part in protests and demonstrations calling for the recognition of, and investigations into, enforced disappearances [22]. However, little progress has been made, with most of the disappeared remaining missing in the region.

Government Response

In many contexts in the region, governments refuse to acknowledge their use of enforced disappearance as a tool to suppress dissent. As a result, most of these cases go unresolved and families of disappeared persons are left without legal recourse.

LACK OF GOVERNMENT ACKNOWLEDGEMENT

The Egyptian government has refused to acknowledge enforced disappearances [22]. However, in 2017, the Egyptian Supreme Administrative Court acknowledged and denounced the forced disappearance of Asma Khalaf, an Egyptian doctor, at the hands of Ministry of Interior police. The court cited international human rights obligations of the state and required the Ministry of Interior to disclose Khalaf’s whereabouts and condemned the practice of enforced disappearance by Egyptian police. However, disappearances have continued, and the Egyptian police continue to deny knowledge of Khalaf’s whereabouts [23].

Although state institutions have been tasked with responding to the issue of missing and disappeared persons in the region, they have yet to acknowledge the ongoing nature of disappearances. In Iraq, for instance, the Martyrs’ Foundation Law only takes into account those killed or disappeared at the hands of the former Ba’ath regime or terrorist attacks [16]. Iraqi law generally does not criminalize enforced disappearance outside this context [16]. The Syrian state denies that it engages in the practice of enforced disappearance and provides no legal recourse for disappearances [11]. Saudi law generally does not criminalize enforced disappearance. Moreover, in some states, including Saudi Arabia but also Lebanon, judicial institutions are subject to varying degrees of executive oversight and may hence avoid investigating disappearances that involve the executive branch [24, 25].
However, there are exceptions, too. In 2011, Bahrain established a commission of inquiry to investigate human rights violations, including disappearances that took place in the context of protests and demonstrations between February and March 2011. The commission published a report in November 2011 and provided recommendations on how the government should address violations [26]. While the commission’s chairman, international lawyer Cherif Bassiouni, insisted that the commission operated independently from the Bahraini government or from political considerations, Bahraini civil society expressed deep concerns about the impartiality of decisions taken by the commission [27, 28]. There have also been concerns that the commission is ineffective since the Bahraini government has shown a lack of political will to implement the commission’s recommendations fully [29]. Bahraini authorities should commit to full implementation of the commission’s recommendations to ensure protection from enforced disappearance.

Governments of states in which people continue to go missing, can take steps towards dealing with cases by first acknowledging the ongoing nature of the practice of enforced disappearance. The Egyptian Judiciary, for instance, should seek the Ministry of Interior’s cooperation in an investigation into Egyptian police activity in an effort to ensure enforcement of the Supreme Administrative Court’s decision in the Asma Khalaf case in 2017. Governments can also develop independent commissions to investigate reports of persons going missing or disappearing, identify perpetrators and develop specific strategies to hold perpetrators to account, and to ensure that the practice is brought to an end. Such commissions can also contribute to documenting and assisting investigative efforts to rebuild trust in government institutions with civil society and survivors.

PART 3: CONFLICT-RELATED DISAPPEARANCES AND ATROCITIES

Another driver of persons going missing in the MENA region is armed conflict. In many cases, conflicts have deliberately targeted civilians, resulting in high numbers of missing persons. The onset of multiple armed conflicts re-emerging over time involving the same countries or actors has significantly increased the number of missing persons. Iraq is frequently cited as having exceptionally high numbers of missing persons – hundreds of thousands [7, 30] – due in part to the Iran-Iraq war, the Iraqi invasion of Kuwait, the US-led coalition occupation, and the emergence of Da’esh, in addition to atrocities committed during the regime of Saddam Hussain, in particular against Kurds and Shia populations. More than 100,000 people have been disappeared or have gone missing in Syria since the start of the uprising in 2011 [8]. There are a number of reasons why so many have gone missing during conflicts in the MENA region. In addition to armed actors going missing, many conflict activities have directly targeted civilians. Family members of persons who have gone missing during conflict are also targeted and forcibly disappeared often while reporting a family member missing [31].

Indiscriminate Attacks Against Civilians

Conflicts throughout the region have witnessed attacks on civilians that resulted in large numbers of missing persons. One widely-quoted example is the Fallujah Offensive in Iraq in the summer of 2016 against Da’esh. Civilians in the city of Fallujah were forced to leave their homes during the offensive and more than 70 men went missing. Years later, more than 500 bodies were discovered in a mass grave in the area, which many believe include the human remains of men who disappeared during the offensive [32].

Between 2014 and 2020, residents of Tarhuna, southeast of the Libyan capital, Tripoli, were subjected to abduction or went missing when the town was under the control of the Al-Kaniyat militia. More than 300 residents were reported missing as a result of their open or perceived opposition to this militia. Since the Government of National Accord regained control of the territory, the Libyan Public Authority for Search and Identification of Missing Persons has worked to document missing persons in a database and identify the missing and locate and excavate mass graves. The public authority has also collected DNA samples from human remains that have been recovered and from family members of missing persons, with a view to identifying the remains of victims [32].

Targeting Civilian Dissidents

During the conflict in Syria, enforced disappearances have targeted those publicly opposed to the Assad regime, including protesters, lawyers, human rights defenders, and journalists. Humanitarian aid workers and medical personnel providing support to victims have also been targeted for enforced disappearance [31]. According to a Syrian Network for Human Rights report in September 2020, there had been 3,353 arrests and disappearances of medical personnel since the start of the conflict in 2011 [33].
In many instances, those forcibly disappeared are detained in secret or illegal detention centers. In many cases the location of these detention centers are kept secret, and governments do not allow families of the missing or international organizations to visit.

Huthi forces in Yemen have reportedly engaged in a campaign of enforced disappearance against journalists and academics as well as members of the Baha’i faith. There have also been reports of UAE forces disappearing Yemenis, who are believed to be being held in secret detention centers [34]. Family members of disappeared persons have been unable to obtain information from officials, who say they do not have jurisdiction over or information on actions of UAE forces. Human Rights Watch reports that UAE officials have transferred disappeared Yemenis to secret detention centers outside Yemen [35]. Since 2016, at least 770 cases of enforced disappearance perpetrated by all parties to the conflict have been documented [36]. Meanwhile, reports of secret prisons in Iraq following the 2003 invasion have not been adequately addressed [16].

All authorities should reveal information about secret prisons as well as the fate of those who have disappeared into such places, and the circumstances of their disappearance. An international independent investigation should be conducted, with the cooperation and information-sharing of all states involved. Amongst other things, such an investigation could help to determine the remedies to which families of the disappeared are entitled.

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**THE DOUMA FOUR**

In December 2013, the office of the Violations Documentation Center, a human rights monitoring group based in Douma on the eastern outskirts of Damascus, was raided and the head of the center, Razan Zaitouneh, and her colleagues Wael Hamada, Samira Al-Khalil, and Nazem Hamadi were kidnapped and have not been heard from since [37]. Reports suggest that Jaysh al-Islam was likely responsible. However, even after the Syrian government took control of Douma and Jaysh al-Islam was displaced to other parts of Syria, no information was provided as to the whereabouts of the victims [38]. While some have speculated that they may have been buried in mass graves in the area, none of these reports has been confirmed [39]. This instance of disappearance had a significant impact on Syrian activists as the four disappeared had been major figures within Syrian opposition circles. [40]

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**Families of Those Missing During Conflict**

The family members of disappeared persons in Syria fear being disappeared themselves, to the degree that whole families have fled the country to avoid this fate [31]. In cases of ongoing conflict, or where the government itself is responsible for a large number of missing persons, families often cannot turn to the authorities for help for fear that reporting a missing relative or asking for help will result in their own detention or disappearance. Instead, Syrians turn to middlemen who have connections to government officials to facilitate finding information about missing relatives [31]. Syrians have learned the fate of their relatives only when they have discovered in civil registries that their missing relative has been listed as deceased. Families do not receive a notification of this registration and the cause of death is almost always listed as a heart attack. The bodies are not returned to the families. As of August 2020, there had been 991 documented cases of this practice [8]. This indicates that the Syrian government was aware of the missing person’s location and is likely aware of when and how they died. Intentional failure to inform the families of this information constitutes multiple human rights violations, including the right to an effective investigation and the right to be informed about the circumstances of the disappearance of next of kin, as well as the prohibition of torture and the right to an effective remedy.
In some instances, families are induced to pay a ransom for the return of their missing relative. This has been a practice used by Syrian officials against individuals who approach government offices for administrative tasks related to a disappearance [31]. The practice is so widespread that it has become a profitable business for officials and middlemen. Syrians with family members who have been disappeared by the Syrian regime have reported paying between USD 500 and 10,000 for information about their disappeared relatives. Often family members are given false or no information [42]. It was also a practice used by militia groups involved in the civil war in Lebanon. Many families have reported being asked to provide thousands of dollars in ransom, often to no avail, or even resulting in the disappearance of the relative tasked with delivering the ransom [43]. Family members have also been targeted for advocating for greater efforts to locate missing family members throughout the region [44].

**Government Response**

**Martyrs’ Laws**

Governments in the region have responded to the issue of missing persons specifically in the context of conflict through measures to document cases, protect the rights of families, locate mass graves, and – most frequently – by adopting laws to protect families of martyrs. Killed combatants typically qualify as martyrs but the term is also extended to others who have been disappeared during periods of conflict. These laws provide for compensation and other assistance to the families of those recognized as martyrs. The definition of “martyr” is often politicized. According to Syrian law, for example, “martyrs” are defined as members of the Syrian Army or Internal Security Forces only [45]. Therefore, only their families benefit from the rights granted under the law [46]. Similarly, in Libya, following the revolution of 2011, a law passed in 2014 provides protection for the families of those who went missing during conflict with the former Gaddafi regime [47]. This law also defines which families are able to access government protection after family members are disappeared, based on political grounds. The Iraqi Martyrs’ Foundation provides compensation for the families of persons missing as a result of enforced disappearance at the hands of terrorist organizations or the Ba’ath government, but does not address more recent disappearances or persons going missing for other reasons [16]. All countries that have enacted laws to protect the families of martyred or missing persons should ensure that protections are not discriminatory and that they are applied regardless of the political affiliation or ethnic or religious backgrounds of those who have gone missing.

**Mass Grave Excavations**

Many governments throughout the region have taken steps to locate and excavate mass graves and to exhume and identify the remains of missing persons. By October 2020, the Iraqi Martyrs’ Foundation Mass Graves Department had identified 101 mass grave sites associated with crimes committed by the Ba’ath party. More than 4,000 sets of human remains have been exhumed from 80 of these sites. Additionally, the Kurdish Regional Government passed a law in 2007 aimed at providing compensation to victims of Ba’ath era crimes [16]. Following the Iraq-Kuwait war in 1990, excavation of mass graves and identification of missing persons in both countries continues to this day [48, 49]. Iraqi authorities have also excavated mass graves of Yezidis in an effort to identify persons who went missing at the hands of Da’esh in Sinjar and Tikrit. Mass grave sites have been located in the village of Kojo as well as in Camp Speicher in Iraq, where remains of Yezidis, Shia and others killed by Da’esh have been excavated and reburied [50, 51]. Family members of missing persons have also received psychological support from international organizations, and blood samples have been collected from the families of missing persons to compare with DNA profiles extracted from unidentified human remains for the purposes of identification [52].

**THE CAESAR PHOTOS**

Syrians have also learned about missing family members’ deaths by finding their images among the “Caesar photos.” In 2013, a Syrian photographer codenamed “Caesar” had been an official forensic photographer with the Syrian military and was tasked with photographing the remains of those in detention centers who were killed under torture, smuggled more than 50,000 digital photographs out of Syria before leaving himself. After many of these photos were published online through the facilitation of Syrian civil society organizations, family members of missing Syrians were able to recognize their missing family members among the photos [41].
While Iraq has instituted processes through its Law on Mass Grave Affairs – albeit partial – in respect of missing and disappeared persons, other countries in the region have not made as much progress. In 2019, Lebanon passed Law 105 for the Missing and Forcibly Disappeared Persons, but the state has yet to disclose to families of missing persons the status of its mass grave exhumation activities and the fate of 17,000 missing persons from the 1975-1990 Civil War. There also appears to be no clear policy concerning the forensic examination, identification and eventual return of remains to families [43]. In response, Lebanese NGOs and associations of families of the missing have taken it upon themselves to document missing persons and locate mass graves and places where people were abducted or went missing. A Lebanese NGO, Act for the Disappeared, has documented more than 2,000 cases of missing persons and 112 mass grave sites so far [53].

**Lack of Political Will**

Across the region, political considerations have had a significant impact on upholding the rights of families of missing persons, including the rights to effective investigations, protection, participation and compensation. In many instances, political actors who were responsible for or complicit in crimes that have resulted in missing persons are still in positions of authority and are unwilling to heed calls from families for investigations and justice. Funding limitations have moreover compounded the problem.

Governments throughout the region should seek to investigate, identify, and hold accountable those responsible for instances of disappearances and international crimes during conflict. Doing so will ensure that decision-makers have not been involved in disappearances and will consequently be less likely to hinder efforts to locate the missing and hold those responsible to account. Investigation and identification of missing persons must be a key component of justice efforts following conflict.

**PART 3: MISSING MIGRANTS**

Over the past decade, there have been large migratory movements across and from the MENA region. Migration flows throughout the region are motivated by a myriad of factors. Migrants include labor migrants, who have primarily traveled to the Gulf region, and forced migrants and internally displaced persons who have traveled throughout the region as well as outside the region as a result of conflict and crises. Additionally, migration has been spurred by complex factors that include economic and employment opportunities and social pressures. According to the Mixed Migration review, the top five destinations are Turkey, Saudi Arabia, France, Lebanon, and Germany. While many migrants travel throughout the region, 76 percent of migrants exiting the MENA region are from outside the region. Countries of origin of most migrants from the region are Palestine, Syria, India, Bangladesh, and Egypt, many of whom are refugees. A majority are young unemployed men, many of whom are seeking better employment opportunities either in the region or elsewhere [54].

**Mediterranean Migration Routes**

Data collected by the International Organization for Migration (IOM) since 2014 shows that the Mediterranean region is the deadliest route worldwide. Although migrants have been using this route over the last 30 years, it captured the international community’s attention in 2013 after a boat carrying migrants and refugees traveling to Europe caught fire off the coast of Italy resulting in hundreds of deaths [55]. Traveling from the MENA region, 30 percent of migrants used this route. More than 3,000 migrant and refugee deaths were recorded on the Mediterranean crossing between 2006 and 2014 [56]; from 2014 to 2020 more than 21,000 migrants died or went missing in the Mediterranean (with more than 2,400 coming from the MENA region, and more than 800 believed to originate from the Middle East [57]). In 2020 alone, 1,861 migrants and refugees were reported dead or missing either within the MENA region or crossing the Mediterranean [54]. For almost a decade there have been reports of migrants and refugees going missing after unstable rubber boats or rafts capsized in the Mediterranean, although the number of migrants crossing has decreased since 2015 [58]. A factor that has contributed to Mediterranean migrant deaths and disappearances has been the exploitation of smugglers across migration routes, who for example cram large numbers of people onto unseaworthy vessels. Migrants usually use more than one smuggler on their journeys, which frequently last over six months [54].
Intercepting Migrants and Refugees in Countries of Transit

Libya is one of the main departure points from which migrants and refugees from Africa and other parts of the Middle East try to cross to Europe. Due to the conflict in the country as well as the presence of smugglers willing to extort payment from families, migrants and refugees are at particular risk of going missing. Some migrants and refugees are also intercepted in the Mediterranean and returned to Libya; reports point to disappearances of migrants and refugees – whether crossing Libya or after being returned to Libya – as a result of their transfer to Libyan unofficial detention centers [61, 62]. By September 2020, IOM estimates that 8,435 migrants and refugees had been returned to Libya. Of 6,200 who had been returned by August 2020, more than half were missing [62]. IOM, which evaluates and visits detention centers where migrants and refugees are held under the control of the Ministry of Interior’s Directorate for Combating Illegal Migration, is not permitted to visit unofficial detention centers and as a result the status and “ultimate destination” of those sent to such centers remain unknown [61]. For a variety of reasons, including logistics and limited communication, families of migrants missing in Libya are often unable to report disappearance; in addition, the institution responsible for dealing with the search and identification of the missing in Libya (the General Authority for the Search and the Identification of Missing Persons – GASIMP) does not currently deal with missing migrants and refugees, as this falls within the mandate of other institutions. Therefore, reporting and family outreach capabilities deployed by GASIMP for missing Libyan citizens are not used for non-Libyans [63].

Turkey is both a destination and a transit point for migrants and refugees from the region, and migrant vessels in the Aegean have capsized, en route to Turkey or from Turkey to Europe, due to bad weather or overcrowding [64-67]. Moreover, Turkey has served as a trafficking hub, with reports, for example, of Yezidi women being trafficked or sold in Turkey by Da'esh. The UN Working Group on Enforced or Involuntary Disappearances (WGEID) has suggested that local authorities are aware of this practice but have done nothing to prevent it [68]. There have also been reports that Turkey has deported large numbers of Syrians back into Syria, where many fear detention, torture, disappearance, or death [68]. Some Syrians involuntarily deported back into Syria have reportedly disappeared upon arrival [69]. Turkish authorities should stop involuntarily deporting Syrians back to Syria, where many are certain to face harm.

Migrants and refugees who are intercepted at the border between states are also subjected to disappearance. Those traveling from sub-Saharan African, for example, are reported to have been intercepted between Morocco and Algeria by Moroccan police and forced to cross the border in remote desert areas where they are left to survive on their own [70]. Similarly, there are reports of migrants and refugees from sub-Saharan Africa who are trying to reach Israel but are kidnapped and disappeared in Egypt after being placed in secret detention centers or kidnapped and trafficked near the Israeli border [71].
Many migrants who do make it to Europe are sent back to Turkey or North Africa or are prevented from landing by European coast guards, resulting in additional missing or drowned. There have also been reports of migrants from the region arriving in Italy or Greece and being pushed back out to sea by Italian or Greek authorities or sometimes by independent non-state actors [72-76]. States along migration routes, including Turkey, Greece, and Italy, should not subject migrants to further risk of harm.

**Locating and Identifying Remains of Missing Migrant and Refugees**

Governments in North Africa have also had to respond to the issue of missing migrants and refugees who are washed up or stranded on their shores. For instance, Tunisia, which is a transit as well as a country of origin for migrants and refugees, has dealt with the recovery of bodies from the sea over an extended period [77]. The volume of human remains that have been recovered following major shipwrecks has represented a significant challenge [78]. Tunisian law prescribes that the attorney general’s office should receive a report when a body is found. In practice, however, very little information is actually collected [78] in situations where the bodies of migrants are recovered from the shore or in rescue operations at sea [78]. Governments in North Africa should work towards ensuring that there are adequate facilities to care for and document the remains of missing migrants and refugees. Additionally, DNA from remains should be documented and stored in the event that the families of missing migrants and refugees can be located.

**Transnational Cooperation**

Following the Arab Spring of 2011, many Tunisians left the country and tried to reach Europe; in 2014 the Tunisian Government raised a formal request with the Italian authorities for information and further investigation into the disappearance of 500 Tunisian citizens [79]. In addition, in response to advocacy efforts by Tunisian families, the Tunisian government established a commission in March 2015 to investigate and search for missing Tunisian migrants. The commission works with DNA specialists and the Italian Interior Ministry to try to establish the fate of disappeared Tunisian migrants [80], but it has yet to produce concrete results. Tunisians have expressed distrust of the authorities, and say they have received little support in the search for missing migrant family members [80].

Both the Libyan and Tunisian cases highlight differences in the proportion of resources and institutional attention allocated to missing migrant and refugee cases compared to national cases. The collaboration between the Iraqi consulate in Greece and the Greek consulate in Iraq shows an alternative approach. The two consulates have worked to identify missing Iraqis in Greece, with the Greek consulate collecting DNA from families of missing Iraqis [81]. Similar efforts should be explored to ensure identification of persons who are not citizens of the state in which they go missing. In order to handle missing migrant and refugee cases in an effective manner, States throughout the region should collaborate with one another and with states from which migrants travel to North Africa.

**Civil Society Support**

In light of the lack of adequate resources that institutions dedicate to the issue of missing migrants and refugees, civil society actors have undertaken efforts to locate and identify missing migrants in North Africa. For example, in Morocco, Boubacar Wann Diallo, a volunteer who supports migrants and refugees who are trying to cross to Europe, has on his own initiative identified and buried human remains that have washed up on the Moroccan coast as a result of failed crossings [78]. Similarly, a local NGO in Yemen has teamed up with UNHCR to search for and identify human remains washed ashore in the Gulf of Aden [82]. An NGO called Missing at the Border has created a photographic record of missing migrants and refugees across North Africa and has collected testimony shared by families of the missing [83]. The Libyan Red Crescent Society (LRCS) has in the past recovered human remains of migrants, collected DNA samples, and conducted burials [84]. Tunisian and Italian civil society have come together to identify missing migrants and refugees and try to ensure that their families find out what happened to them. Where possible, they reconnect Tunisian migrants with their families [80].

Although commendable, these efforts emphasize the need for enhancing the involvement of state authorities in all these aspects, thereby ensuring that the issue is addressed in a rule-of-law-based manner and not solely as the result of humanitarian efforts. Moreover, states should refrain from placing migrants and refugees in further harm by pushing them back into the sea where they are likely to face great hardship and even to drown or disappear.
The role of families of missing migrants and refugees is absent in official procedures; throughout the region many of these families have turned to social media to share information about their missing relative and connect with other families of missing migrants and refugees [16, 85]. The reliance on public posts on social media can, however, increase the vulnerability of families to ransom demands and other risks. It is crucial to increase awareness about the issue of missing migrants and refugees, the procedures to follow, the rights of the disappeared and their families, and the resources available to families of the missing.

PART 4: ACCOUNTABILITY

Throughout the MENA region, efforts to hold to account those responsible for missing persons and to uphold the rights of survivors need to be significantly improved. Till now, governments have failed in this area, and civil society has stepped into the breach in order to support victims and advocate for the rights of families.

Addressing Enforced Disappearance

Many countries in the region, such as Egypt and even Iraq, have not yet expressly outlawed the practice of enforced disappearance [86]. However, some states have sought to address the issue. For example, in Bahrain, following repression and violence, including abductions and enforced disappearances of activists and protesters in February and March 2011, an independent commission of inquiry was created and documented 196 cases of enforced disappearance. Yet, enforced disappearance was a tactic used against activists and opponents of the government long before the 2011 protests [87]. The report of the commission of inquiry included a set of recommendations for the Bahraini government, including the release of arbitrarily detained and disappeared activists and holding senior officials to account. However, following the publication of the report, experts have noted that sentences meted out to some perpetrators, mostly junior officers, were much less severe than those handed down to political dissidents [88]. A very encouraging example of state responsibility in the region is Tunisia’s Law on Establishing and Organizing Transitional Justice, which provides that any case of enforced disappearance, death, or missing persons must be investigated, and perpetrators must be held to account [89].

Post-Conflict Mechanisms

Truth Commissions

Armed conflicts have in some cases resulted in the development of mechanisms to investigate disappearances and reports of missing persons and to hold perpetrators to account. Morocco established the first truth commission in the MENA region in 2004 when it created the Equity and Reconciliation Commission (ERC), which was tasked with investigating instances of enforced disappearance and arbitrary detention that occurred between 1956 and 1999. The commission investigated 742 cases of enforced disappearances and provided families with compensation. The commission’s progress has been due in large part to the advocacy efforts of Moroccan civil society and victims’ groups, which moved the government to pursue comprehensive transitional justice measures. However, even if the truth commission’s very existence represented an acknowledgement by the state of its responsibility for disappearances, this came at the cost of accountability – not only did the commission’s work result in no criminal convictions, but victims including their relatives were not allowed to name perpetrators in their testimonies before the commission [88].

Morocco’s truth commission inspired the creation of the Tunisian Truth and Dignity Commission, which covers human rights violations and international crimes, including enforced disappearance between 1955 and 2013. In addition to the Commission, Tunisia has referred cases to Specialized Judicial Chambers, which prosecute cases of gross human rights violations, including cases of enforced disappearance [89]. However, cases before the specialized judicial chambers have moved very slowly so far [90].

By contrast, in Lebanon, following the 1975-90 civil war, the authorities failed to develop mechanisms to address the issue of the missing and disappeared. On the contrary, Lebanon proclaimed an amnesty in 1991 for all politically motivated violence perpetrated during the civil war and consequently failed to address enforced disappearances, ostensibly so as not to open old wounds and stoke political differences. However, as has been noted on many occasions, precluding accountability, and investigating persons going missing has had the opposite effect [91].
Investigative Bodies

In 2000, Lebanon created the Official Commission of Investigation into the Fate of the Abducted and Disappeared Persons, but the government refused to publish a full report of the Commission’s findings [92] until more than a decade later, when the State Council, Lebanon’s highest administrative court, overturned that decision on human rights grounds. The court noted with reference to jurisprudence of the European Court of Human Rights (Judgment of 10 May 2001, Cyprus/Turkey; Judgment of 18 December 1996, Aksoy/Turkey) that when “states fail to carry out quick and effective investigations and are unable to determine where missing people are and what has happened to them, this constitutes a continuing violation of the right to life, which must be protected and guaranteed by implementing the law and making the necessary inquiries.” The court also noted that “the National Authority for Federal Crimes in Argentina, during the trials known as the truth trials, (…) considered that guaranteeing quick and effective judicial remedy would help lay the foundations for the rule of law and ensure that the system is transparent” [93]. Lebanese authorities have, in recent years, taken steps to address the issue of persons who went missing or disappeared during the 15-year civil war. Law 105 for missing and forcibly disappeared persons was passed in 2019. The law requires the establishment of a commission for the missing and forcibly disappeared. While this is a welcome step towards investigating how people went missing and towards holding perpetrators accountable, it comes nearly 30 years after the end of the civil war, and the commission’s establishment has seen little to no movement since the enactment of Law 105 [94]. Similarly, in Libya, the transitional justice law calls for the establishment of a fact-finding and reconciliation commission, which could contribute to investigations of cases of missing persons. While this is a step forward, such a commission has yet to be established [16].

Specialized Criminal Tribunals

Another step towards advancing accountability is the Iraqi High Tribunal, which was created to hold to account perpetrators of gross human rights abuses and international crimes under Ba'ath party leadership. The Tribunal's mandate includes enforced disappearance as a crime against humanity [16]. However, there are additional measures Iraq needs to take to ensure accountability for disappearances, including those in which the authorities are accused of being involved. In 2016, Iraq issued a general amnesty to quell Sunni-Shia tensions, that covers Ba'ath era crimes, but not enforced disappearance [16]. However, new legislation addressing enforced disappearance is now before the Iraqi parliament. If passed, Iraq would be among the first in the region to criminalize the practice, setting a precedent in the struggle against impunity [95].

Government Institutions

There are also mechanisms in place in Iraq to report instances of missing persons following the US occupation, such as the National Human Rights Commission, the Ministry of Justice, and the Ministry of Interior. However, according to Ceasefire for Civilian Rights, an NGO, many Iraqis do not report missing family members out of fear of reprisal [16]. Concerns highlight a lack of independence among Iraqi institutions investigating disappearances. Given these concerns, investigations of missing and disappeared persons in Iraq should be conducted by an independent mechanism that is designed with a specific mandate to conduct such investigations [96]. This will ensure that funding and attention are given to the issue of missing and disappeared persons and will create space in which Iraqis can feel more confident reporting cases, as the mechanism will be independent from other government offices.

In February 2021, the Iraqi parliament passed the Yezidi Women Survivor’s Law, which opens an avenue for the prosecution of those responsible for the abduction of Yezidi women and provides for compensation, rehabilitation, and education for survivors [97]. Implementation of this law will be an important step towards justice for survivors of Da'esh abduction of Yezidi women and for the Iraqi government’s protection of the rights of families of missing Yezidis. The Law also serves the purpose of recognizing the crimes that have been committed against the Yezidi community in Iraq. However, critics argue that Iraqi government measures to locate missing persons and prosecute those responsible for their disappearance have emerged in an ad hoc manner, with separate mechanisms dealing with persons missing from different circumstances. These mechanisms often use such a narrow definition of missing persons that many cases are excluded [44]. Iraqi government efforts to address accountability in instances of missing or disappeared persons should seek to protect the rights of families indiscriminately. Moreover, efforts to identify missing persons and hold perpetrators to account should not prioritize certain periods of time or circumstances of disappearance.
Civil Society and Family Associations

Governments in the MENA region have often fallen short regarding the rights of families of the missing and searching for and identifying missing persons and holding those responsible to account. Civil society and families of the missing have tried to fill this gap where possible. Religious institutions and communities have also participated in efforts to locate and identify missing persons.

The Da’esh attack on Yezidi villages in northern Iraq in 2014 resulted in the kidnapping and disappearance of 6,000 women and children. Efforts to rescue those captured by Da’esh, however, have generally been undertaken by members of the Yezidi community and voluntary organizations. Roughly 3,000 Yezidi women and children are still unaccounted for. Members of the Yezidi community, religious leaders and NGOs have organized efforts to look for missing Yezidi women and children in Iraq and also in Syria and Turkey [90]. In Lebanon, meanwhile, when the government failed to take adequate steps to protect families of missing persons or search for missing persons, families came together to provide mutual support and cooperate in searching for the missing, including conducting their own documentation of cases and advocating for greater government action [99].

In regard to Syria, while the conflict is still ongoing, there have been few opportunities for holding those responsible for missing persons cases to account. Following a dual Russian and Chinese Security Council veto to refer Syria to the International Criminal Court in 2014, multiple national courts in Europe have turned to universal jurisdiction to bring perpetrators to account. One of the most notable cases has been the trial of former members of the Syrian intelligence services, Anwar R and Eyad A, at the Koblenz Higher Regional Court in Germany. Testimony focused on the systemic nature of enforced disappearances, torture and sexual violence in Syrian prisons, including the Al-Khatib detention center where both Anwar and Eyad worked. The Al-Khatib trial was the first anywhere in the world to address these crimes. In addition, both the Netherlands and Canada have recently filed a complaint against Syria under the Convention against Torture. Should this complaint proceed, issues of enforced disappearances and torture may be dealt with by the International Court of Justice.

Syrian family associations and CSOs have played a pivotal role in advocating for accountability and working with international agencies and groups to file complaints and identify perpetrators who have fled to Europe. In February 2021, Syrian associations of families of the disappeared and survivors of detention launched a charter calling for an end to detention and a full accounting of Syrians who are missing [100]. Syrian family associations and civil society have repeatedly sought to raise awareness and push policymakers to address the issue, testifying at the United Nations, before human rights bodies and in court proceedings. They have also used art and music to bring attention to the issue of the missing. One striking visual example of this is a mosaic comprising 100 portraits, exhibited online and also in print at the UN in New York in 2019, that represent more than 100,000 disappeared Syrians [101].

PART 5: THE GENDERED IMPACT OF MISSING AND DISAPPEARED PERSONS

In the MENA region, and throughout the world, an overwhelmingly majority of reported missing persons are men, amounting to up to 94 percent of all cases [102]. That said, women who are missing face distinctive risks: they are often subjected to
sexual and gender-based violence (SGBV) including sexual enslavement, forced marriage and forced pregnancy and/or trafficking for the purpose of forced marriage or forced prostitution. In some cases, women are targeted because of their relationship with men who are targeted by governments or other actors. They may be targeted because of their role in political opposition, or for reasons associated with conflict, or for their role as human rights defenders. In other cases, women are subjected to enforced disappearance simply because they are women. The WGEID notes that, “due to the biological attributes of women, specifically their ability to reproduce, women victims of enforced disappearance are often used as a tool or an instrument to achieve specific objectives. Women’s bodies are used as part of a strategy of social control” [103].

**Missing and Disappeared Women**

Throughout the region, women human rights defenders have played a key role in ensuring protections for women and for women’s rights over the last decade. Women have also played key roles in protest and revolutionary movements calling for democracy and greater protection of human rights [104]. Women in the region have also taken part in conflict. In Syria, Kurdish women served at the front lines fighting Da'esh in Kobani [105]. The roles that women play in activism, politics, and on the battlefield is significant. As a result, women have also been targets of disappearances.

This is also true for women who are members of persecuted minority communities. In addition to sexual violence, Yezidi women who are missing or have been disappeared after Da'esh capture in Iraq and face sexual violence often do not want to return to their communities because of the social stigma that they will have to face having been victims of sexual violence. Some Yezidi women in Da'esh captivity are unwilling to leave their captors after having given birth to children in captivity. Missing Yezidi women often fear that their communities will not accept them and their children, and they are unwilling to leave their children behind. Yezidi women who have been captured by Da'esh also fear reprisal if they do escape. This prevents many from escaping [98]. As more time passes, missing Yezidi women and children become more difficult to find as they and their captors become more scattered across Syria and parts of Turkey [106]. While the conditions of Yezidi women subjected by Da'esh have been extensively documented, this victimization has also happened to other minorities including Chaldean, Assyrian, Syriac, Turkmen, and Shabak populations.

Women who are forcibly disappeared face additional risks such as sexual violence and forced pregnancy, while family members of those who are forcibly disappeared, who tend to be women, are subject to the ongoing crime of enforced displacement. Family members face psychological as well as economic and social difficulties. Girls often miss out on education, and enforced disappearance perpetuates gender-based violence. Syrian women who have returned from detention face social stigma as a result of a perceived loss of “honor” during the detention period. Syrian women have lost parents, friendships, and spouses in the face of this stigma [107]. Women who return from disappearance are ostracized by their families and communities, resulting in additional trauma in addition to the harm they faced during their disappearance.

**Female Relatives of Missing Persons**

The gendered impact of this crime is severe, and failure by governments to respect and protect the rights of families as well as to facilitate information regarding truth of what happened to their missing relatives perpetuates the impact of enforced disappearance on women [101].

The particular risks that women face in missing persons scenarios are often overlooked in justice and accountability efforts. In Morocco, however, the Equity and Reconciliation Commission (IER) gathered testimonies of women, many of whom were family members of missing persons. These women testified about the difficulties they faced in the aftermath of the disappearance of their family members and in their attempts to seek justice, and this increased awareness and recognition of the wider impact of enforced disappearance [108].

**Rethinking Societal Roles**

The gendered dimension of the missing persons issue means that women as survivors, as mothers and wives, daughters and sisters of missing persons, face particular hardship. In the MENA region, patriarchal social frameworks mean that men are often the primary breadwinners while women work in the home. A Syrian woman interviewed by CARE stated, “I was a housewife who was only responsible for raising my children and taking care of my household. Now, my role has changed a lot and I am responsible for four children and all of them have a visual impairment. I am now the mother and father to
them" [108]. In families where the primary breadwinner is missing, women have to assume the duties formerly carried out by the missing men in their families. Prior to the conflict in Syria only four percent of households were headed by women, compared to 22 percent as of February 2021. Although much of this rise may be attributed to the injury or death of the husbands, much of it is a result of husbands going missing [101]. This means that many female relatives of missing persons are entering the workforce for the first time and with minimal skills. In consequence, they frequently take on insecure or informal jobs that may make them vulnerable to abuse or mistreatment [109]. Women are also often limited in choice of employment because of societal expectations of what is appropriate employment for a woman compared to a man—expectations that are reinforced by boys’ education being prioritized over girls, early marriage, and so on [110].

**Generational Impact**

Mothers leaving their traditional roles to seek income also impacts younger generations in decisive ways. In the mother’s absence, traditional roles demand that young women and girls take on domestic work including the care of young children. This perpetuates limitations on women and reduces their opportunities for study or professional development. In addition, mothers and sisters face considerable challenges in securing the respect required to lead the family unit. Field research conducted in 2017 in the Iraqi governorate of Diyala, by the NGO Ajal, with ICMP support, documents how boys respond to the absence of their fathers and the ‘stigma’ they experience when their mothers take on a non-traditional role. Ajal documented a correlation of families with missing fathers where young boys became religiously radicalized [101].

**Administrative Tasks**

In addition to taking on extra work, family members of missing persons throughout the region face a number of administrative obstacles as a result of the disappearance of the male family member. These include issues related to property ownership, inheritance, and the guardianship of children among other things. In Lebanon, for example, transferring land ownership from the missing person to the wife or child is extremely expensive. As a result, family members have to choose between paying large sums of money to resolve property issues or otherwise leaving the issue unresolved or the property unused [109]. According to a report on the impact of enforced disappearance on female family members in Lebanon, “administrative decisions regarding bank accounts, property transfer and inheritance and child custody usually require the authority of a woman’s husband or another male family member” [101]. In Lebanon, women struggle to obtain identity documents for their children when the father is missing. Lebanese women sometimes need to rely on male family members stepping in to provide assistance [111]. Similarly, in Syria, women whose husbands are missing experience difficulty if they wish to relocate their children without the approval of their male guardian when he is missing [109]. Female relatives of the missing throughout the region face similar administrative challenges such as the ones described in the examples above.

**Lack of Adequate Legal Protections**

Legislation across the region to provide legal security is inadequate and impacts the families of missing persons, and women in particular. Where procedures are available, such as in Iraq, families are required to report the disappearance to judicial entities, but legal protection can only be activated through administrative procedures, including a Declaration of Death, that give the missing the status of martyr, and give spouses the status of widow, thus allowing them to retain parental rights, access property, pension, and compensation. Such procedures are problematic for families at the practical, legal and psychosocial level. They force family members to declare their relative’s death without conclusive evidence thus placing family members in an impossible dilemma; they require a long time for activation, depending on the country from 5 to 7 years; and in effect they end any investigation, even if under international human rights law the State continues to have an obligation to determine the circumstance of death.

**Social Stigma**

Women whose husbands are missing often struggle with the question of remarriage. In Lebanon and Syria, women whose husbands disappeared during conflict have reported symptoms of chronic physical and psychological trauma [43]. Lebanese women report feeling “isolated” and “displaced” in their own communities, unsure of how they fit into society as they cannot identify themselves as married or widowed. Some feel pressure to remain single either for religious reasons or because choosing to remarry means giving up on their husbands, while others struggle to find a partner as “widows” of missing husbands [109]. Syrian women whose husbands are missing also report being isolated in their own communities, with
other families in the community being afraid to be associated with the family of a missing person. This is further amplified in refugee contexts, where women face the stigma of having a missing husband as well as the stigma of being labeled as refugees [43, 112].

**Impact on Mental Health**

The lack of knowledge about a family member’s whereabouts has caused mental anguish for many family members left behind, including mothers and wives of the disappeared. Women in Lebanon, Algeria, and Tunisia speak of decades of mourning, as the absence of resolution precludes closure or the ability to move on [113]. A large part of why families have taken part in advocacy efforts has been to share experiences and find support in one another [44].

Female relatives of missing persons often dedicate long hours and large sums of money towards finding their relatives. This imposes an additional burden and additional stress on wives and mothers who have already taken on the duties of husbands or fathers. Syrian women have reported traveling throughout the country to try and locate their children. In Lebanon, during and after the civil war, women whose male family members were missing because of enforced disappearance or kidnapping, or other conflict-related causes, turned to local religious or political leaders or international or other organizations to report that they were missing. Women in Lebanon also assumed the burden of searching for missing family members because this was perceived as being less risky for women than for men. While fathers, for example, who went to pay ransom for their missing sons were also kidnapped, this was seen as less likely to happen to women. However, women also faced reprisals from those who kidnapped their male family members when they spoke about this publicly.

**Exploitation of Women**

Women whose male family members are missing may be seen by men in their own communities as being more vulnerable and may therefore be at risk of unwanted male advances. In Lebanon, there are reports of women who searched for their missing male family members being subjected to extortion or blackmail [114]. Moreover, women searching for or advocating for missing family members have faced reprisals from kidnappers. In various parts of the region, through consultations with a number of families of the missing and NGOs across the country, ICMP has received verbal reports of women facing sexual harassment and requests for sexual favors from front desk officials as a condition for action in regard to the file of their missing relatives.

Women, while particularly vulnerable in traditional society, have developed agency and resilience in the context of the phenomenon of disappearance. Women human rights defenders have played a key role in the enactment of legislation relating to violence against women, domestic worker’s rights, increased political representation for women, and the repeal of rape-marriage laws [44]. In the context of advocating for the families of the missing or disappeared, women have played significant roles. In Algeria, the mothers of those who went missing during the civil war in the 1990s continue to call for government action on finding out what happened to missing persons. While the 2005 Charter for Peace and National Reconciliation gave an amnesty to government security forces, families were required to drop investigations in order to receive compensation. For many, this was impossible to accept. No amount of money justified giving up the search for their missing family member. Beside anything else, this type of remedy prevents family members from being able to know the fate of their loved ones. As the Algerian state has yet to adopt measures to establish the circumstances of disappearances or
the fate of the disappeared, Algerian women have advocated for their missing family members, reaching out to police and politicians and organizing regular demonstrations and protests in front of the government human rights commission. [90] Similarly, in Lebanon, women have played a key role in associations of families of the missing that have lobbied effectively for government action on the issue of missing persons [115]. Nadia Murad, a Yazidi woman from Sinjar in Iraq who was kidnapped and disappeared by Da’esh in 2014, is a leading figure in advocacy for survivors of sexual and gender-based violence as well as for the Yazidi community [12]. Syrian women also play an important role in advocacy and human rights activism in Syria, including in advocating for missing and disappeared Syrians, through the Syrian women-led Families for Freedom and other organizations [116]. Family associations and movements led by mothers of the disappeared are at the forefront of activism regarding missing or disappeared persons [101].

CONCLUSIONS AND RECOMMENDATIONS

Although some governments in the MENA region have taken steps to address the issue of missing persons, much more progress is needed to account for all missing persons regardless of their political affiliation, economic origin, ethnicity or their role in hostilities or the circumstances of their disappearance. In many instances, efforts to investigate persons going missing and disappearing to prosecute perpetrators and providing support to families have been colored by political considerations. Throughout the MENA region, systematic impunity remains an issue. Much of the progress that has been made in the region has been made because of political advocacy and legal efforts by associations of families of the missing and civil society.

There are a number of steps that states in the region can take to protect the rights of the missing and their family members and to move forward in resolving missing persons cases. MENA region states that have not signed the ICPPED should do so. Additionally, states that have signed but not ratified the Convention, such as Lebanon, should ratify it and ensure implementation of all provisions in their domestic legal systems. This includes identifying perpetrators of enforced disappearance and those responsible for missing persons and holding them accountable, including responsible state actors such as the military or state security and intelligence services. It also includes ensuring that all enforced disappearances end and that all arbitrarily detained persons are released. MENA states that have not already created criminal laws that specifically outlaw the crime of enforced disappearance should do so. Relatedly, MENA states should ensure that institutions tasked with locating and identifying missing persons are created, empowered and insulated from partisanship.

States must ensure equal rights for migrants and refugees, whether they are citizens or non-citizens, which includes the legal obligation to account for migrants and refugees who have gone missing. States must refrain from detaining migrants and refugees in unofficial detention centers, which cannot be monitored and where they are disappeared and subject to ill treatment and torture.

Additionally, states where conflict has resulted in large numbers of missing persons should investigate disappearances and hold perpetrators to account as part of comprehensive justice and accountability processes that seek to protect the rights of the missing and their families as well as investigate and hold perpetrators of disappearances accountable. Failure to do so not only prevents families from being able to move forward, it prevents post-conflict recovery. States should work in conjunction with independent and impartial international organizations to develop databases that include documentation of missing persons cases, and DNA collection from families and from unidentified human remains in order to identify missing persons and ensure that families can know the truth of what happened to their missing relatives. International and regional actors play a significant role in multiple conflicts throughout the region. These actors should support justice efforts regarding the issue of missing or disappeared persons and assist in official investigation. Moreover, the issue of the missing and disappeared should be elevated and addressed during UN-mandated or other international peace negotiations in accordance with Security-Council Resolution 2474 of 2019.

States should also cooperate with neighboring states to search for and identify missing migrants and refugees and reconnect them with their families, and to collect and match DNA samples of family members of missing migrants and refugees as well as newly arrived migrants and refugees in European states. This should include DNA collection at refugee camps to reconnect refugees who may have been separated from their families. European states should halt any arrangements with other states intended to keep migrants out or preventing sea rescues. European states should ensure that coast guard forces prioritize the safety of migrants and refugees.
States should also cease all enforced disappearances and reveal the location and fate of those forcibly disappeared. Additionally, authorities should provide families of the missing as well as international organizations with access to detention centers. States should be transparent about the location of detainees and allow them to contact their families outside detention centers.

States should also provide services and support to families of missing persons, including compensation, support for education, and assistance with legal and administrative issues they may face as a result of having a missing relative. This support should be provided without political bias and without limitation as to the event that resulted in the family member’s disappearance. States should also adopt measures to ensure a clearer legal status for missing persons in order to assist family members with administrative issues that may arise from the precarious legal status of survivors. This should not come at the expense of accountability or investigation of missing persons cases. To do this, states should work closely with civil society and associations of families to identify the missing, acting in response to the needs and the demands of families.
INTRODUCTION: HISTORICAL AND LEGAL CONTEXT

Africa has a troubled history of persons going missing and being disappeared, dating back centuries. Scholars estimate that over the span of four hundred years, more than twelve million people were violently captured and sold into brutal systems of bondage as part of the transatlantic slave trade [117, 118]. Countless families were torn apart by these horrific disappearances, never learning the fate of their loved ones. This tragedy is deeply rooted but it is not simply a problem of the past. The issue of missing persons remains one of the most pressing challenges of the 21st century. Yet, the task of writing about disappearance is exceedingly difficult, especially regarding sub-Saharan Africa (SSA). It is necessary to contend not only with the somewhat arbitrary divisions between North Africa and the rest of the continent, but also, with the fact that each State has a different colonial legacy, and this has a bearing on its institutions and postcolonial experience. It is also necessary to pay attention to the ways in which secessionist movements and disputed territories disrupt the integrity of the State as a discrete unit of analysis. Add to that the perennial problem of limited or uneven data and it becomes obvious why the issue of persons going missing or disappearing in Africa presents a particular challenge.

The challenge of finding data about missing persons is even more acute given the inherent difficulty of trying to gather data on persons who are not technically there to be counted, coupled with the lack of a centralized system for collecting and storing data about missing persons in the region. The International Committee of the Red Cross (ICRC) reports that, as of late June 2020, there were 44,000 persons registered as missing on the continent, nearly half of whom were children. Most of the missing, or 82 percent, came from seven countries: Nigeria, Ethiopia, South Sudan, Somalia, Libya, the Democratic Republic of Congo, and Cameroon [119]. But this number does not take into account persons who have not been registered as missing and is likely to represent just the tip of the iceberg.

Given these limitations, where can “good” data on missing persons in sub-Saharan Africa be accessed, making it possible to construct a meaningful account of disappearances? This chapter focuses on the social, political, and economic conditions, or drivers, that cause people to go missing in SSA and in some cases to remain missing. This makes it possible to highlight broad patterns that can be traced across national boundaries, thus giving policymakers a better understanding of regional dynamics, even if precise local data is lacking. Analysis is based on the careful reading of regional reports from inter-governmental agencies and humanitarian organizations, as well as scholarly articles and media reports, all of which describe different aspects of the problem. This approach combines empirical case studies with available statistical data to produce a regional overview.

Framing disappearance as a problem with deep historical roots illustrates the fact that this is not a new practice or a new experience. This is followed by a brief overview of legal mechanisms that address missing persons at both international and regional levels, focusing on key legal instruments and judicial structures. Four primary drivers of disappearance within the region today are then introduced and analyzed: (1) armed conflict and violent extremism; (2) enforced disappearance and illegal detention; (3) migration; and (4) human trafficking. The chapter concludes with a brief discussion of the coronavirus pandemic and the additional challenges it raises, along with general recommendations for stakeholders.

Historical Context

To understand the issue of missing persons in sub-Saharan Africa today, it is useful to think about disappearance from an historical perspective. While the transatlantic slave trade was the most notorious system of bondage, millions of Africans were also abducted and sold within the trans-Saharan and Indian Ocean slave trades [120-122]. In more recent years, trafficking rings have been involved in the abduction of young children for body parts or ritual sacrifice. In Uganda, for instance, more than 300 cases of murder and disappearance were linked to ritual ceremonies in 2008 [123-127]. The following year, at
least two hundred more children and young people went missing under similar circumstances. Fortunately, the practice appears to be waning, due in part to the creation of an Anti-Human Sacrifice and Trafficking Task Force within the Uganda Police Force, as well as widespread public awareness campaigns. Efforts like this play an important role in preventing a resurgence of this kind of violence in times of economic crisis or political uncertainty.

Many Africans have also disappeared along migratory routes. Some persons went missing in search of greater financial opportunities, whether by land or by sea. Others were compelled to migrate for other reasons, such as natural disasters or armed conflict. In 1987, more than 20,000 young boys (and some girls) fled a brutal civil war in what is now South Sudan. They traveled over one thousand miles in treacherous conditions, facing dehydration, attacks by wild animals, and forcible conscription into the rebel army – the Sudanese People’s Liberation Army. By the time the haggard children reached Ethiopia several weeks later, nearly half of the original group had gone missing. In 1991, a new war forced them to flee once again. After briefly returning to the Sudan, the children sought refuge in Kenya at Kakuma Refugee Camp. Over time, some eventually reunited with family members, while others were resettled in the United States and other countries. Still others remained in Kakuma for the long-term or left the camp in search of better opportunities [128]. These children, the so-called Lost Boys and Girls of Sudan, represent a particularly harrowing modern example of missing persons.

It should come as no surprise that armed conflict and violent extremism have resulted in the disappearance of countless Africans. Some have gone missing when forced to migrate, as illustrated above, while others disappeared as nameless casualties of war, their bodies never recovered and/or identified. In other cases, rebel groups have abducted civilians to use as human shields, as soldiers, or as sexual slaves. Many such persons have never been seen again. One of the most disturbing examples of this pattern can be found in northern Uganda, where the Lord’s Resistance Army (LRA) abducted some 70,000 people over the course of nearly 20 years, many of whom were children [129]. After signing a truce with the government of Uganda in 2006, just months after the International Criminal Court unsealed arrest warrants for five high-ranking commanders, the rebels quickly regrouped in neighboring countries. They have since terrorized the local populations of the Democratic Republic of Congo, South Sudan, and the Central African Republic using violence and abduction that shows no signs of abating [134]. Joseph Kony, the leader of the LRA, has never been apprehended.

Rebel groups are not the only ones responsible for missing persons. Indeed, numerous States in sub-Saharan Africa have been implicated in the enforced disappearance of political dissidents and other perceived enemies. Between 1980 and 2019, the UN Working Group on Enforced and Involuntary Disappearances (WGEID) received 925 complaints about State violations in SSA [68]. Burundi was implicated in 239 cases, which was nearly twice as many as Ethiopia, the country with the second highest number of complaints. This does not necessarily mean that these States are the worst offenders. Instead, it suggests a sustained pattern of violence that requires further scrutiny. These patterns of violence can go back many years. For example, during the apartheid era in South Africa, from 1960 to 1994, as many as 2,000 persons are thought to have disappeared [126]. In fact, this type of political violence was so pervasive that the Truth and Reconciliation Commission identified five different kinds of enforced disappearance in its final report. It is perhaps these deep historical roots that are responsible for the stubborn persistence of the practice of enforced disappearance across the continent.

4 Some of the “Lost Boys” have written memoirs. See, for example, Alephonsion Deng, Benson Deng, and Benjamin Ajak, They Poured Fire on Us from the Sky: The True Story of Three Lost Boys from Sudan (Public Affairs, 2015). For another popular account of the journey, see Dave Eggers, What Is the What (Vintage, 2007)


7 These include (a) abductions and enforced disappearance; (b) disappearances in exile; (c) disappearances during periods of unrest; (d) disappearances regarded as out of the Commission’s mandate; and (e) cases of indeterminate cause. 137. Report of the Human Rights Violations Committee: Abductions, Disappearances and Missing Persons. South African Truth and Reconciliation Commission. See also 138. Dewhirst P, Kapur A. The disappeared and invisible: Revealing the enduring impact of enforced disappearance on women: International Center for Transitional Justice; 2015.
Less common, but no less devastating, are the losses associated with genocide and ethnic cleansing. Between 1904 and 1908, the German colonial administration orchestrated the deaths – primarily through starvation and dehydration – of up to 100,000 Herero and 10,000 Nama in German South West Africa, which is known today as Namibia. Germany, on 28 May 2021, has officially acknowledged committing genocide during its colonial occupation. During the first phase of the violence, thousands of people were led into the Namib Desert and prevented from leaving. In the next phase, those still alive were imprisoned in concentration camps, where most died from disease, abuse, and exhaustion. After their deaths, the skulls of several hundred victims were sent to Germany for scientific study, part of a larger initiative to “prove” the racial superiority of Europeans over Africans. Although the last of these skulls were finally returned to Namibia in August 2018, their identities remain unknown. More recently, in the aftermath of the Rwandan genocide of 1994, forensic anthropologists used clothing and personal items to try to identify bodies that were discovered in mass graves. Several different factors, including perpetrator actions, and exhumation policies and practice, meant that there have been very few identifications.

Climate change is also prompting the disappearance of persons in SSA. In the Sahel region of northern Nigeria, for instance, decades-old conflicts between herders and farmers have become increasingly violent as fertile grasslands and water resources become scarcer. A prominent feature of these conflicts is the mass abduction of school-children, a terror strategy used by armed groups to extort ransoms from the government and to displace residents. While many of these conflicts are deeply rooted, climate change, which acts as a “threat multiplier,” is making things worse. As access to scarce resources becomes more tenuous, more and more people will be forced to migrate. This will invariably expose migrants to harsh physical conditions, such as those faced by the Lost Boys and Girls of Sudan. There are already indications of how climate change will affect the coastal regions of the continent. In 2019, for instance, two powerful storms plowed into Mozambique’s eastern coast in quick succession, causing thousands to go missing. As the flood waters receded, the search for answers was complicated by the presence of scavengers, such as crocodiles, hippos, and snakes, as well as wild dogs and pigs, which made it more difficult to find and identify human remains. Human remains were found and buried without any record being kept, meaning that loved ones never had closure or a chance to say goodbye. The loss of these individuals has significant social and economic repercussions, not just for the grieving families, but for the larger community. In the future, disasters attributable to climate change will likely become more prevalent drivers of disappearance.

By better understanding the causes (and consequences) of past disappearance patterns, we can more effectively plan for those in the future, ideally with the goal of eliminating the practice, or at the very least, mitigating its most harmful effects.

Legal Context

The capacity of States to address the problem of missing persons is predicated by the legal frameworks that are in place. For example, there are a variety of international mechanisms that can be (or have been) used to prevent disappearance and/or to promote justice and reconciliation, such as international treaties and resolutions. Most relevant to this chapter is the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), which was adopted by the UN General Assembly on 20 December 2006 and entered into force on 23 December 2010. To date, only 16 countries in sub-Saharan Africa have ratified the Convention (out of 46). While this number remains small, it is perhaps significant that none have declared reservations to any articles within the treaty. In April 2019, the Committee on Enforced Disappearances (under the auspices of the United Nations Office of the High Commissioner for Human Rights) adopted "Guiding Principles for the Search for Disappeared Persons," based on the Convention and other relevant international instruments.
The following year, the WGEID issued a report on “standards and public policies for an effective investigation of enforced disappearances [68].” Both documents should be read in tandem with the “Guiding Principles on Internal Displacement,” a set of best practices developed by the Commission on Human Rights established by the Economic and Social Council (ECOSOC) in 1998. Principle 16 is particularly relevant and concerns the rights of family members in relation to missing persons [68]. While neither set of guidelines carries the force of international law, they can be used by African States to craft domestic legislation, policies, or initiatives that promote justice and reconciliation.

Closely related to the Convention, as well as both sets of guiding principles, is UN Security Council Resolution 2474, adopted in June 2019 as the first to deal specifically with persons reported missing in armed conflict [152]. This resolution calls on member States to demonstrate greater political will in addressing this mounting problem, which, according to a UN press release, “shows no signs of abating” [153]. Another international instrument that has significant bearing on missing persons is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which came into force on 25 December 2003. The UN TIP Protocol, as it is often referred to, has been ratified or acceded to by 43 countries in SSA.11 Four States cited reservations in relation to Article 15(2), which calls on the International Court of Justice to adjudicate unresolved disputes. They do not, however, disagree with the substance of the Protocol. The Protocol against the Smuggling of Migrants by Land, Sea and Air, which came into force on 28 January 2004, has been ratified or acceded to by 38 countries in SSA.12 Two States cited reservations with regard to Article 20(2), which enables the International Court of Justice to adjudicate unresolved disputes. Also relevant is the UN Convention on the Law of the Sea, obligating States to require all shipmasters to render assistance so that persons are not lost at sea [156]. Forty States in SSA have ratified this convention.

The African Union has also enacted relevant legislation that can be utilized by States to address missing persons on a regional level. In 2009, for instance, it adopted the Convention for the Protection and Assistance of Internally Displaced Persons in Africa, known informally as the Kampala Convention, which came into force on 6 December 2012. Under Article 9(2)(h), States must “take necessary measures, including the establishment of specialized mechanisms, to trace and reunify families separated during displacement and otherwise facilitate the re-establishment of family ties” [150]. Thus far, 28 countries in SSA have adopted this Convention with no apparent reservations. The African Commission on Human and Peoples’ Rights, the agency within the African Union that promotes and protects human rights, passed Resolution 448 on 7 August 2020, which requires the Working Group on Death Penalty, Extra-Judicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa to develop Guidelines for the Protection of all Persons from Enforced Disappearances in Africa within one year [157]. This is a significant regional response that has the capacity to raise the profile of missing persons on the continent.

International courts provide another important mechanism of legal redress, especially for cases involving enforced disappearance. The most far-reaching is the International Criminal Court (ICC), which entered into force on 1 July 2002. There are currently 31 States in SSA that have ratified the Rome Statute, which defines enforced disappearance as a “crime against humanity” that can be tried by the ICC [158]. The Court is currently pursuing a handful of cases that involve enforced disappearance – one involving Mahamat Said Abdel Kani of the Central African Republic is in the pre-trial phase, two additional cases from Burundi and Nigeria are in (or are entering) the investigation phase, and a fourth case from Guinea has entered the preliminary investigation phase.13 Charges of enforced disappearance have been brought in only four cases (out of the 30 cases heard by the Court thus far). This may be a jurisdictional issue, as States have the “first responsibility and right to prosecute international crimes” [160]. However, if a given State fails to prosecute such a case, the ICC has the capacity and authority do so.

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13 For information on the status of these cases, see 159. Situations and Cases: International Criminal Court; [Available from: https://www.icc-cpi.int/Pages/Home.aspx.]
The African Court on Human and Peoples' Rights, established under a Protocol to the African Charter on Human and Peoples' Rights that came into force in January 2004 (but was not operational until November 2006), also has the capacity to hear cases involving enforced disappearance if the concerned State has ratified relevant human rights treaties, such as the ICPPED. However, only five States in sub-Saharan Africa have accepted the competence of the Court to hear cases brought directly by NGOs or individuals (i.e. Malawi, Ghana, Burkina Faso, Mali, and The Gambia) as defined by Article 34(6) of the Protocol [161]. Those in other States must apply to the African Commission on Human and Peoples' Rights – the institution in charge of protecting, promoting, and interpreting the Charter – which then decides whether to refer the case to the African Court. Given its rather limited territorial jurisdiction, it is not surprising that the Court has not yet adjudicated cases on enforced disappearance.

As a quasi-judicial body, the African Commission has heard many cases involving enforced disappearance. Even though enforced disappearance is not explicitly mentioned in the African Charter, which is the material jurisdiction of the Commission, complainants have argued that enforced disappearance violates Charter principles, such as the right to life outlined in Article 4.14 While effective, this limited approach ignores the much broader harms that result from this type of violence, such as the perpetual trauma caused to family members who are unable to find closure, or the many ways in which disappearance stifles social, political, and economic development. Article 60 enables the Commission to “draw inspiration from international law on human and peoples’ rights,” although it has rarely done so regarding enforced disappearance.15

In June 2014, the African Union adopted the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, also known as the Malabo Protocol. Once ratified by at least 15 member States, the Protocol will grant the proposed African Court of Justice and Human Rights – a judicial merger of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union – criminal jurisdiction [163]. Like the Rome Statute, Article 28(c) of the Malabo Protocol defines enforced disappearance as a crime against humanity [164]. It also defines trafficking in persons, among other crimes directly related to missing persons. Thus far, fifteen States have become signatories to the Protocol, but none have ratified it.

Finally, there is the ECOWAS [Economic Commission of West African States] Court of Justice, which was established in 2001 and has jurisdiction over all 15 member States. This is the only regional court with the ability to hear cases involving human rights violations. It has tried one case of enforced disappearance, a case involving violations in The Gambia, and found for the plaintiff [165].

Truth commissions can also be important tools for helping communities move beyond the trauma associated with enforced disappearance and missing persons. Nearly half of all African countries have established such commissions to investigate any number of human rights violations, including enforced disappearance [166]. In Uganda, for instance, Idi Amin established a commission of inquiry in 1974 to investigate the “mysterious” disappearances of people during the early years of his military regime. The great irony was that Amin’s State was directly responsible for most of the disappearances, and the inquiry was nothing but a highly choreographed performance of “political theater. [167]” Seven years after Amin’s government was overthrown, the State launched a new commission of inquiry that would examine violations of human rights from the time of independence in 1962 until Yoweri Museveni and his National Resistance Army seized power in 1986. This commission also investigated enforced disappearance, although this time the investigators took their work seriously and ultimately recommended the prosecution of several former agents of the State [168]. In South Africa, the Truth and Reconciliation Commission recommended the establishment of a Missing Persons Task Team, which was launched in 2005. To date, the team has recovered the remains of more than 150 persons [169].

This legal landscape demonstrates that relevant instruments and judicial mechanisms exist. Although ratification and utilization are patchy, there are encouraging signs that some States and intergovernmental bodies are moving in the right direction.

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15 One notable example, according to Bizimana, is 2001 Mouvement Burkinabé des Droits de l’Homme et des Peuples v Burkina Faso, which cites the 1992 Declaration on the Protection of All Persons from Enforced Disappearances. See Bizimana, “Avenues for Victims of Enforced Disappearances in The Gambia.”
PART 1: ARMED CONFLICT AND VIOLENT EXTREMISM

Armed conflict and violent extremism can be blamed for the disappearance of many persons in sub-Saharan Africa today. Although it is difficult to ascertain how many people have gone missing as a result of such violence in any given year, related statistics on warfare in Africa suggest that the number is quite high. Before considering such data, it is important to define key terms. Armed conflict, according to International Humanitarian Law, can be divided into two main types: (1) international armed conflicts involving two or more States; and (2) non-international armed conflicts between government forces and non-government armed groups, or between such groups only [170]. Persons can go missing as a result of either type of armed conflict, as well as violent extremism, which, according to the UN Secretary General, “encompasses a wider category of manifestations [than terrorism)” [171]. While there is no internationally accepted definition of violent extremism, various definitions have been advanced at national levels [172]. This analysis draws on the US Agency for International Development, which defines violent extremism as “advocating, engaging in, preparing, or otherwise supporting ideologically motivated or justified violence to further social, economic and political objectives.” [173] Violent extremism is frequently a precursor or driver of armed conflict.

In 2019, there were at least 15 countries with active armed conflicts in SSA [174]. This resulted in 21,000 incidents of political violence (through November 2019), which represents an increase of 36 percent compared to the same period in 2018 [175]. According to the Armed Conflict Location and Event Data Project, these violent incidents resulted in 29,407 fatalities. The previous year, this number stood at 27,858 [176]. The Internal Displacement Monitoring Center noted that sub-Saharan Africa was the global region most affected by conflict-related displacement in 2019, with upwards of 19.2 million internally displaced persons on the continent [177]. Although this data does not say anything explicitly about missing persons, it does suggest a widespread problem. Furthermore, if one interprets this data in conjunction with UN General Assembly Resolution 73/178, which highlights a “dramatic increase since 2014 in persons reported missing in connection with armed conflict,” it is easy to see why high levels of armed conflict are likely to indicate a substantial number of missing persons [178].

So, how does armed conflict and/or violent extremism result in missing persons? One way is for people to get caught in the crossfire, whether as the result of a battle, a suicide bombing, a riot, or some other incident of violence. Their bodies may be hastily buried in unmarked graves, fall prey to scavengers, or be damaged beyond recognition. People may also go missing when they are forcibly displaced. Sometimes, as seen in the case of the Lost Boys and Girls of Sudan, they disappear in flight, succumbing to the elements, to illness, or to injuries. They may become separated from family members as violence erupts, or while they are seeking refuge in another place. Some refugee camps, for instance, house tens of thousands of people, making it difficult to locate loved ones even if they are in the same settlement. In 2015, Kakuma Refugee Camp in Kenya had a population of 184,550, making it the largest camp in the world. Persons may also go missing as a result of abduction, a terrifying practice that is becoming increasingly common. According to Control Risks, a global risk consultancy firm, 37 percent of all kidnappings last year took place in sub-Saharan Africa [180].

The reasons why people go missing during armed conflicts are well-documented, but why do they remain missing? One reason relates to the logistical challenges of searching for missing persons in active war zones. Security concerns may prevent searches being conducted until the violence abates, which in some cases, could be many months or years. Furthermore, there are some countries that lack the capacity to utilize DNA analysis to identify human remains, such as Zimbabwe, Lesotho, Mozambique, Eswatini, and Angola. A lack of knowledge, or trust in the processes involved, may also explain why persons remain missing. While organizations such as the ICRC operate tracing programs to reunite families separated by conflict, such programs only work if someone is registered as missing and is still alive. As the ICRC notes, those registered represent “a drop in the ocean to the true scale of people whose family members are searching for them” [181]. Some may be reluctant to report a missing relative, especially if that person had been actively involved in politics, as this puts both parties at risk of politically motivated repercussions. Furthermore, families may not realize that such tracing programs exist, instead, attempting to find loved ones on their own or giving up the search altogether. Persons may also remain missing if

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16 The second, third, and fourth largest camps are also located in Kenya and make up Dadaab, a complex of five “smaller” camps. It is significant that eight of the world’s ten largest refugee camps are in sub-Saharan Africa. See 179. Inside the World’s 10 Largest Refugee Camps: UNHCR; [Available from: https://www.arcgis.com/apps/MapJournal/index.html?appid=8ff1d1534e8c41ad4c04a04b435b7974b.

17 It is important to note that several countries in SSA have, or are completing, fully functional laboratories to conduct DNA analysis. These include South Africa, Botswana, Namibia, Tanzania, Kenya, Zambia, Uganda, and Ethiopia. Thermofischer, personal communication, 13 April 2021.
there is a lack of political will. There have been some cases, as discussed below, where government officials have refused to negotiate with hostage-takers until they are guaranteed a kick-back. Corrupt bureaucrats therefore have the power to keep persons missing if it is not in their financial interest to act.

The primary victims of armed conflict and violent extremism are civilians, who generally bear the brunt of the violence. Forty-five percent of the missing in Africa are children (or were children when they went missing) [181]. In Nigeria, 57 percent of missing persons are under the age of 18, which equates to 13,110 lost children. Women also make up a significant proportion of those missing. In Ethiopia, for instance, 64 percent of the missing are women and children [181]. Most perpetrators, on the other hand, are likely to be men, given the close relationship between militarism and masculinity that numerous scholars have documented [182-184]. They populate the ranks of State-sanctioned and rebel groups.

War, and the violence and chaos that ensues, should not be an excuse to ignore missing persons. African States – and indeed all parties to armed conflict – have obligations under international law “to actively search for persons reported missing, to enable the return of their remains, and to account for persons reported missing without adverse distinction…” [152, 178] Security Council Resolution 2474 (2019) also mandates that States “put in place appropriate channels enabling response and communication with families on the search process, and to consider the provision of information on available services in relation to administrative, legal, economic and psychosocial difficulties and needs they may face as a result of having a missing relative, including through an interaction with competent national and international organizations and institutions...” [152, 178]. In addition, 28 States in sub-Saharan Africa have ratified the Kampala Convention, which obligates parties to “trace and reunify families separated during displacement” [185].

If a disappearance is associated with a war crime or a crime against humanity, it can be brought before the International Criminal Court if granted jurisdiction – and, as noted above, 31 States in SSA have ratified the Rome Statute. The African Court on Human and Peoples’ Rights also has the capacity to hear such cases, although only five States allow individuals or NGOs to bring cases directly to the Court. In addition, the ECOWAS Court of Justice can hear cases involving violations of human rights brought by individuals from its 15 member States. Truth commissions may provide another way for States to investigate disappearances. However, these commissions tend to have a limited temporal scope, focusing on crimes committed during a particular historical moment. They are not as useful for investigating disappearances that implicate current government officials or that fall beyond the commission’s mandate.

CASE STUDY OF NIGERIA

On 26 February 2021, armed bandits abducted 279 schoolgirls from the rural town of Jangebe in northwest Zamfara State. Less than one week later, the kidnappers released the girls unharmed. While government officials denied paying a ransom, analysts have suggested this is unlikely, as large-scale kidnappings have become a highly lucrative enterprise [186, 187]. Indeed, this was the third mass abduction in less than three months [188-190]. Some of these abductions have been linked to Boko Haram, a violent jihadist group that has waged an eleven-year insurgency in the northeastern part of the country. In April 2014, for instance, they gained notoriety after abducting 276 schoolgirls from the small town of Chibok in northeastern Borno State. Some of the girls eventually escaped or were rescued, but the United Nations children’s agency, UNICEF, estimates that 173 are still missing [187]. The Islamic State in West Africa, a group that splintered off from Boko Haram in 2015, has also claimed responsibility for abductions, including the kidnapping of more than one hundred schoolgirls from Dapchi in northeastern Nigeria in February 2018. All but one girl – a Christian – were released after a ransom was paid.

PART 2: ENFORCED DISAPPEARANCE AND ILLEGAL DETENTION

In sub-Saharan Africa, agents of the State have utilized enforced disappearance as a political strategy to eliminate real or suspected dissidents. Unlike the abductions mentioned above, which tend to occur when the State is absent or unable to provide sufficient security, enforced disappearance is a deliberate mechanism of authoritarian Statecraft. According to international law, it refers to “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law[191].” Governments have used enforced disappearances in various contexts, such as armed conflict, as part of anti-terrorism operations, and during campaigns to suppress political opposition. It is considered a “continuous” crime in that it only ends when States acknowledge detention or release information about the fate of those disappeared.

Enforced disappearance is prevalent throughout the continent, although most complaints reported to the WGEID stemmed from North Africa[192]. This should not imply that the practice is any less common in SSA; it simply means that it is reported less frequently. Burundi is a notable exception. The UN Working Group noted a significant number of disappearances associated with public protests surrounding Pierre Nkurunziza’s decision to run for a third presidential term in 2015[193]. Many of the abducted were young men – university and secondary school students – who disappeared during mass arrests. In addition, the group received reports about women who were disappeared when searching for their relatives[194]. They also expressed concern over references to secret detention facilities, which are contrary to the provisions of Article 10 of the Convention, as well as reports that the “Imbonerakure” youth wing of the ruling party was collaborating with security forces to disappear political enemies. Burundi is certainly not the only country where the State is engaged in enforced disappearance, although it is one that is receiving substantial international scrutiny.

In recent years, Nigeria has also been implicated in perpetuating enforced disappearance. Since the Boko Haram insurgency began in 2009, the military have arrested and detained thousands of children, some as young as five years old, for suspected involvement[194]. The WGEID received evidence that between January 2013 and March 2019, Nigerian authorities had detained 3,617 children, including 1,617 girls, based on little or no evidence. The children have been held incommunicado in military detention facilities in violation of international law. Upon release, they are taken to a transit center in Maiduguri, which is operated by the Borno State Ministry of Women Affairs and Social Development. Here they typically stay for two to three months, receiving psycho-social support while employees search for their families. It is beyond troubling that young Nigerian children are being forcibly disappeared by the very State that is supposed to protect them from abduction in the first place.

Enforced disappearances target those who are perceived as enemies of the State, as well as their families and acquaintances. While men are more likely to be disappeared, perhaps because of greater political visibility, women and children are also targeted. In their general comment on women affected by enforced disappearances, the WGEID noted that women are particularly vulnerable during times of conflict[195]. When disappeared, women suffer the same levels of torture and abuse as men, but they are also subject to harms based on their gender, including sexual violence, and forced impregnation. Relatives are also victims of disappearance, especially as the wives and mothers of the disappeared. They may endure material deprivation if the head of household is abducted, they may be blamed for their loved ones’ disappearance, and/or they may be putting their lives at risk if they search for answers. And, if a woman loses her husband to enforced disappearance, she may find herself in a precarious legal position, unable to access bank accounts or make legal transactions without a death certificate. She may be reluctant to apply for such a certificate, however, as it signals that she has given up hope, which may be its own source of stigma.

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[19] Note that enforced disappearance is defined slightly differently in the Rome Statute. According to Article 7(2)(i), it refers to “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”

A person may disappear for a relatively short period of time – a few days or weeks – or they may never be found again. Sometimes a ransom can secure a release. Other times it may not. Much depends on whether the disappeared person is still alive. Frequently the disappeared are killed shortly after they are abducted, but relatives are given no information, so they hold out hope and have no closure. Occasionally, the State may release one or two people from detention for strategic purposes. Such persons would invariably warn others of what they had seen when in custody, thus spreading fear and stifling political opposition. It can therefore be a highly effective mechanism of social control. Locating loved ones is also complicated by the fact that many detention facilities are un gazetted, which means that they do not technically exist. Anyone who insists on finding information about a missing relative runs the risk of falling victim themselves. It is therefore no surprise that many disappeared persons remain missing indefinitely.

The African Commission on Human and Peoples’ Rights has recognized the tremendous harms associated with enforced disappearance, noting that it is “an international complex crime that constitutes a multiple violation of several fundamental rights, including the right to liberty and security of the person, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, the right to life and the right to the recognition of the legal status, among others.” Recognizing that there is no African instrument that specifically addresses prevention and protection against enforced disappearance on the continent, the Commission ordered the Working Group on Death Penalty, Extra-Judicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa to develop, by 7 August 2021, Guidelines for the Protection of all Persons from Enforced Disappearances in Africa [157].

Because most African States do not have domestic legislation outlawing enforced disappearance, complainants may be able to pursue legal action based on existing jurisprudence (e.g., laws prohibiting kidnapping, murder, torture, and other related crimes).

If domestic redress is not an option, persons may seek justice or accountability through the international courts or quasi-judicial bodies described above. One may also choose to testify before a truth commission, although this is a limited option, depending on the commission’s mandate. For example, some of the persons who appeared before the Commission of Inquiry to Investigate Violations of Human Rights that took place in Uganda in the late 1980s and early 1990s were told that they could not testify about incidents that occurred after 1986 – the period when the current government seized power – even though this was also a time of great violence [168].

CASE STUDY OF SOUTH SUDAN

In December 2013, armed conflict broke out in South Sudan, less than two years after the nascent State achieved independence. At least 380,000 persons were reported dead by September 2018, with another 1.8 million internally displaced, and 2.5 million more seeking refuge abroad [197, 198]. More than 5,000 others were reported as missing, although the actual number may be much higher [199]. Many of the disappearances have been attributed to the National Security Service (NSS), a government organization established in 2011 to collect and analyze intelligence, and then advise relevant authorities. Critics argue that the NSS has gone beyond its mandate and is now “one of the government’s most important tools of repression [200].” Researchers from Human Rights Watch interviewed 48 persons who had been detained by the NSS between 2014 and 2020, and documented numerous cases of torture, arbitrary arrests, illegal detentions, unlawful killings, and enforced disappearances, among other crimes. Persons have been detained in three un gazetted facilities in Juba – Blue House, Riverside, and Hai Jalaba – as well as unauthorized residential homes. One former detainee told researchers that he was

21 This was the case in Uganda during Idi Amin’s military dictatorship. Life became so hard for the wives of the disappeared that they demanded the government allow them to seek relief. Amin relented by passing the Estates of Missing Persons (Management) Decree in August 1973, which allowed relatives to administer the estate of anyone who had not been heard of for more than six months. Prior to this, the person had to wait three years until someone could be presumed dead. The irony was that Amin, and his henchmen, were the primary culprits. See 196. Decker AC. In Idi Amin’s Shadow: Women, Gender, and Militarism in Uganda. Ohio University Press; 2014.
told, “Don’t you know that we can kill you now if we want? Don’t you know that nobody knows you are here? You don’t even have a file here” [200]. South Sudan is not party to the ICPPED, but international law requires all parties to account for the missing and to provide family members with relevant information. Toward this end, the Ministry of Humanitarian Affairs and Disaster Management of South Sudan recently inaugurated a technical working group dedicated to the issue of missing persons. The ministry’s undersecretary, Gatwech Peter Kulang, confirmed that this issue – finding the missing – is essential to the sustainability of peace [200]. One local initiative has taken important steps in this direction, creating a website that documents the names of those missing and/or deceased since 1955, the year the first Sudanese civil war engulfed the region. To date, the group has published more than 14,300 names [201, 202].

PART 3: MIGRATION

Another key driver of missing persons in sub-Saharan Africa is migration, especially that which occurs through irregular channels and takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit, or destination [203]. Irregular migrants are often compelled to migrate as a means of survival, due to economic desperation, armed conflict, or some other arbitrary reason. Frequently, such migrations are facilitated by a smuggler, a person who procures the illegal entry of others into a State of which they are not a national or permanent resident for financial or other material benefits [204]. Although human smuggling is a long-established practice, demand for such illicit services reached a new high after the European Border and Coast Guard Agency (Frontex) began cracking down on irregular migration from Africa in 2015, a response to the so-called migrant crisis, signified by the detection of 1.82 million irregular entries at various sea and land borders [205].

Between January 2014 and October 2019, more than 7,400 migrants died or disappeared in transit across Africa, most within the Sahara Desert [208]. Nearly 19,000 more died or went missing when attempting to cross the Mediterranean from North Africa [208]. These figures represent recorded incidents, and do not account for those who were not reported as missing or whose bodies were never found. The International Organization for Migration (IOM), which established the Missing Migrants Project in 2014, notes that “Irregular migration is becoming increasingly complex, elaborate and mosaic, making it harder to monitor and identify” [209]. In West and Central Africa, for example, there is very little data about missing migrants. Little is known about their sex and age, let alone the exact location of their death or disappearance [209]. Despite these data challenges, it is significant that more than 20 percent of migrant fatalities ever recorded by the Missing Migrants Project have occurred in Africa and more than 30 percent of recorded deaths involved Africans [210].

The Sahara crossing is one of the most dangerous migration routes in the world due to harsh desert conditions, as well as high levels of violence throughout the journey [211]. The most common route crosses from northern Niger into Libya, and sometimes, into Algeria. Migrants from West Africa also travel via Mali and Algeria, while those from both East and West Africa try to reach Libya via the Sudan, or, less frequently, through Egypt. Since the mid-2000s, most migrants have crossed the desert using the services of smugglers from nomadic or semi-nomadic groups, a journey that lasts between three and seven days. They risk violence, robbery, and sexual assault at the hands of smugglers, border guards, militia, roving gangs, and other migrants. In addition, they risk falling off crowded pick-up trucks and being left behind or being forced to disembark if they fall sick. And due to the increased securitization of borders, migrants are often forced to travel the last several kilometers on foot, as smugglers do not want to risk detention if caught. Some migrants thus become lost and never make it out of the

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Even if African borders remain heavily securitized, migrants do have rights under international law [218]. There is also evidence that Algerian authorities have expelled or denied entry to more than 13,000 migrants, forcing them into the Sahara Desert in Niger without food or water, sometimes at gunpoint, in temperatures of up to 118 degrees Fahrenheit. Aid workers told reporters in 2018 that it was difficult to count how many migrants had died because “corpses lie in the sun until they are swallowed by sand” [212][213].

Migration to Europe by sea is equally harrowing, as evidenced by the numbers identified as dead or missing over the last several years. African migration to Europe has taken three main routes: (1) the Atlantic maritime route from West Africa to the Canary Islands; (2) the Western Mediterranean route from Morocco or Algeria to Spain; and (3) the Central Mediterranean route from Libya (and less frequently Tunisia and Egypt) to Italy [214]. The Atlantic crossing is considered the most dangerous, likely because the journey is so long. Those embarking from Guinea, for instance, must travel nearly 2,500 kilometers (as opposed to the distance between Morocco and Spain, which is less than fifteen kilometers). Despite the risks, the route has become popular (again) since the European Union cracked down on migration along Morocco’s northern coast. While 2,687 migrants reached the Canary Islands by boat in 2019, this number had risen to 23,023 by the end of 2020 [216]. IOM documented 40 shipwrecks in 2020, along with 849 dead or missing migrants [217]. Most of those who migrated along this route, some 97 percent, were adult men [216].

There are several reasons why a migrant might remain missing. If a person does not inform their loved ones that they are migrating, there is no one to confirm that this person arrived safely at their destination. A migrant may lose touch with family members over time, perhaps even inadvertently, and subsequently “disappear.” If an individual boards a vessel that gets lost at sea, in the absence of a proper passenger manifest, family members will not be able to verify whether their loved one was onboard. If a migrant is abducted in the desert, or detained at a remote border post, they may not be able to notify anyone of their whereabouts. If no one witnesses or reports such an incident, the migrant may never be found. The possibilities are virtually endless, but without the regularization of migration – opening borders and allowing migrants to move more freely – there will continue to be many missing migrants in sub-Saharan Africa.

Even if African borders remain heavily securitized, migrants do have rights under international law [218]. As previously mentioned, 38 States in SSA have ratified the UN Smuggling Protocol, which obligates them to enact domestic legislation that protects the rights of migrants. Migrants are entitled to the same human rights as anyone else. Article 4(c) of Human Rights Council Resolution 23/20 on Human Rights of Migrants, for instance, calls upon States “to prosecute, in conformity with applicable law, acts of violation of the human rights of migrants and their families, such as arbitrary detention, torture and violations of the right to life, including extrajudicial executions, during their transit from their country of origin to the country of destination and vice versa, including their transit through national borders” [219]. The resolution also calls upon States “to avoid excessive detention of irregular migrants, to review, where necessary, detention periods and to use alternatives to detention, where appropriate,” among other things [219]. Such provisions can help to prevent migrants from going missing, especially at the hands of government officials. States also have an obligation to make sure that migrants do not get lost at sea. Article 98 of the UN Convention on the Law of the Sea, which came into force on 16 November 1994, obligates shipmasters to assist anyone found at sea who is in danger of being lost and to rescue distressed persons if such actions do not seriously endanger the ship, crew, or passengers [156]. Forty States in SSA have ratified this convention.

In 2006, the African Union adopted the Migration Policy Framework for Africa (MPFA), which considered the development potential and challenges posed by migration [220]. Ten years later, the African Union Commission conducted an evaluation of the framework, determining that the MPFA should be updated, and that a “plan of action” should be implemented. Toward this end, in 2018, they launched the Migration Policy Framework for Africa and Plan of Action (2018–2030), which considers – at least in part – the relationship between irregular migration and missing persons. Although the policy is non-binding, it is useful for States that want to address the problem.

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23 IOM notes that the route used to be very popular. In 2006, for instance, 32,000 migrants from West and Central Africa had taken the route. This number had dropped to 425 by 2017. See 215. Irregular Migration Towards Europe. International Organization for Migration.

According to Article 3 of the UN TIP Protocol, trafficking in persons refers to “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.” This exploitation may include the prostitution of others or other forms of sexual exploitation, forced labor, slavery, or practices akin to slavery, or the removal of organs [154]. According to a 2017 study by the International Labor Organization and the Walk Free Foundation, 3.4 million persons in SSA are currently victims of forced labor, which is 14 percent of the global total [223]. Although trafficking is generally considered a form of forced labor (and forced labor is a form of exploitation covered under the TIP Protocol), the two terms are not necessarily interchangeable [224]. Nonetheless, the aforementioned statistics provide a useful, albeit imprecise, metric for gauging the extent of the practice. If we couple these numbers with those provided in the US Department of State’s most recent Trafficking in Persons Report, which identifies more than 42,000 victims of trafficking in SSA in 2019 – nearly double the number from the year before – it is relatively easy to see that human trafficking is a serious problem [225]. In SSA, 77 percent of trafficking victims are engaged in forced labor, while another 20 percent are trafficked for sexual exploitation [226].

Most trafficking victims in SSA are children, approximately 60 percent, although child trafficking is more commonly detected in West Africa than in East or Southern Africa [227]. In fact, West Africa tends to have more detected cases of trafficking than elsewhere on the continent. Nearly ten times as many victims were identified in West Africa than in Southern Africa, and more than three times as many than in East Africa. Across the sub-continent, 32 percent of trafficking victims are girls, 27 percent are boys, 27 percent are adult women, and 14 percent are adult men. If we disaggregate the data regionally, however, we find significant differences. For example, in West Africa, young boys are the primary victims (followed closely by young girls), while in Southern Africa, they are the least likely to be trafficked. Women in this region, on the other hand, are more than three times as likely to fall victim to traffickers than any other group [227].

Trafficking patterns are also regionally distinct. In West Africa, 92 percent of victims are trafficked within their home country, while the other 8 percent come from other countries within the sub-region. In Southern Africa, 43 percent are trafficked domestically, while another 43 percent come from the sub-region. The rest are trafficked from other parts of the continent, as well as South and East Asia. Finally, in East Africa, 14 percent of victims are trafficked within their home country, 75 percent come from the sub-region, and the rest from other parts of the continent or from South Asia [226].
In sub-Saharan Africa, most traffickers are men, which aligns with larger global patterns. Men are investigated, prosecuted, and/or convicted twice as frequently as women, although women are convicted in at least 30 percent of cases [226]. Data from 12 countries suggests that 78 percent of convicted traffickers are citizens of the countries where they were arrested, while another 22 percent are citizens from the sub-region [226].

Not all victims of human trafficking, or forced labor, are missing. Within these illicit networks, however, persons can easily disappear. In situations of armed conflict, for instance, persons are regularly abducted, and/or forcibly conscripted, into armies and rebel groups. The Special Representative of the UN Secretary General on Children and Armed Conflict maintains that the recruitment and use of children by armed groups nearly always constitutes trafficking in persons [228]. In 2019, the United Nations verified the abduction of 1,683 children, primarily within Somalia, the Democratic Republic of Congo, and Nigeria. Ninety-five percent of the perpetrators of these crimes were non-State actors [229]. Abductees are often forced to travel great distances, crossing international borders, and generally living “off the grid.” If they are killed in battle, no one is likely to record their death, and their families remain without answers. In the Central African Republic, political upheaval has increased the population’s vulnerability to trafficking. The UN Office of Drugs and Crime reported incidents of traffickers entering refugee camps to coerce victims into sex work, domestic labor, or forced marriage as a means of survival [230]. A woman from such a camp might get involved with a trafficker to escape desperate conditions, only to find herself in circumstances that are even more dire.

Similarly, criminal networks may recruit unsuspecting victims for “lucrative” jobs overseas. In downtown Kampala, for instance, nearly every lamppost is covered with posters advertising “great jobs” abroad. These jobs are often connected to trafficking rings that channel unsuspecting young women into domestic servitude in the Middle East. The women are not allowed to leave until they repay their employer for the costs of their airfare and living expenses. Their salaries are so low, however, that they are never able to get out of debt. Their families at home know only that they have gone abroad for work. Oftentimes, they are never heard from again. The most recent Global Report on Trafficking in Persons notes that when organized criminal groups are involved in trafficking networks such as these, victims are trafficked longer, farther, and with more violence [214, 227].

Persons who are trafficked may disappear temporarily, or they may never be found. Like migrants, a person who is trafficked may not have told anyone they were taking a job abroad. They may have told family members that they were migrating to town for work, or for school. They may have believed they would return within a few months – a year at most. However, if they later find themselves in trouble, for example if their passport has been confiscated and/or they are being held against their will, their loved ones will have no idea where to look [231] Sometimes trafficked persons remain missing because it is too dangerous for their loved ones to search for them. In other cases, too much time has passed, and their families have given up hope. Some of the children who were abducted by the Lord’s Resistance Army in the late 1980s, for example, have now been gone for more than 30 years. Many of those abducted were forced to commit atrocities and may feel too ashamed or frightened to return home.

Under international law, States are obligated to protect their citizenry from human trafficking and its attendant dangers [232]. Forty-three States in SSA have ratified the UN TIP Protocol, which seeks to prevent, suppress, and punish human trafficking. However, four of these countries have only criminalized the trafficking of children, and one additional country has no laws against it [227]. Another useful international instrument is the Protocol to the Forced Labor Convention, which explicitly defines trafficking as forced or compulsory labor [233]. Unfortunately, this treaty has been ratified by only ten countries in SSA thus far. Also relevant is the Convention on the Rights of the Child, which requires parties to “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form” [235]. All 46 States in SSA have ratified this important treaty.

25 UNODC, Global Report on Trafficking in Persons, 168. The US Department of State has rated five countries in SSA as Tier 3, meaning they do not meet minimum standards for the Trafficking Victims Protection Act: Comoros, Eritrea, South Sudan, Burundi, and Lesotho. South Sudan is not a signatory to the Protocol. The other four have ratified the Protocol, so they may be the countries referenced by the UNODC report. US Department of State, Trafficking in Persons Report, 56.

Because trafficking is most likely to harm women and girls – both globally and in sub-Saharan Africa – it is important to highlight key articles within the Convention on the Elimination of all forms of Discrimination Against Women, or CEDAW, and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, also known as the Maputo Protocol. The former requires States to take “all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women” and has been ratified by all forty-six States [236]. The latter requires States to “prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk.” It has been ratified by 38 States [237]. These treaties, as well as those mentioned above, obligate State parties to take human trafficking seriously by enacting domestic legislation that outlaws the practice. By taking such steps, African governments can address a key driver of missing persons on the sub-continent.

CASE STUDY OF KENYA: “THE GIRLS WHO ARE NOT KNOWN”

In January 2020, 96 young women and girls from Uganda were stopped at Nairobi’s international airport en route to the United Arab Emirates. They had paid an “employment agency” a significant fee to help them find work abroad. Instead of linking the girls to legitimate employment opportunities, the bogus agents channeled them into an elaborate trafficking ring. Nearly every month, Kenya’s Directorate of Criminal Investigations intercept victims coming from Uganda, as well as Burundi, Rwanda, and Tanzania. According to a recent report, the “value chain” of this network has three main links: (1) regional recruitment brokers who bring girls to Kenya; (2) Kenya-based brokers who receive the girls, acting as employment agents and moving them from Kenya to the host country; and (3) host country counterparts who receive the girls upon arrival [238]. East Africans have recently taken over the third link in the chain, thus allowing the girls to be greeted by “familiar faces,” while retaining control over supply chain profits. Trafficking victims often find themselves in exploitative working environments, unable to leave because they cannot afford to repay their employers for recruitment costs [239]. In a 2018 interview, one Ugandan official told a local reporter that it was hard for the government to rescue such victims because “they are not known” [240]. And herein lies the crux of the problem – the girls cannot be rescued because no one knows their whereabouts, but they also cannot escape without significant external help. Too often, these girls who “are not known” simply disappear.

CONCLUSION

The main drivers of missing persons in sub-Saharan Africa today are not necessarily those that were most prominent in the past, nor will they remain unchanged in the future. Covid-19, for instance, has complicated the search for the missing in significant ways: detention facilities are locked down so humanitarian organizations are unable to search for the missing; domestic and international travel is suspended in many places, thus making it difficult to carry out searches over broad regions; and social distancing requirements prevent groups from gathering to look at photos of the missing, or to ask questions about their loved ones. Economic precarity has also compelled people to migrate, despite the tremendous risks. In a recent study of North and West African migrants, the Mixed Migration Centre found that the pandemic had increased aspirations to migrate, while decreasing the population’s capability to do so, in part, because of new border restrictions [241]. Such restrictions have thus compelled migrants to take more isolated and hazardous routes. Many have relied on smugglers to facilitate their transfer, even if it has exposed them to greater risks. For example, on 20 March 2020, smugglers attempted to transport 78 Ethiopian migrants into Mozambique in a sealed shipping container. When customs officials inspected the cargo, they discovered the bodies of 64 migrants, along with 14 survivors [205]. Similar harrowing tales have emerged throughout the continent. In the Sahara, for instance, border closures have left thousands of vulnerable migrants stranded, forcing them to quarantine in overcrowded transit centers that lack adequate food or health facilities. Others have been expelled into the desert [211]. There are also reports of large numbers of migrants being forced to disembark in Libya after their vessels were intercepted at sea, despite mounting political unrest [242]. The risks associated with migration are clearly exacerbated by the pandemic and will not abate until international borders become less securitized and more porous.
Covid-related job loss, coupled with widespread school closures and persistent poverty, have meant that more Africans are now increasingly vulnerable to human trafficking as well. The pandemic has made children more susceptible to forced labor and early marriage, as well as forced recruitment into armed groups [243]. The UN Secretary General has warned that the virus would likely magnify the harms of armed conflict, particularly for those who are already vulnerable, such as children, women, persons with disabilities, and the missing [244]. He has noted that the pandemic is “the greatest test that the world has faced since the establishment of the United Nations” and that it has had “a severe impact on the protection of civilians, particularly in conflict contexts” [245]. It is perhaps for this reason that the Security Council adopted Resolution 2532 (2020) in July, calling on all parties to armed conflicts to engage in an immediate 90-day pause to enable the safe, unhindered provision of humanitarian services [246]. While the resolution did not quell all fighting, it did send a powerful message about the severity of the crisis.

Global lockdowns have also made it harder to prevent or mitigate enforced disappearances. In late August 2020, the WGEID issued a statement to mark the 10th anniversary of the Convention for the Protection of All Persons against Enforced Disappearances and the 40th anniversary of the Working Group. They noted that the virus had “created new and concerning contexts for enforced disappearances.” Compulsory quarantines, for example, have meant that many families do not know the fate of their relatives. The suspension of visits, they claim, has “led to a complete absence of contact between detainees and relatives or representatives, which is conducive to incommunicado detentions, and may lead to enforced disappearances” [247]. A recent analysis of East and Southern African prisons confirms that Covid-19 lockdowns have been detrimental to prisoners’ rights [248]. While it is less likely that a prisoner will go missing in an official state-run prison – at least, not in the long term – one has to wonder about the fate of those in clandestine, ungaazzeted facilities.

**Recommendations for Governments**

**General Recommendations**

- Provide proper means of identification for all citizens and government employees.
- Respond to the missing persons data challenge by establishing national and/or regional bureaus to track data on missing persons and to conduct transparent and timely investigations into incidents of missing persons. ICMP’s data systems, can be used to help countries develop their own capabilities and to work collaboratively across borders.
- Recover, identify, and manage human remains in a way that respects human dignity and secures the rights of families of the missing.
- Invest in forensic science.
- Commission scholars and/or civil society organizations to conduct research on the relationship between human trafficking and missing persons.
- Create accountability mechanisms, such as special courts or truth commissions, and then prosecute those who contribute to the illegal disappearance of persons.
- Publish widely the results of truth commissions and implement their recommendations.
- Provide reparations that are meaningful to the relatives of the missing, such as monuments, commemorative sites, public apologies, and/or atonement rituals, as well as adequate financial and psycho-social support.
- Ratify relevant international and regional conventions and integrate these principles into domestic law.
- Allow relatives of missing persons to access benefits without requiring a death certificate.
- Acknowledge the gender-specific harms that women experience, both as victims of disappearance and as relatives of the disappeared.

**To investigate and prevent missing persons in armed conflict**

- Provide appropriate training for all members of the armed forces on international humanitarian law and of civilian authorities, as well as judicial institutions of human rights obligations in respect of families of the missing.
- Take steps to identify and determine the fate of all who go missing during armed conflict and provide relevant information to family members.
- Promote closer engagement and support for ICRC tracing work and the ICMPs efforts to promote and assist effective investigations, as well as digital tools such as “Trace the Face Southern Africa”, “Remembering the Ones We Lost”, expanding the “ICMP Online Inquiry Centre,” which allows families and others to safely report a missing person and by establishing better interoperability among these tools.
To investigate and prevent enforced disappearances

- Ensure that all detainees are registered upon arrival and held only in legal facilities.
- Always allow relatives to maintain regular contact with detainees.
- Ensure conditions of arrest, preliminary interrogation, and detention of suspects comply with the Robben Island guidelines.
- Engage in timely and transparent investigations of enforced disappearances.
- Guarantee that children born during enforced disappearance will be protected and their births will be properly registered.

To investigate and prevent missing migrants

- Ratify the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention against Transnational Organized Crime, and incorporate it into domestic law.
- Prosecute and/or sanction those who engage in migrant smuggling.
- Train law enforcement officials to detect and investigate migrant smuggling.
- Expand pathways for legal entry for migrants and those fleeing crises.
- Address the root causes of migration.
- Educate the public about the dangers of migrant smuggling.

To investigate and prevent human trafficking

- Ratify the UN Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and incorporate it into domestic law.
- Investigate and prosecute traffickers.
- Dismantle criminal networks that perpetrate trafficking.
- Provide relief and services for all victims of trafficking.
- Train stakeholders to increase the identification of victims.
- Promote public awareness about modern slavery.
- Educate border agents about human trafficking.
Andrej Đerković, Photo: Andrej Derkovic, Missing, 2004, Istanbul Collection for Ars Aevi Museum of Contemporary Art, Sarajevo – names of missing persons from Srebrenica written in Braille
INTRODUCTION

The history of modern Europe is marked by events that have left large numbers of people missing, creating indelible scars on a continent still healing from the many traumas of the 20th century. From Europe's conflicts and tragedies, we can see how unaddressed trauma can haunt communities for generations and create false narratives that continue to the present day, perpetuating historical grievances and polarizing societies. But in the continent's history, we can also see the emergence of strategies for countering such revisionism and division and we can see how state investigations into missing persons become central to that process of rebuilding trust. This chapter will first examine the historical and societal context to the missing persons challenge in Europe, looking at lessons the continent learned from its many conflicts and the legal frameworks that emerged. It will then explore how those lessons are applied in the present day, firstly through the lens of migration and Europe's faltering reaction to the thousands of people missing presumed dead in the Mediterranean. The next part will consider human trafficking, followed by an examination of persons missing in Europe because of political unrest and conflict. The chapter will conclude with a summary of the main points and recommendations for governments and European Union institutions.

Historical Context

The lessons gleaned from Europe stretch back to the first genocide of the 20th century, when at least one million Armenians were killed during Turkish deportations in 1915 and 1916. The mass graves remained largely hidden, the dead unaccounted for, and more than a century later the unresolved hurt and grievances have been passed down from generation to generation. The lack of any state investigation into that crime continues to facilitate the denial and revisionism that perpetuates divisions between the communities today.

With the advent of the First World War, more death and trauma came to Europe, and epic efforts were undertaken to identify the millions of soldiers missing in the combat zone. The aftermath of the Great War was the first time in Europe's history when nations made a systematic effort to allocate marked graves to deceased soldiers, the results of which can be seen in the sobering military cemeteries scattered across Europe today. However, hundreds of thousands of soldiers and civilians remained unaccounted for, and as many European nations destabilized in the 1930s, they experienced disappearances not directly related to the battlefield. In Russia, hundreds of thousands of people went missing in Stalin's political purges. The ascent of the fascist dictator Franco in Spain in the late 1930s saw enforced disappearances become a favored tool to suppress dissent. As the Second World War gripped the continent, internal political opposition in Germany led to the Nazi's Night and Fog campaign, in which up to 7,000 people were killed or sent to concentration camps, the sudden and clandestine nature of their disappearance designed to deter further dissent.

The aftermath of the Second World War was chaotic and traumatic, but it did spark a growing understanding of the psychological impact of knowing who the dead are, and efforts continue today to develop new legislation and methods to try and account for the victims of those wars [249]. The end of World War Two also heralded a new understanding of the need for an international framework to prevent conflict: The United Nations was founded in 1945, followed by the adoption of the Universal Declaration of Human Rights in 1948.

But while there were unprecedented gestures of global cooperation after the wars, there was no coordinated effort in Europe to forge a unified strategy for dealing with the issue of missing persons, nor was it considered central to the reconciliation process. Then in the early 1990s, conflict erupted as Yugoslavia broke apart, and a collective shock at a return of genocide and ethnic cleansing to Europe finally jolted Western governments into recognizing their legal and human rights obligations concerning missing and disappeared persons. During the conflicts of the 1990s, more than 40,000 people went missing in the former Yugoslavia, including 8,000 men and boys massacred and buried in mass graves in the region of Srebrenica. That such a flagrant breach of the 1948 Universal Declaration of Human Rights was possible in Europe in the late 20th century spurred international efforts to end the war and forge new instruments to address the atrocities.
In 1993, the International Criminal Tribunal for the former Yugoslavia (ICTY) was established, the first international war crimes court in Europe since the Nuremburg trials. Then the Dayton-Paris Accords ended the fighting in 1995. But the fate of missing persons threatened to overshadow the fragile peace. The different communities struggled to move forward and forge trust, in part because so many loved ones had disappeared. Families did not know if those loved ones were dead or the victims of clandestine detention. In a conflict in which religious and communal association had been used as tools to divide the population, world leaders were aware of how damaging it would be if the search for the missing became another polarizing political tool. It was a determination to respect the rights of the families of the missing to truth, justice and reparations – regardless of national, ethnic or religious affiliation – that led to the creation of the International Commission on Missing persons (ICMP) in 1996. With its assistance, the states affected by the war began collaborating on accounting for the missing on the basis of the rule of law.

Relatives of the missing aided this process by forming citizen groups such as the Mothers of Srebrenica, which worked together across national and religious divides to become powerful advocates for the rights of the victims and the survivors. The historical, legal and societal imperatives that helped drive that process were aided by scientific developments, which meant the most up-to-date DNA analysis tools were deployed, helping to forge a new global blueprint for the search for the missing. Today, more than 70 percent of the 40,000 people who went missing have been accounted for, including 90 percent of the 8,000 men and boys massacred in Srebrenica.

It took the specific set of circumstances in the former Yugoslav republics for this new standard to be established, but the expertise gleaned from those investigations would prove instructive around the world. As well as offering a methodological blueprint, the success of a concerted effort to account for the missing in the former Yugoslavia demonstrated what could be achieved when states recognized their legal obligations and then worked together with others with a common purpose and a shared goal, supported both diplomatically and financially by the broader international community. Conceptually, it demonstrated how the process of effectively accounting for the missing contributes to greater social cohesion, lasting security, and shared historical memory. Families of the missing on all sides of the conflict worked together and recognized their shared grief. When human remains began to be located and identified through official processes led by justice institutions, trust in government and in those institutions grew. The existence of the ICTY meant that the evidence accrued in the search for the missing played a large part in the search for justice.

When a population – regardless of ethnicity, nationality or religion – felt that they had been treated fairly and equally in an investigation that upheld the rule of law, there was less space for the proliferation of the false narratives that perpetuate old grievances. The relevance of these findings is particularly pertinent today given the explosion of fake news and historical revisionism in the age of social media, and diminishing trust in state institutions.

Since the conflicts in the former Yugoslavia ended, large swathes of Europe have enjoyed prolonged peace and prosperity while strengthening their compliance with human rights and justice apparatus. Most countries are signatories to the major international human rights conventions and many are members of the International Criminal Court. Forty-seven European countries now form the Council of Europe and are signatories to the European Convention on Human Rights (ECHR), with the only exceptions being Belarus, an authoritarian state, and Kosovo, a state whose status is disputed. The rights of missing persons and their families have been found to fall under Article 2 and Article 3 of the ECHR – the right to life and the prohibition of torture. When breaches of Articles 2 and 3 arise, this places a procedural duty on the state to conduct an effective investigation.

Yet despite Europe's history of providing a best practice example and its strong institutional, political and economic foundations, it seems that the continent has not always learned from its own history. Today, Europe is faced with a huge missing persons problem: at least 22,000 people have gone missing in the Mediterranean or along Europe's borders since 2014 as they attempt to reach the continent by boat or overland. Many of these people were fleeing wars; others were in search of a better quality of life. All were in possession of the basic human right to dignity and life. But when it comes to respecting those rights – and the right of family members to an effective investigation into the missing – the political will that Europe has shown towards its own citizens in the past seems to be harder to summon.

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27 This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.
PART 1: MIGRATION

Migration to Europe from elsewhere in the world is not a new phenomenon. People have always moved between regions in search of a better life. In the years after the Second World War, much of the movement was in the opposite direction, as two million people fled the battered continent and headed in search of safety and prosperity elsewhere, mostly to the United States. As growth and stability returned to Europe, many countries encouraged migration from overseas, mindful that they needed foreign labor to fuel rapid post-war growth. Governments in western Europe also largely welcomed refugees, remembering the continent’s own history after the Second World War, when millions of displaced Europeans needed assistance to recover and rebuild.

A shift in perceptions began in the 1980s as refugee numbers around the globe increased due to the proliferation of conflict in the post-Cold War world, and the global recession and soaring unemployment in many European nations led to increased protectionism against foreign-born workers. European nations introduced more visa restrictions and toughened their asylum policies. As more measures were put in place to keep people out, people took greater risks to get in, and the toll of the dead and missing along Europe’s borders began to rise.

One of the most dangerous routes was the sea crossing from North Africa to Italy, Malta and Spain. Libya was the preferred departure point, not least because of complicity in the human smuggling by Colonel Muammar Gaddafi, who used desperate migrants as pawns in his dealings with Europe. In 2009, Gaddafi signed a deal with the Italian government allowing Italy’s Navy to intercept the rickety boats and send them back to Libya. The fate of the returned migrants was unclear. Many disappeared upon arrival, either into the maze of appalling detention centers or dumped in the desert on Libya's inhospitable southern borders. The European Court of Human Rights ruled that the policy contravened a person’s right not to be returned to a country where they face degrading and inhuman treatment [250], and Italy stopped the returns. But that policy set the tone for the coming years in which Europe's efforts to keep people out would increasingly push the boundaries of international law.

While the numbers of people attempting to enter the European Union clandestinely had been steadily rising since the 1980s, a surge came in 2011 with the advent of the so-called Arab Spring. More than 140,000 refugees and migrants arrived that year, and 1,500 people were reported dead or missing on the Mediterranean crossing from North Africa or on the land route via Turkey, Greece and Bulgaria. The following year saw a lull, but the global turmoil had not disappeared. Syrians were fleeing their homeland in unprecedented numbers, and in 2013 many of them started to make the perilous journey to Europe. Boats were now not only leaving from Libya's shores, but from Turkish shores too. These were flimsier vessels, often little more than rubber dinghies pointed in the direction of the Greek islands. Reports of shipwrecks and drownings in the central and eastern Mediterranean started to emerge, but initially they received little attention in Europe. That changed in late 2013 when the bodies started washing up on European beaches and beauty spots.

On 3 October 2013, a decommissioned fishing vessel with a capacity of 35 came within sight of the Italian island of Lampedusa. More than 500 people were packed on board. They had spent 36 hours on the crossing from Libya, but less than half a mile from the coast of Europe, the boat started taking on water, then caught fire and sank. The shipwreck claimed 368 lives, the victims washing up on the sandy beaches of Lampedusa before being packed away in coffins marked only with a number. The shocking nature of the tragedy so close to Europe provoked an outpouring of compassion. European Union leaders said that such a tragedy should never happen again, and a search and rescue operation should be launched ‘from Cyprus to Spain’ [251]. But it took less than a week for another boat to sink on the same stretch of water from Libya, this time killing 200 more people.

Those tragedies of October 2013 were a sign of what was to come. The number of refugees and migrants trying to enter Europe soared during 2015, and so did the number of people going missing. Today, IOM reports that nearly 20,000 people have gone missing, presumed dead, in the Mediterranean since 2014, with another 2,000 missing in other European border areas. That number is likely to be an underestimate, and while UN agencies keep track of people missing on Europe's borders, no one knows how many people are dying or disappearing earlier in their voyage.

The long path to Europe is strewn with the disappeared. Thousands of sub-Saharan Africans have fallen prey to kidnapping and extortion in the Sahara. Promised passage to Europe, they are instead spirited away by trafficking gangs to the Sinai Peninsula where they are detained and tortured while the criminal gangs try and extort money from family members. Others go missing in overcrowded and barely roadworthy trucks that cross the Sahara. Many of the migrants who make it out to sea today are returned to Libya by its coastguard, which receives training and funding from the EU. Back in Libya, they risk going missing in the appalling conditions of Libyan detention centers.

Those who make it into the European Union remain vulnerable. Conditions in migrant camps in Greece, the Balkans and central Europe are dismal, with overburdened administrative systems creating backlogs in processing asylum claims. Up to 30,000 children and young people have disappeared from the EU's asylum system since 2014 [253], some trafficked for labor and sexual exploitation, others choosing to voluntarily disappear from a system in which their human rights appear to be systematically denied.

Why migrants go missing on their way to Europe and within the continent is clear. Wars, human rights abuses, and poverty force people to leave their home countries. Desperate and vulnerable, they offer easy prey for exploitation at the hands of traffickers. With ever-decreasing legal options to claim asylum in Europe or to apply for work visas from outside the continent, they are forced to turn to illegal methods. These illicit methods for entering a country are inevitably perilous: they embark on sea voyages in dangerous vessels or land crossings over treacherous terrain. As the EU has scaled back search and rescue, there are fewer life-saving operations in the Mediterranean. Structural issues in processing an influx of asylum seekers increase their vulnerability within the EU.

A more perplexing question is why most of these people are still missing. Given the difficulties with record keeping, no one knows exactly how many of the 22,000 migrants and refugees believed to be missing have been located and, if dead, identified. But it is widely believed to be less than 10 percent. All EU states are party to international covenants and domestic legal requirements obliging them to investigate every missing persons case effectively, and the continent has a history of best practice in this field. So, why have European states so far failed to meet their own obligations and uphold the rights of missing migrants and refugees?

A specific set of circumstances around missing migrants and refugees complicates the quest to account for those who have disappeared on the path to Europe, separating these vulnerable people ever further from their most basic rights and the protection of the law.

The origins of many missing migrants and refugees represent one complicating factor. In many cases, they come from poor households in underdeveloped countries. A lack of infrastructure and low levels of education and social standing may mean that families lack the resources and advocacy skills to seek justice when a loved one goes missing. They may also have limited access to the media and technology needed to facilitate participation in an investigation, or indeed to become aware of such an investigation. This is not always the case. A journey to Europe arranged by unscrupulous smugglers can be costly, and most of the Syrians arriving in Europe in 2015, for example, came from middle class families. But these arrivals had fled a devastating civil war, their resources depleted by the conflict and by their harrowing journeys. Documentation was often lost, and family savings spent on the passage to Europe.

Other people may have come from a country which has no interest in fulfilling its legal duties or collaborating in investigations into the missing, or where trust has broken down between the government and a particular community. Many of Europe's new arrivals in 2015 came from Eritrea, where an authoritarian government has a record of punishing family members of people who have left the country. A consequence of this is that family members are reluctant to come forward and report a missing loved one.

The circumstances people face on arrival in Europe further complicates efforts to form the kinds of citizen advocacy groups that have had an impact on public opinion elsewhere in the world, such as in the former Yugoslavia or in central and south America. Migrants and refugees arriving in Europe may not speak the language and will face a gauntlet of resettlement and integration challenges. This makes the organic formation of civil society groups difficult. The diverse backgrounds and concerns of different migrant and refugee communities across different European nations also impedes effective civic advocacy.
The geographical spread poses many other problems. Once a person leaves their home country, they are likely to cross a number of countries on the journey to Europe; they may be unable to keep in touch with family members due to lost or stolen mobile phones, or the absence of internet connectivity. Key points would be the country from which they disembark and their place of arrival in Europe, which in the case of the EU is the country where an individual is legally bound to make an asylum claim. Many people choose not to stay in the country in which they arrive, however, and evade registration and once again traverse more territories as they try to reconnect with family members or reach the country that will offer them the best future.

Family members often become separated during the journey. Some families are split up at sea, perhaps by smugglers putting them in different boats. In some shipwrecks in the Mediterranean, members of one family were rescued by the Italian coast guard and taken to Italy, while others ended up in the care of Maltese search and rescue personnel.

These structural issues at the EU level continue on land, where the Dublin Regulation requiring people to apply for asylum in their country of arrival means that members of one family arriving in different countries are bound by law to stay there and have to leave clandestinely if they want to reunite with loved ones elsewhere. This encourages many new arrivals to try and avoid registration and stay out of any national security databases. EU nations are duty bound to reunite unaccompanied children with their parents or other family members, but processing family reunification claims can take up to a year, and many people become frustrated and remove themselves from the system.

Chaotic record-keeping in countries where large numbers of people arrived at the height of the 2015 migrant crisis – or large numbers of bodies were washing up – exacerbated those structural issues. Bodies were buried in unmarked graves with no effort to take DNA samples or ensure that victims from one shipwreck were kept together. Systematic procedures were not in place at the country level, let alone coordinated at an EU level. Thousands of the people reported missing also remain at the bottom of the Mediterranean trapped in the vessels they hoped would ferry them to safety, with nations reluctant to shoulder the financial burden of retrieving human remains from the seabed.

With many countries involved in each missing migrant case, an investigation may require outreach across the globe as DNA and personal details need to be collected from family members both in the country of origin and in Europe too. Given the perils at every step of the migration journey to Europe, it may not be clear in which country the individual went missing. While this could result in a situation where many nations are willing to dedicate time and resources to a case, instead it seems to contribute to a lack of willingness to start the process.

This evasion of responsibility is in part due to the political and economic climate in Europe, which has seen a rise in anti-migrant sentiment since the 2008 eurozone crisis. Populist and nationalist political parties with a tough line on migration and asylum have seen support soar in countries including Britain, Italy, Germany, France, Hungary, Poland, the Netherlands, Belgium, and parts of Scandinavia. In response, many centrist parties have shifted their rhetoric, with the conversation over migration less focused on the rights of the individuals and moving towards a security-focused discussion on keeping people out at all costs. A similar shift in tone can be observed within the EU leadership. The empathetic tone after the shipwrecks of 2013 has been replaced with more hostile and impersonal language. These shifts foster an ‘us and them’ mentality among the population and political classes, with the message conveyed that the lives of migrants are somehow not as valued as the lives of citizens of the country, despite international and domestic law requiring governments to treat everyone equally. This hostile tone in the public debate hampers political will and the effort to secure funding for initiatives to search for the missing.

There are also legal impediments to the quest for justice for people missing in migration. European countries have been strident about cracking down on the smugglers who exploit human suffering, but prosecuting individuals requires cross-border cooperation, which can be lacking. Identifying culpability is also a problem, as in many cases smugglers have left vessels under the charge of one of the migrants, leading to concerns that the migrants themselves may end up being prosecuted. At the European level, there are also internal structural and bureaucratic hurdles that hamper any process of investigating the disappearance of migrants and refugees and identifying them. Investigative work overseas comes under the remit of foreign ministries, while such work on home soil is the responsibility of the interior ministries, so an investigation may involve not only multiple governments, but multiple ministries and agencies within each country.

All these complicating factors mean that in many cases, the effort to identify missing migrants and refugees has fallen to non-state actors and humanitarian organizations. The International Committee of the Red Cross (ICRC) has campaigned...
to raise awareness of the issue and assisted in some specific searches. In Greece, small Islamic organizations and other religious foundations have stepped in to handle the burial of bodies and interactions with family members searching for missing loved ones. In Italy, academics and determined forensic scientists have continued the work of attempting to identify the victims of the many shipwrecks in the central Mediterranean, even when state funding or collaboration has ended (see Case Study).

While all these efforts are well-meaning and to be applauded, European states must also ensure that they fulfil their own obligations under international law to effectively investigate all missing persons cases within their jurisdiction. A preponderance of disappearances and missing persons cases are associated with criminal acts, and states are required to investigate potential evidence wherever it appears. Failure to effectively investigate persons going missing or disappearing constitutes a continuing violation of the rights of next of kin.

There are signs that nations are moving in the right direction. In Britain on 23 October 2019, police found an abandoned lorry trailer in an industrial park in Essex. When they opened it up, they discovered the bodies of 39 people. They had slowly suffocated in the cramped and sweltering space, their quest for a better life ending in tragedy. The Essex coroner set up an Identification Commission, which collected DNA samples and studied dental records and distinctive body markings. Samples were simultaneously collected from family members in Vietnam, who were worried about missing relatives. Within two weeks, all 39 of the Vietnamese men, women and children who died in the back of that lorry had been identified.

When the will is there, European nations have the resources and expertise to conduct the investigations required under international law. European nations on the front line of the migration crisis recognize this too. In June 2018, with the facilitation of ICMP, Greece, Italy, Cyprus and Malta agreed to form a Joint Process to Account for Missing Migrants and Refugees, the first phase of which involved setting up focal points to facilitate cooperation between states and support outreach to family members. Another meeting in 2019 reiterated those goals. Changes of government personnel in Italy have meant that progress is taking time, but Greece and Malta have identified focal points, signifying renewed political will to implement the goals.

It is vital that this process continues, and that the families of those individuals missing in migration have their right to the truth, justice and reparations upheld. This is not only important for bringing closure to individual family members, but for securing social cohesion, stability and peace in Europe too. More than a million people arrived in the continent in 2015, many successfully settling in the country that gave them refuge. People continue to come to Europe to work or claim asylum. Some will go back home again. Others will stay and build a life and have families in their adopted countries. These new arrivals must be made to feel part of the societies in which they live, and central to that is the perception that justice and human rights are upheld and respected for all citizens, regardless of their origin or ethnicity. Seeing that the fates of missing members of their family or community are properly and thoroughly investigated, and those responsible are held to account wherever possible, is crucial to upholding those ideas and fostering that sense of inclusion and belonging. Without that, the narratives of ‘us and them’ more easily propagate, stoking feelings of alienation and isolation that can be easily exploited by extremist groups or divisive political movements.

**CASE STUDY**

No one knows exactly how many people were onboard the triple-decker fishing trawler that set sail from Libya on the night of Saturday, 18 April 2015. Some say 800 boarded, others estimate that more than 1,000 people got on the ship. It took just over a day for the overloaded vessel to start to take on water. There were no search and rescue vessels nearby, the Italian government having recently ended its life-saving Mare Nostrum operation after failing to secure support from other EU nations.

A Portuguese merchant ship eventually responded to the trawler’s distress call, and found the vessel careering erratically in the waves. Suddenly the stricken vessel turned and rammed the merchant ship’s hull, listed to one side, then started to sink. By the time Italian rescue boats
arrived, there was little they could do but sift through the discarded clothes and petrol-soaked sea looking for the bodies of the victims. Just 28 people survived the sinking, making it the deadliest migrant boat disaster in the Mediterranean, and one of the worst shipwrecks of the 21st century.

The Italian government commissioned Dr Cristina Cattaneo of the University of Milan to lead the forensic investigation. In the months following the accident, the Italian Navy recovered 249 bodies. Then a year later, the Italian government ordered the ship to be raised from the seabed – the first time a sunken migrant boat was recovered from the Mediterranean. The cost was 9.5 million euros. The recovered boat was combed for human remains under the close watch of Dr Cattaneo. Another 279 intact bodies were recovered, along with the comingled remains of an estimated 600 more people.

But while the Italian government had paid to raise the ship, no funds were set aside for the painstaking process of separating, cataloguing and identifying those remains. Charitable foundations provided the support to begin the process, but that funding didn’t last long. At the same time, the ICRC began a limited pilot study to find the relatives of those who had died on the vessel. Their investigator travelled to Senegal and Mauritania to collect interviews and DNA samples, hoping to put together a passenger list and pair that list with Dr Cattaneo’s emerging database of remains. But people on the boat came from at least 12 different countries, and many relatives were believed to be living in Europe too. Before any investigation could reach them, that funding also ran out.

Today Dr Cattaneo continues working on the remains on a voluntary basis, aided by other universities and police forces that donate their time and resources.

There are positive lessons to be gleaned from the case. The Italian government went to unusual lengths and great expense to recover the bodies, spurred by the scale and impact of the tragedy. It came at a time when there was little sign of broader solidarity from other EU countries towards nations like Italy on the front line of the crisis. But one country bearing the financial burden of raising the boats was not sustainable, and that effort has not been replicated in other shipwrecks since.

Italian courts also prosecuted the captain of the sunken vessel and sentenced him to 18 years in jail and ordered him to pay compensation to the victims. But today, more than six years on from the sinking, the remains of just four people on the ship have been matched to the list of the dead. Not one family member of a victim was present at the sentencing of the smuggler. This shows us that recovering the bodies of the victims is just one piece of the puzzle. States need to continue funding scientific investigation of the remains and managing outreach to people linked to such tragedies. Without genetic data from the dead and their family, the people raised along with the boat from the bottom of the sea will remain just entries in a database, fragments of a person buried in an anonymous grave.29

29 Case study based on author interviews with Dr Cristina Cattaneo and the BBC story, ‘1,000 lost on one boat - this woman hopes to name them’, published 22 December 2020 254. Dr Cristina Cattaneo. 1,000 lost on one boat - this woman hopes to name them. In: BBC, editor.
PART 2: TRAFFICKING AND ORGANIZED CRIME

When dealing with the disappeared, an investigation often only begins when family members raise the alarm and report a person missing. But what happens when the victims are invisible? This is one of the main challenges in finding persons missing through human trafficking. The victims of this cruel trade usually come from the most vulnerable groups in society, and when they disappear, the voices calling for help are often those that are the last to be heard. This invisibility makes it impossible to know the true scale of the trafficking problem. Any figures are based on detected cases, likely the tip of the iceberg of actual numbers.

The European Union tries to maintain up-to-date records and has documented approximately 15,000 registered victims of human trafficking each year in an industry worth billions of euros. Outside the EU’s borders, data collection is less centralized, but in Ukraine, for example, more than 260,000 people are believed to have been victims of trafficking since 1991, making it one of the main countries of origin for human trafficking. Whatever the exact figures, Europe clearly remains a destination and region of origin for trafficked individuals, with people smuggled into and around the continent to be exploited for economic gain against their will. Trafficking for sexual exploitation remains the most common reason, followed by forced labor. Numbers are also rising in regard to coerced criminal activity, and there are reports of trafficking for organ harvesting and illegal adoptions.

The profile of trafficking victims in Europe is diverse. Trafficked individuals are slightly more likely to be adult women, although the number of boys is rising. The people trafficked into Western and Southern Europe come from all over the world, but the highest numbers are EU citizens from eastern and central Europe, followed by people from sub-Saharan African nations.

Increasing numbers of women and girls are trafficked into Europe for forced participation in the sex industry by organized crime gangs in Nigeria, with trafficking from sub-Saharan Africa worsening during the refugee crisis of 2015. Traffickers took advantage of the new migrant smuggling routes, and opportunistic organized crime networks flourished along the lawless Libyan coastline. Women trafficked on this route are typically tricked with promises of job opportunities and a free trip to Europe; then when they arrive, they are told they owe vast sums of money and must work in the sex industry to repay their debts. Similar false promises entice women and girls from eastern and central European nations, who believe they are heading elsewhere in Europe for legitimate work in fields they aspire to.

Traffickers often target the most vulnerable and marginalized in society – for example Romani communities – aware that their access to the state instruments meant to protect them is already compromised. Trafficking does not necessarily mean crossing borders: many victims of trafficking remain in their country of origin. Other vulnerable groups are people in state care and institutions, homeless individuals, and people with drug dependency issues who are struggling to get the help they need within the system. Economic disadvantage is a key driver for trafficking, with the criminals exploiting both the vulnerability of the victims and the vulnerabilities within immigration systems. The paradox of many Western European nations is that there is a high demand for low-paid, unskilled labor across many sectors, but avenues for people to apply legally for these positions are decreasing as countries adopt harsh immigration policies. This creates ideal conditions for traffickers.

This combination of complicity and coercion and the nexus between smuggling and trafficking complicates efforts to quantify the problem – and to delineate between a trafficked individual and a missing person. A question arises over whether some trafficked individuals are in fact missing. They may remain in contact with family members, perhaps hiding the nature of their circumstances out of shame or embarrassment, or because of coercion or the threat of violence from the criminals who are exploiting them. In cases of forced labor, the victim may not even be aware that they are a trafficked individual, and that the conditions in which they work constitute exploitation. They may regard their situation as a means to try and improve the prospects for themselves and their families.

But in many cases, they are missing when it comes to state protection, and for the most vulnerable, being smuggled or trafficked can be the first steps in a dangerous journey that ends in their eventual disappearance. Cases have recently emerged in Europe of crime gangs kidnapping smuggled or trafficked individuals to extort money from their family, a similar racket to the one already established in the Sahel region.
People in Europe’s asylum system are also vulnerable. In 2020, the Dutch government raised the alarm after 25 heavily pregnant women – most of them from Nigeria – disappeared from refugee centers across the Netherlands in the last two months of 2019 [258]. The specter of stolen babies potentially being trafficked for illegal adoption or for use in voodoo rituals garnered international attention, but it was a continuation of a problem that had seen more than 2,500 women and young girls disappear from Dutch asylum centers in the previous decade. Similar concerns have been raised about the disappearance of hundreds of Vietnamese children from asylum centers in the Netherlands. The refugee crisis worsened the situation across Europe, creating a pool of people detached from state monitoring who were deeply vulnerable to exploitation.

The situation for unaccompanied minors is particularly concerning. In 2019, 33,200 child migrants arrived in the EU, and 27 percent of them came alone or had been separated from their families during the journey.\(^5\) Thousands of unaccompanied minors live in camps in Greece, and the overburdened administration and poor conditions make them vulnerable to exploitation. An estimated 30,000 children who arrived clandestinely in Europe between 2014 and 2017 went missing [253]. The majority left their accommodation willingly so they could seek out family members in other countries. But others are believed to have been trafficked for exploitation, with documented cases of refugee children being sexually abused and forced into child labor. Given the problems with data collection and cross-border cooperation, it is impossible to quantify how many of these vulnerable youngsters remain missing in dangerous situations.

Many of the factors complicating efforts to locate missing trafficking victims are familiar from investigations into missing migrants and refugees. The trafficked individuals often come from poor, vulnerable communities. Relatives struggle to organize and advocate because of state or criminal efforts to suppress such activities or because of limited means and infrastructure. The kinds of citizen initiatives that have helped galvanize governments to investigate disappearances are absent, with a scattered diaspora of worried relatives unable to organize effectively.

Victims coming from outside Europe may have travelled through many countries, often against their will and unaware of where they were headed. When they reach Europe, there are few people advocating for their wellbeing, and the clandestine nature of their arrival means that they are never registered in any country or exist in any database. They are under the control of the criminal individual or organization that brought them to Europe, and their families back home may also be scared into silence by organized crime groups. People trafficked and exploited in their own country or in Europe may have no family to support them, the lack of such ties being a contributing factor in their exploitation. In many cases, no one will even be aware that the individual is missing, the case only coming to light if a human smuggling network is uncovered and disrupted or if bodies are found.

The blurred lines between smuggled, trafficked and missing individuals also hampers investigations. If a child from a migrant or refugee background is identified as missing, questions arise over whether that child is afforded the same attention and resources as a citizen of that country [260]. In many cases an assumption is made that a child has left their accommodation voluntarily, and no investigation takes place into their vulnerability to trafficking.

While EU nations all have comprehensive procedures in place for missing children, which make no delineation in their legal obligation to citizens and non-citizens, non-governmental organizations have raised concerns that the procedures are not followed as closely in the case of missing migrant children, with not all cases referred to the police and cases not prioritized by authorities [261]. The phenomenon is not seen as a child protection issue but viewed through the lens of migration policy. Once again people from migrant and refugee backgrounds are hampered by a hostile political environment in which their rights are not seen as a priority for governments that are focused on deterring further migration. This is despite all EU countries being signatories to the UN Convention on the Rights of the Child.

Problems with data collection on missing migrant children complicate the issue, as does the necessity of cross-border cooperation, as the existing systems to put out an alert about a missing person to law enforcement across EU countries are not always activated. Regardless of the nationality of the missing person, investigations into human trafficking are likely compromised by the need for cross-border cooperation between police, intelligence, and other security forces. States

are legally obliged to cooperate with each other to safeguard human rights, and within the European Union, there are agreements, frameworks and measures in place for this cooperation. While in practice these do not always function as quickly and effectively as they should, the apparatus does exist. Cooperation between EU countries and other nations involved in trafficking can be more problematic.

Many people being trafficked from sub-Saharan Africa transit through Libya, but cooperation between the EU and Libyan authorities is focused on preventing people leaving Libya, rather than on assessing and aiding vulnerable people who are being trafficked. In many cases, people who are intercepted and interned in Libyan detention centers become more vulnerable to recruitment by traffickers for sexual exploitation and forced labor [262]. Europol has no operational agreements in place with Libya or many of the other transit countries in North Africa, making information sharing difficult.

When trafficking rings are disrupted within Europe, justice and reparations for the victims and their families can also be hampered by negative perceptions of trafficking victims in society. In some cases, the exploited person ends up in police custody, especially in cases where an individual was trafficked for coerced criminal activity. In the United Kingdom, a data mapping project in 2018 found that more than 500 trafficking victims had been held in detention centers that year, rather than being placed in safe houses and provided with support and rehabilitation [263].

Exactly what constitutes justice and resolution for people who have gone missing through trafficking – and for their families – can be complex. In other missing persons cases, finding a missing person alive and reuniting them with their family would be considered a great success. But trafficking victims may feel reluctant about such reunifications, through shame at what they have been forced to endure, or a sense of failure that they were unable to provide financial support for their families. People who are removed from a trafficking situation remain deeply vulnerable and need to be assisted by the state in rebuilding their lives and reintegrating into society. If this process is not effectively managed, the person remains vulnerable to going missing again, and the cycle of vulnerability and exploitation continues.

PART 3: WAR, POLITICAL UNREST AND OPPRESSION

In the decades since the conflicts in the former Yugoslavia sent shockwaves across the world, the European Union has expanded to include some of the former Yugoslav republics. The EU was created after the Second World War with the aim of binding nations together with shared economic and political goals, thus preventing a return to the catastrophic conflicts of the past. The gradual eastward expansion aimed to spread those ideals, with new membership dependent on countries meeting a high standard of compliance with human rights and justice criteria.

While the illusion of common economic goals was called into question by the eurozone crisis, EU nations have remained at peace with one another, and today EU citizens largely take that peace for granted. However, in 2013 a conflict began right on the EU’s doorstep, disproving any perceptions that Europe is a continent free from conflict. It was an attempt by the EU to further expand its influence eastward – and Russia’s determination to retain power over former Soviet states – that started a chain of events leading to a war in Ukraine that persists today.

The conflict began in 2013 when the Ukrainian President pulled out of a pact promising greater integration with the European Union, sparking mass protests in Kiev that eventually ousted the President. Unrest then broke out in more pro-Russian areas in Eastern Ukraine, prompting Russian forces to annex the Crimea and start covert military interventions in the east of the country. Then on 14 July 2014, Malaysian Airlines flight MH17 was shot down above in Eastern Ukraine, a few hours after setting off from Amsterdam bound for Kuala Lumpur. Investigations later showed that a Russian-made Buk missile had downed the craft. All 298 people on board were killed, more than two-thirds of them Dutch nationals, and the Dutch government began recovering the victims (see Case Study) for identification. Within a year, 296 of the passengers had been identified and lengthy court proceedings had begun, showing the determination of the Dutch to ensure justice and reparations for the victims of the crime.

The same determination has not been replicated with other missing persons related to the war in Ukraine. Amnesty International and Human Rights Watch in 2016 documented enforced disappearances in Eastern Ukraine [264]. They highlighted the stories of 18 individuals held in arbitrary detention, in some cases without any official recognition of the detention. Amnesty found last year that the practice of enforced disappearances continued in the areas under the control.
of Russia-backed militia. No one has been held accountable; there is little international pressure pushing for investigations and justice for the disappeared.

A similar story is repeated in other conflicts in former Soviet republics, particularly in the restive North Caucasus region. In Chechnya, between 3,000 and 5,000 people are believed to have gone missing in the two wars with Russia in the 1990s and 2000s. However, there has been little political will on the part of Russia or the current Kremlin-backed government of Ramzan Kadyrov to establish the mechanisms to investigate or meet their obligations under international law to hold the perpetrators to account. Wars between Georgia and Russia over the breakaway regions of South Ossetia and Abkhazia in the 1990s and 2008 left thousands of people unaccounted for. The ICRC is involved in efforts to identify those individuals, with cooperation from the Georgian authorities [265].

Even closer to the European Union is the current upheaval in Belarus, where in 2020 thousands of people took to the streets to protest an election win for the authoritarian President, Alexander Lukashenko. The pro-democracy uprising put a renewed spotlight on the fate of historical opponents of Lukashenko, who has ruled the country for 26 years. Four prominent opposition figures disappeared in Belarus in 1999 and 2000. Despite determined efforts by their families to push for answers – and appeals for international assistance – there is still no acknowledgement of the disappearance of the four men [266]. This tactic appears to have been revived during the latest pro-democracy protests, with activists saying that dozens of people have been disappeared in recent months [267]. This raises questions about why other European nations are not doing more to account for the missing in their own continent.

The efforts in the former Yugoslav republics shows that when the political will is there, European governments can fulfill their human rights obligations and other legal duties to the missing and their families. But when the conflicts in many of the former Soviet states are examined, they are marked by an absence of political will. In Belarus and Chechnya, authoritarian rulers show little interest in fulfilling their legal duties to the missing and their families, in part because fear of disappearance remains an effective tool for political repression. While Russia has notionally collaborated in investigations into missing persons in the North Caucasus region, courts have ruled that those investigations fall short of human rights standards [268], suggesting political motives as Russia may wish to maintain tensions between Russian-speaking and other communities in former Soviet states.

Dissidents from many of these nations have since left their homes and sought refuge in EU countries, with many Belarussian activists now in Lithuania. Pressure is mounting for the EU to intervene more forcefully in regard to the oppression in Belarus, but while the EU has condemned violence against protesters and refused to recognize Lukashenko’s claim of election victory, economic sanctions were held up for months by internal disputes. As in the case with the missing migrants and refugees, political and structural issues hamper the EU’s ability to intervene forcefully.

The EU’s foreign and diplomatic arm – the European External Action Service – has always struggled to formulate a unified and forceful voice given the differing security and foreign policy concerns of its 27 member states. This is especially true when it comes to disputes involving Russia, with a tangle of intersecting economic and diplomatic interests among EU nations. Advocating for the missing and disappeared in the former Soviet republics – and for their families, some of whom now live in the EU – has largely been left to non-governmental human rights groups such as Amnesty International and Human Rights Watch. The propagation of fake news has also complicated the search for the missing, with states including Russia deploying varying levels of information manipulation in an attempt to deny and discredit reports of missing and disappeared persons.

Even within the European Union, there are missing persons cases related to war and political unrest yet to be effectively resolved. On the divided island of Cyprus, an estimated 493 Turkish Cypriots and 1,508 Greek Cypriots went missing during inter-communal fighting in the 1960s and after the 1974 invasion by Turkish forces. Efforts have been underway for years to find the bodies of the disappeared. A Committee on Missing Persons in Cyprus was set up in 1981 with the cooperation of the UN, and it has excavated dozens of mass graves and returned the remains of nearly half of the missing to their families.

On the surface, this appears to be a success: families finally know where their loved ones are and can bury their remains and mourn for them. But the mission is purely humanitarian. Bodies are returned, but no effort is made to find out how or why they died, or who was responsible. Without effective investigations by the state with a view to providing justice and reparations, the process is incomplete, and the work of the commission has been found to fall short of standards for an
The exclusive sense of nationalism that led to the wars in the former Yugoslavia will never disappear from the European continent. With so many different peoples, languages, cultures, and religions squeezed into a small geographical space, the potential for these to be exploited and manipulated for political gain remains high. The years since the 2008 eurozone crisis have seen a resurgence in national populism, and across Europe, there is the potential for old grievances to resurface and flare again into conflict. The fighting in late 2020 between Armenian and Azerbaijani troops in the disputed Nagorno-Karabakh region – as a result of which many soldiers are still missing – shows how quickly tensions can escalate into conflict.

Even in the former Yugoslav republics, where the systematic process of investigating disappearances helped convict the perpetrators of genocide at the International Criminal Tribunal for the former Yugoslavia, revisionism persists. But it is in the field of war and political unrest that the significance of effective investigations into the missing – and the polarizing effect of those wounds remaining open – can be felt most powerfully, at an individual and societal level. Accounting for victims of a conflict is intrinsically tied to justice for those who have unlawfully died and is one of the most effective strategies for enhancing social cohesion and strengthening public trust in the institutions of the state.

When wars are over, the pain for people with missing loved ones continues, and this can grow into bitterness and resentment towards any individual, organization or state which they feel is prolonging their pain and grief. In regions with tensions over ethnicity, language, religion and national allegiance, an impartial process of state investigation into the disappeared demonstrates a commitment to human rights for all while rebuilding trust across communities and in state institutions.

It also provides an evidence-based bulwark against false narratives, fake news and revisionism. In the former Yugoslavia, any attempt by populist leaders to stoke nationalist sentiment by questioning the facts about the genocide at Srebrenica or other atrocities in the conflict can be immediately countered by the evidence gathered systemically with the collaboration of the states in the region. A Missing Persons Group was formed in 2018 in The Hague and consists of the governments in the Western Balkans with missing persons from the conflicts of the 1990s. They agreed on a workplan to find the remaining 11,000 persons from the region and routinely provide updates on progress to a regional representation of families of the missing and to the Berlin Process. The missing have been named, and they cannot be ignored, forgotten or denied.

**CASE STUDY: MH17**

Many barriers existed to the retrieval, repatriation and identification of the 298 people killed when MH17 crashed in Eastern Ukraine in July 2014. The Boeing 777 was flying at high altitude when it was hit by a Buk missile which Dutch investigators later said was fired by a Kremlin-backed militia unit. It broke up in the air and came down in a wheat field in an area that had seen fierce fighting between Ukrainian forces and pro-Russian separatists. The force of the blast left debris and body parts scattered over miles of land.

The first human remains were recovered by armed militia active in the area. After this, the Organization for Security and Cooperation in Europe (OSCE) – which already had an operation in Ukraine – was allowed limited access to the site. The bodies were transported by train for preliminary investigation by a joint ICMP-INTERPOL mission, before they were repatriated to the Netherlands for further work on identification.

Given that most of the victims were from the Netherlands and the plane departed from Amsterdam, the Dutch authorities took the lead in mounting an investigation. However, fighting and unexploded ordnance at the crash site meant that it took two weeks for a team of foreign
investigators, including forensic teams to arrive, and it was not until a ceasefire in early 2015 that the teams were able to comb the area systematically for all remaining evidence and body parts.

Despite the difficulties, the remains of all but two of the victims have now been retrieved and identified. At the same time, the Dutch government opened an inquiry into the cause of the crash and a separate criminal investigation, the two inquiries constituting the largest case in Dutch history. The crash investigation determined the type of missile that hit the plane, and a criminal trial is now underway. Despite the close historical economic ties between the Netherlands and Russia, the Dutch government announced in 2020 that it was taking Russia to the European Court of Human Rights for its role in the crash.31 The experience of MH17 shows that when a European government is determined to find justice for the missing, it can go to extraordinary lengths and overcome multiple hurdles to secure this, regardless of any political or economic consequences.

CONCLUSION AND RECOMMENDATIONS

The situation for missing and disappeared people in Europe today is a tangle of contradictions. On the one hand, the region is home to some of the richest nations on earth with the most advanced security and technological capacity. The rule of law and justice infrastructure is deep-rooted and strong in the EU and European Economic Area nations, as well as Switzerland, Norway and the United Kingdom. These governments and the EU institutions pride themselves on upholding the highest standards of human rights, presenting themselves as beacons for other regions to follow.

When they have the political will, they can mount effective missing persons investigations based on the rule of law and human rights and backed by detailed jurisprudence by the European Court of Human Rights. Governments can also work together to overcome diverse diplomatic and foreign policy goals and form a united strategy for upholding people’s rights and respecting the rule of law, as demonstrated by efforts to deliver justice for the missing and their families in the former Yugoslavia.

Yet today, despite these great capacities, a lack of political will undercuts Europe’s legal framework and the rule of law in respect of the missing. The eurozone crisis, the refugee crisis, and a revival in tensions between Russia and the EU shook the continent, and the political consensus emerging from these upheavals appears to be one in which domestic security and economic interests are prioritized at the expense of a universal respect for human rights.

This can be seen most glaringly in the case of the 22,000 missing migrants and refugees, where the inter-governmental cooperation needed to begin the process of delivering justice to them and their families is still lacking. The blurred lines between migration, refugees and trafficking – and the fact that many trafficking victims are non-citizens – also impacts the push for greater action, especially when relatives of the missing face barriers to accessing law enforcement and justice institutions, and to mobilizing and advocating for themselves and their loved ones.

A different historical context and set of political priorities affects countries outside the EU. In the former Soviet states, the quest for geo-political influence often seems to supersede human rights considerations, with both Russia and the EU weighing diplomatic, economic, and foreign policy concerns when it comes to acting on human rights abuses including enforced disappearances through conflict and political unrest.

Prioritizing what are perceived as national concerns is, however, shortsighted and illusory. Respecting the human rights of every individual in a society is a crucial step towards reviving the sense of security that many people feel is under threat after recent upheavals and the current Covid-19 crisis. If certain groups of people are made to feel that they are second-class

31 The Netherlands brought an Inter-State Case under Article 33 of the ECHR.
citizens, their rights not considered equal to others in that society, feelings of bitterness and marginalization can flourish and perpetuate for generations. This can create the conditions in which extremism and divisive narratives thrive, as these marginalized groups seek that sense of community and inclusion elsewhere. When one community is affected by false and polarizing narratives, the consequences do not remain in that community, but seep out and affect everyone in a reciprocal cycle of mistrust and insecurity.

Europe today is diverse and multi-cultural – and thrives because of this. The movement of people from all over the world to Europe will continue. Aging societies and declining birthrates in the most developed countries necessitate continued migration, while climate change and the fallout from Covid-19 in poorer countries is taking a toll on human security for all and could create new waves of refugees.

Societies need to ensure that all new arrivals feel welcome, included and respected, and share the same rights as everyone else. This is a complicated process with many facets, but showing that the missing and disappeared are valued and their rights and the rights of their families are upheld is both a symbolic and practical step in this process. It sends a strong message of inclusion, engages people who are vulnerable to marginalization in a potentially positive dialogue with the authorities and with society as a whole, and starts a process of psychological healing. Similarly, by addressing the issue of missing persons both in migration and in political unrest, governments concretely show respect for the values that many European nations and the EU institutions extol outside their borders, setting an example and furthering their influence on the world stage.

A good first step would be upholding some of the most basic rights of all – the right to life, and the right to family life. European-led search and rescue operations must be scaled up in the Mediterranean, and any financial and logistical assistance from the EU which leads to people being returned to Libya must end. Speeding up family reunification within Europe would prevent many of the new cases of missing migrant children while showing that the most vulnerable in society will be protected. Administrative backlogs should not be keeping an unaccompanied child in Greece separated from their parents or relatives for almost a year in the richest continent on earth. Finding safe and legal routes to reunite families in Europe with loved ones in dangerous situations elsewhere in the world would also prevent people from undertaking dangerous journeys in the first place, as would creating legal channels for people overseas to apply for the low-skilled jobs that Europe needs filled. These measures would help prevent people going missing both through trafficking and migration.

People already in Europe who are searching for missing loved ones – whether they are missing through political unrest, migration, trafficking or as a result of other causes – are entitled to know their rights and have an avenue for reporting a person missing in a forum where they feel safe from repercussions, either for any family back home or regarding their own legal migration status.

Creating a central online form where people can fill in basic details of a missing person would be a starting point to gauging the scale and geographical spread of the problem, while offering a first resource for further action. Each nation in Europe can then start the process of sending investigative teams to any family members living in that European country and start collecting relevant genetic evidence. This has been done swiftly and effectively before. Thousands of European citizens were killed in the 2004 Asian tsunami. In the days after the disaster, each affected European country activated disaster response protocols, following similar processes for communicating with family members then sending police teams to their homes to collect evidence including DNA and dental records. This information was then fed into international databases in Thailand and at the ICMP and matched as bodies were recovered. Because of the clear and efficient frameworks already in place, the European victims were some of the first to be identified. The process has become even more efficient since the tsunami, with the use of simple DNA testing deployed in Europe after the 2015 Germanwings airline crash and the MH17 disaster.
As we have seen, there are many pieces to the jigsaw, and true resolution only comes when all the pieces fit together. In Italy after the 2015 shipwreck that killed at least 1,000 people, the bodies of the dead were recovered, and justice was served when the ship’s captain was convicted. But because living family members were not located and engaged in that process, the impact of those successes was limited. In Cyprus after fighting between Greek and Turkish Cypriots in the 1960s and 1970s, family members were involved in locating and identifying the missing and in many cases were able to take possession of the remains of their loved ones. But without any effort to bring those responsible to justice, a lasting sense of healing between the communities has remained elusive.

For the process of locating the missing to be comprehensive and effective, all the elements need to be considered, and the process needs to safeguard the right to both truth and justice. In Europe, the apparatus exists for this at every level. Now it needs to be activated. It will be a difficult process with many practical and geographical barriers, but the symbolism of starting that process and showing that each and every person matters will have an impact that lasts for generations.
Ai Weiwei, Safe Passage, Berlin 2016, Cinema for Peace – commemorating refugees drowned at sea
www.flickr.com/photos/gertrudk/
America
by Arely Cruz-Santiago

INTRODUCTION

Enforced disappearances in Latin America were first recorded in Guatemala in the late 1960s. However, military dictatorships in Chile and Argentina “led, experienced, exported and shared the development of enforced disappearances as a systematic practice” throughout the region [270]. The history of the Americas is marked by violent intervention, disappearances, and political repression, but also by grassroots resistance, as well as legal and scientific innovations that have shaped our global understanding of human rights and forensic investigative methods.

This chapter delineates the status of missing/disappeared persons in the Americas, following a historical narrative that recognizes that the issue of missing persons is multifaceted and complex. The chapter starts by describing the disappearances that occurred in Latin America in the context of the Cold War as part of a strategy of terror widely used by repressive governments. It then discusses the issue of criminal groups, such as gangs and human traffickers, that have adopted similar techniques of enforced disappearances, prompting precarious migration practices from Central America and into the United States. The chapter presents the citizen-led efforts and family-centered initiatives organized to identify disappeared persons that have been characteristic of the region. Gender and the role of women is a thread that runs throughout the chapter: women have become victims of disappearance and women-led innovations have shaped responses to disappearance in the region, and the world. The chapter concludes by offering themes for reflection and some key recommendations for the region.

PART 1: THE DISAPPEARED. LATIN AMERICA AS A SITE OF INNOVATION

During the Cold War, the US pursued an active, interventionist foreign policy in Latin America in an attempt to thwart communist uprisings in the region. Between 1968 and 1989 the US coordinated a cross-border system of repression known as “Operation Condor” that operated mainly in Chile, Argentina, Brazil, Uruguay and Paraguay. Condor operations consisted of coordinating security and intelligence forces with the common goal of eliminating left-wing opposition groups and people who were identified as subversives.

Over the years, the US demonstrated its willingness to support, and even impose, strong military regimes in the region. The military dictatorships in Brazil, Argentina and Uruguay, prompted growing urban protest movements and urban guerrilla groups, which generated an increase in instances of disappearances, torture and political killings. Between 1973 and 1985, a military government in Uruguay was responsible for the disappearance of at least 194 persons. So far, the remains of four persons have been identified [271].

From 1976 to 1983, in a period known as the “Dirty War”, the military dictatorship in Argentina killed and disappeared at least 30,000 persons [272]. The majority of the disappeared were young people, academics, and activists: those who had actively opposed the government’s attempt to control the population by eradicating the perceived threat of communism. People were abducted from their homes, spaces previously deemed private and safe, and held captive in clandestine detention centers where they were interrogated, tortured, and killed [273]. According to data from the National Commission on Disappeared Persons, the military junta set up 345 clandestine detention centers where extrajudicial executions and torture were carried out [274]. What happened to those who entered the detention centers was, and in many cases still is, unknown, leaving thousands of families uncertain about the fate and whereabouts of their loved one. Some of the detained women were pregnant at the time of their abduction and gave birth within the detention centers. Their newborn was taken away and given to military families to be “properly” raised. Approximately 500 newborn babies and young children were abducted in this manner [275, 276].

The “disappeared” is a neologism that describes the condition of being forcibly taken away as part of repressive authoritarian state policy. The term was used by General Jorge Rafael Videla to describe people who had been “allegedly” taken away, tortured, and killed by his military government. The existence of these people could not be proven because there was no evidence. For Videla, the disappeared were neither here nor there: their fate was simply unknown. In response, organized social movements – most notably the Mothers of the Plaza de Mayo – used the term “disappeared” as an activist device to challenge the governing premise of disappearance and demand justice on behalf of their sons and daughters. The disappeared existed because their mothers were searching for them and demanded their reappearance in public.
CASE STUDY: ABUELAS DE PLAZA DE MAYO AND THE DEVELOPMENT OF THE “GRANDPaternity INDEX”

In 1977, the Abuelas de Plaza de Mayo (Grandmothers of the Plaza de Mayo) constituted a non-governmental organization to locate and identify their missing grandchildren born in captivity or disappeared alongside their parents. They argued that their grandchildren have the right to be restored to their legitimate families [277]. During protests in front of the presidential palace (La Casa Rosada), the Abuelas gathered information on families they suspected had adopted missing children. They also employed a range of surveillance activities, for example, working as domestic staff in households where their grandchildren were believed to be, or photographing children who were believed to have been illegally adopted. The Abuelas styled themselves as “forensic citizens [278]”. In the process of investigating the best way to identify their grandchildren, they learned about paternity disputes being solved through blood analysis [279] and wondered if a similar technique could be used to identify their grandchildren [280]. In 1984, after discussions with scientists and after visiting more than a dozen countries in Europe and the Americas, the Abuelas inaugurated a new forensic genetic technique known as the “grandpaternity index” [280]. The grandpaternity index analyzed highly specific genetic markers, including human leukocyte antigens (HLA), blood groups, red-cell enzymes, and plasma proteins, to establish that a child shares specific genetic variants with a specified set of grandparents, compared to the probability that the child and the grandparents share similar genetic variants only by chance [281]. The development of this index was possible through collaboration between the Abuelas de Plaza de Mayo and geneticists Victor Penchaszadeh, Mary-Claire King, and Fred Allen [281].

The Abuelas became the “first group worldwide to organize around genetic identification technologies to prove relatedness in the absence of the parental generation” [282]. To date, the grandpaternity index has allowed 128 grandchildren to be identified via genetic technologies [277]. Its development opened the way for the creation of the National Genetic Database in Argentina in 1987 and the National Commission for the Right to an Identity in 1992 [283].

Despite the restoration of democratic governments, the work of the Grandmothers of the Plaza de Mayo has encountered serious legal obstacles. Initially, many members of the judiciary resisted the restoration of grandchildren. Ethical and legal questions have been raised regarding the normative family frameworks created around Argentina’s disappeared and their blood-biological ties [284]. Not all grandchildren want to have their DNA analyzed and some refuse the identification process altogether [275]. There have been cases of grandchildren not wanting to meet their birth families or change their names32. For them, the people who raised them often feel like family. As the scholar Lindsay Smith argues “care and love in the service of genocide, as much as violence and death, have marked the long road of reconstitution in Argentina” [282].

Peru experienced an internal armed conflict between 1980 and 2000. The country recorded human rights violations committed by government security forces and insurgent groups. According to official figures, 42.4 percent of cases are located in the municipality of Ayacucho, which means that most of the victims were campesinos, targeted for living in communities labelled as subversive for speaking Quechua [286]. By the end of 2020, the number of disappeared persons in the country was 21,334. Only 2,665 persons have been returned to their families [287]. Similarly to what occurred in other parts of South America, the enforced disappearances in Peru involved intimidating the population, getting information from victims, eliminating them, and ensuring impunity for the perpetrators. In the late 1990s in the context of the legal actions against former dictator Augusto Pinochet, the Chilean judge, Juan Salvador Guzman Tapia, developed the concept of “permanent kidnapping”, whereby disappearances were classified as ongoing crimes in the present, renewed every day. This legal innovation was designed to render powerless amnesty laws under which crimes that had happened between given dates or throughout the duration of the military regime had been pardoned [288]. In response to the situation in Chile, the UN’s Commission on Human Rights created an ad hoc Working Group on enforced disappearances. The Working Group provided the first illustration of a case of disappearance in a UN document in 1976 [270].

In Central America, Guatemala's Security Forces abducted, tortured, and killed leaders of the opposition Partido Guatemalteco de Trabajadores in March 1966. This event became known as the first case of enforced disappearance in the region [289]. During 36 years of conflict, the official number of disappeared persons has been tallied at 45,000. Most of the victims were Indigenous Mayan people and rural poor. Peace accords were signed in 1996, but the crimes committed during the conflict have largely gone unpunished. In El Salvador, the government and military attacks against political opponents, Indigenous people and the guerrilla forces of the Farabundo Marti National Liberation Front (FMLN) resulted in thousands of killings and disappearances. During the Salvadoran Civil War, between 1980 and 1992, children were abducted in the course of military operations. Their families were executed or forced to flee for their lives. The children, most of them under seven years old, were frequently taken away by military leaders who brought them up as their own [270]. The Human Rights organization, Pro-búsqueda, has received 921 reports of children who went missing during the Civil War. In 2021, Pro-búsqueda reports that 443 children – now adults – have been identified; of these, 235 have been reunited with their families [290]. As with the rest of the region, it is difficult to calculate the extent of disappeared persons in the country. According to official figures there are at least 9,000 cases.

Unlike countries in South and Central America, where military governments seized power during the 1960s, Mexico developed its own version of government repression; described as the "Perfect Dictatorship" by Peruvian writer Mario Vargas Llosa. The perfect dictatorship is a camouflaged regime, a perpetuation of a single party government, that allows space for criticism to maintain the appearance of democracy. However, it suppresses, by all means necessary, whatever criticism or social movement may threaten the party's perpetuation in power [291]. Mexico's "Perfect Dictatorship" resulted in more than 70 years of single party rule. During this period, human rights abuses were perpetrated silently and systematically against vulnerable populations: Indigenous people, girls, women, and peasants, and anyone who openly opposed those in power. In the 1970s, more than 400 individuals from Atoyac were disappeared by security forces when the government launched a counterinsurgency campaign in Guerrero against the Party of the Poor (Partido de los Pobres), a guerrilla group formed by a local schoolteacher, Lucio Cabañas. In 1968, the Mexican government killed students and bystanders during a protest against the authoritarian regime in a public plaza at Tlatelolco, Mexico City. There is no official tally of the dead, but estimates range from 14 to 325. According to the National Commission on Human Rights in the 1970s, at least 532 political dissidents disappeared in Mexico. Federal, state, or municipal officials kidnapped and, in most cases, tortured these persons [292]. The National Search Commission indicates that between 1964 and 2005, at least 1,595 persons disappeared [293].

Latin America has long been regarded as the object of human rights concerns more than a contributor to human rights thinking [294]. However, as Ariel Dulitzky argues, Latin American experience and activism have been critical in defining and conceptualizing the crime of disappearance. The creation of a novel international normative framework that devised legal, judicial and policy responses to tackle complex human rights violations emerged in the region in the mid-seventies. In 1980, the first specialized thematic human rights mechanism within the UN was established. The Working Group on Enforced or Involuntary Disappearances, consolidated Latin America as a central actor in the understanding and tackling of this phenomenon [270].

The role of families searching for disappeared persons has been crucial in developing legal frameworks and securing international recognition of disappearances as a human rights violation. The engagement of families of the disappeared with science as a form of political action has had lasting effects in forensic science disciplines [295]. The forensic science standards, protocols and infrastructures that were developed due to the participation of family members, student-activists, and international scientists’ networks marked "one of the first interventions by science into human rights" [279].

In 1984, shortly after Raúl Alfonsin’s democratic government was established in Argentina, civil society gathered around graves in local cemeteries marked “NN” (No Name). The graves contained some of the bodies of those who disappeared under eight years of military rule. In the light of these discoveries, and at the request of the Abuelas de Plaza de Mayo and the National Commission on Disappeared Persons (CONADEP), forensic anthropologist Clyde Snow and human rights researcher Eric Stover arrived in Argentina to help with the identification of thousands of victims of state-sponsored violence [296]. Clyde Snow trained local students who were interested in helping with the identification of victims. When he and his students began exhuming the graves of disappeared persons in Argentina, it was the first time that state-sponsored human rights violations were documented using forensic technologies. Snow visited Argentina many times over a period of five years to train the group of young anthropology and archaeology students. In 1985 this group became formally known as the Equipo Argentino de Antropología Forense (EAAF) [297]. In the years that followed, Chile and Colombia develop specialized services in forensic medicine.

In 1992, the Forensic Anthropology Team of Guatemala was founded, consolidating its forensic genetics laboratory in 2008 [298]. In Peru, the Peruvian Forensic Anthropology Team has been dedicated to identifying the dead and disappeared of Peru’s internal armed conflict since the 1990s [277]. In 2005, 20 years after the military government ended in Uruguay, an Investigative Group on Forensic Anthropology (GIAF) was created [271]. In Mexico, a team of forensic anthropologists was established in 2013 [299].

The innovative use of forensic expertise to address disappearances in the Americas had important consequences for the way forensic disciplines developed in the region and globally [300]. None of these innovations would have been possible without the emotional and intellectual labor of families searching for their loved ones. Forensic expertise in response to human rights violations in the area consolidated Latin America as the pioneer in what became called “humanitarian forensic” work carried out by non-governmental groups [300].

**Transition of enforced disappearances and the emergence of new forms of violence by new actors.**

The situation in Mexico and Colombia is in some important respects different from elsewhere in Latin America. For instance, the end of military rule in the region was followed by a transition, a regime change, which enabled the deployment of forensic teams (interdisciplinary groups of forensic practitioners created, in most cases, independent from state authorities in order to identify victims of human rights violations), and the establishment of truth commissions. However, this was not the case in Mexico or Colombia. In these countries, non-state actors have created international organized crime networks that are fueling the rise of violence and disappearances in both countries and along migratory routes.

In recent years, drug cartels have diversified their activities. In addition to trafficking drugs, they now traffic people, particularly women and children, and participate in mass kidnappings, as well as stealing natural resources such as oil, and training gunmen to confront other cartels and state forces. The cartels’ use of military-grade weapons and de facto control over certain territories has placed in question the State’s monopoly on violence [301]. In Mexico, this has reached a point where, in some strategic zones and along some highways, cartels have installed checkpoints protected by gunmen to control and secure the transportation of illegal items [302].

In Mexico, “to disappear” might not only be the consequence of a strategy used by state security forces but is as likely to be part of a deliberate action by non-government entities such as organized crime groups. As explained by Rainer Huhle, former member of the UN Committee against Forced Disappearances, in Mexico “the privatization of disappearances” emerged when groups that are not the State copied the technique and made it their own. When the lack of investigation is so significant, anything can happen. There are many cases where neither relatives of the victims, nor authorities, have a clear idea of the reason for the disappearance. When it is easy to disappear people with such impunity, the reasons to disappear people multiply [303].
This has meant that almost anyone can be disappeared with impunity. In Mexico and Colombia human rights defenders, journalists, Indigenous and Afro-Colombian leaders, and other community activists face disappearances, death threats and violence. The government has taken insufficient steps to protect them. Mexico is now considered one of most dangerous countries in the world for journalists [304, 305]. Especially dangerous for those who criticize public officials or expose the work of criminal cartels. Journalists face harassment and surveillance by both government authorities and criminal groups.

**Disappearance of women in Ciudad Juarez, Chihuahua**

The gradual economic integration across the US-Mexico border that began in the early 1970s, has encouraged women and young families to migrate internally to the region to work in maquiladoras, factories, in Mexico’s northern states. The vulnerabilities imposed on this population by current labor practices and the lack of public services in the area have seen an increase in the number of crimes reported, especially those committed against young women and girls. For a long time, local authorities responded to the disappearances and deaths of women on the US-Mexico border by “resorting to the discourse of the public woman, the prostitute who not only wreaks social destruction but who deserves her violent destruction” [306]. This was matched by a lack of interest by the authorities in launching formal investigations to determine whether a criminal offence, such as kidnapping, had taken place. As a result, the pattern of disappearances and murders of women in the region was not acknowledged or investigated [307].

As Melissa W. Wright argues, for local authorities, these “public women” were not a matter of public concern, but rather the private responsibility of families who needed to control their wayward and over-sexualized female relatives. The disappearance of girls and women represented crises of patriarchy, not crises of the state, and, as such, their deaths and disappearances were, “private, not public, matters” [306]. Public criminalization deterred families from reporting the disappearance of young women to local police. When they did make a police report, the authorities’ unwillingness to deal with cases and their failure to prosecute perpetrators of women’s disappearances and killings caused deep distrust. In response to this complex scenario, in 1993, a pioneering group of mothers, Grupo 8 de Marzo, led by human rights defender Esther Chavez Cano, created the first citizens’ effort to make a systematic record of deaths and disappearances.

The approach developed by this group was to compile a list of names – a public record of the systematic disappearance of young women and girls in Ciudad Juárez. “The List” contained names and dates of disappearance and information that made it possible to cross-reference the different disappearance cases according to dates of abduction, times of death and locations where bodies were found [307]. The List shows that some of the girls worked in maquilas and disappeared shortly after leaving work. To highlight the lack of procedures in police investigations, families had recorded the shortcomings in data collection, noting the failure of authorities to undertake activities such as immediately distributing the photographs of missing persons or visiting the location where the victim was last seen [308]. Since its inception, the List has become the public record of disappearances in Ciudad Juárez, as the local government has shown no interest in collecting information on this issue. The List publicly challenged local authorities’ willful neglect. It marked a starting point for citizen-led efforts to advocate for their rights through using new methods to collect data that confirmed the existence and disappearance of loved ones. Its strength was, and still is, to produce independent data on the status of disappearances in the country [309].

As the List of disappearances grew, the protest and visibility of families searching for their daughters proliferated in the region. A new coalition of organizations for women’s rights was created. The Coordinadora de ONGs Pro de la Mujer organized meetings and events throughout the city to make the names and life stories from the List visible. Members of the group held press conferences in front of government buildings and introduced the family and friends of murdered and disappeared girls to an increasingly concerned domestic and international public. These activities raised public awareness of the situation in Ciudad Juárez in civil society and among the private companies that owned maquilas in the region. As a consequence of this advocacy work, in 1998, the National Human Rights Commission issued a specific recommendation to local authorities regarding the need for investigation and prosecution of these crimes. Additionally, Mexico’s first ever Special Prosecutor’s Office to investigate crimes against women was created [306].

Maquiladoras implemented programs to protect women and to raise awareness about sexual violence. In the same year, the word femicide, feminicidio in Spanish, became part of the lexicon used among activist and feminist groups in the northern part of Mexico to designate the killing of women and girls with impunity. The use of the term feminicidio, along with the List and the growing number of civil society organizations demanding an end to the disappearance and murder of women, made it almost impossible for the authorities to continue denying the situation. However, due to inconsistencies and a lack of transparency by the authorities during investigations of these crimes, many remain unsolved.
While some changes were made, women in Mexico continued to be disappeared and killed at very high rates. It became clear that institutions in Chihuahua did not have the infrastructure or the political will required to investigate disappearance cases or to prosecute those responsible. On 6 and 7 November 2001, the discovery of the bodies and skeletal remains of eight women in an abandoned cotton field in Ciudad Juárez raised concerns among civil society and international organizations. Relatives of the victims and civil society organizations documented the inability of local authorities and forensic experts to carry out basic investigative procedures. In March 2002, mothers of three of the victims found at the Cotton Field in Ciudad Juarez filed a petition with the Inter-American Court of Human Rights (IACHR) to investigate the case. In 2003, at the request of a group of local and international civil society organizations, the Equipo Argentino de Antropología Forense (EAAF) provided forensic assistance in dealing with unidentified remains of the murdered women of Ciudad Juárez and Chihuahua. In December 2009, the Inter-American Court of Human Rights issued a judgment declaring that the Mexican State was responsible for the disappearance and subsequent death of Brenda Esmeralda Herrera Monreal, Laura Berenice Ramos Monarrez and Claudia Ivette Gonzalez.

Deficiencies in the investigative system have not yet been resolved, nor has the continuous disappearance of young girls and women. National and international organizations have expressed concern over the high rate of disappearances and femicides throughout the country. Estado de México accounts for almost a quarter of all disappearances of women [310].

**The “War on Drugs”**

In 2006, Mexican President Felipe Calderon deployed military forces in some states with the stated object of combating drug cartels and reducing corruption among local police forces. However, this strategy provoked violence, which spread throughout the country (Tuckman, 2013). The authorities explained the increase in violence as a consequence of clashes between drug cartels and state forces. The gendered discourse applied to the young women of Ciudad Juárez was again used by the State to characterize teenage boys and young men as part of drug cartels, and their association with the “wrong people” was deemed to be the cause of their disappearance and violent death. The official discourse criminalized the victims of violence in the country.

Organized crime has challenged the State's authority – not by threatening to capture it but by damaging and weakening it through corruption (International Crisis Group, 2013). For instance, former Public Security Secretary Genaro García Luna is currently awaiting trial in the US for allegedly taking millions of dollars in bribes to protect drug cartels. In October 2020, the former Secretary of Defense (2012-2018), Gen. Salvador Cienfuegos Zepeda, was detained in the US on charges of conspiracy to distribute narcotics in the US and money laundering. A month later, he was released from US custody so that he could be investigated and, if appropriate, charged, under Mexican law [311]. An investigation conducted by the Mexican government did not find any evidence of his links to organized crime [312].

Cienfuegos was the Secretary of Defense when 43 students disappeared in Ayotzinapa, Guerrero. Mexico's Federal Attorney General’s office found that local police had arrested the students following orders from the mayor and handed them over to a criminal group [313]. The case attracted global attention for the way in which the investigations were conducted. The IACHR set up an expert commission, Grupo Interdisciplinario de Expertos y Expertas Independientes (GIEI), to implement an auditing process of the state’s provision of justice and its investigation of the Ayotzinapa case. After analyzing the evidence at hand, the GIEI identified fundamental failings in the state's criminal investigation and concluded that the findings of the Federal Attorney General's investigation were misleading since they did not consider the involvement of federal and military forces in the case [314]. The families of the 43 students worry that the liberation of Cienfuegos will generate additional resistance among the military to ongoing investigations.

The so-called “War on Drugs” and the violence it has generated across Mexico has dramatically increased the number of homicides and disappearances. The government estimates that 289,000 people have been killed and 86,451 have been disappeared since 2006. Under President Andres Manuel Lopez Obrador, the militarization of the police has continued to be marked by high levels of violence throughout the country. In 2019, the president created the National Guard, a military force, to replace the Federal Police as the government's principal law enforcement agency, and in May 2020, he formally deployed the military to assist the National Guard in civilian law enforcement.

In 2017, Mexico adopted the General Law on Enforced Disappearance of Persons, Disappearance Committed by Non-State Actors and the National System to Search for Persons (Ley General En Materia De Desaparición Forzada de Personas,
Desaparición Cometida por Particulares y del Sistema Nacional de Búsqueda de Personas) [315]. According to Dulitzky, this is the first law in the world to regulate several aspects of enforced disappearances in a very specific and detailed manner. The law standardizes the criminal definition of enforced disappearance, clearly defines the roles of the different government agencies responsible for handling enforced disappearance cases, and creates a National Search System (SNB) and a National Search Commission (CNB) [270].

In 2019 the CNB began operations. Since then, it has created an online platform to allow people to report disappearances anonymously and to show real-time statistics on the number of people who have disappeared, excluding personal identity information [313]. However, there is no access to disaggregated data on the number of people who have disappeared, or information on how data was collected in order to arrive at the official number of clandesture burial sites or the number of bodies recovered from those sites. Families of the disappeared and human rights organizations note that the lack of transparency in the data collection process poses a significant challenge to asserting the right to the truth for victims of violence and for society in general [316].

According to CNB data, since 2006, more than 4,274 clandestine burial sites have been discovered throughout Mexico. 7,298 bodies have been recovered from these sites, with exhumation efforts still ongoing. From December 2006 through to the end of 2020, more than 289,000 people were intentionally killed in Mexico. Although the data is unreliable, federal authorities maintain that the number of disappeared or "not located" persons in the country stands at approximately 86,497 [318]. In August 2020, the government recognized the jurisdiction of the UN Committee on Enforced Disappearances to consider cases in Mexico [319]. Accordingly, families of victims will be able to submit cases to the committee once they have exhausted their legal options domestically [320].

The National Search Commissioner has conducted a national forensic assessment to address obstacles to identifying and storing human remains, but no data has been made public. The government has recognized a "forensic crisis", attributed in part to a lack of infrastructure, resources, and formally approved standardized protocols for the management and care of the dead, and a lack of coordination and efficient communication among forensic institutions [310]. The image of a lorry accommodating 273 decomposing corpses abandoned by authorities from the Institute of Forensic Sciences in Jalisco in 2018, has become the symbol of the forensic crisis in Mexico [321]. Families of the disappeared maintain that there are between 38,500 and 50,000 sets of unidentified human remains in mortuaries and cemeteries across the country [322]. According to Freedom of Information Act requests between 2006 and 2019, the number of unidentified human remains increased by 1,032 percent in this period [323]. Civil society organizations have called this phenomenon "double disappearance", a situation in which the recovery of unidentified corpses from clandestine burial sites does not mean that they will be properly stored and identified.

In 2019, following demands by families, and with the aim of resolving the existing backlog in the identification of bodies, the CNB and the SNB created the Extraordinary Mechanism of Forensic Identification (MEIF). However, the Mechanism has not yet been made operational, and reportedly it has only been funded until the end of 2021. At the time of writing, the call for applications to be part of the MEIF had been closed and authorities were in the process of selecting candidates [322].

The role of families

In March 2021, civil society organizations marked the tenth anniversary of the creation of the Movimiento por la Paz con Justicia y Dignidad, MPJD (Movement for Peace with Justice and Dignity in Mexico), one of the most significant civil society initiatives since the "War on Drugs" began. The MPJD was created after the murder of Juan Francisco Sicilia, son of Mexican

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poet and novelist Javier Sicilia. Javier Sicilia called for a movement of national unity and organized several caravans within the country and to the US to raise the visibility of the victims of violence in Mexico. Sicilia urged politicians on both sides of the border to rethink their strategy towards the "War on Drugs". During the caravans, members of the MPJD documented personal stories and disappearance cases where state officials had reportedly participated in the crime. The participation of state officials in disappearances left families without recourse to legal action through state institutions, thereby reinforcing the impunity of those responsible for these practices [324]. The caravans were successful, since they raised the visibility and documented the violence in Mexico. They also established the basis for the General Victims' Law, the second of its kind to be created in the Americas (the first was the Victims' Law in Colombia). The General Victims' Law stipulated the creation of a National System for Attention to Victims (Sistema Nacional de Atención a Víctimas) and a National Executive Commission for Victim Support (Comisión Ejecutiva de Atención a Víctimas, CEAV) with a local office in each of the country's 32 states.

Women have played a leading role in the struggle for truth and justice. Although it is the States' duty to investigate all disappearances and establish whether the disappeared person was the victim of a crime, authorities have relied on families reporting incidents and launching their own investigations to determine whether the missing person had left voluntarily or not. In several cases, families reported that the local authority had discouraged them from filing criminal complaints, warning them of potentially dangerous consequences, including death threats and harassment directed at the family [295]. The CNB reported that more than 7,000 people disappeared in 2019. That year, the Attorney General's Office opened 351 investigations into disappearances and initiated just two prosecutions. For families of the disappeared, the message is that there will be few or no consequences for the perpetrators of these crimes.

CASE STUDY: CIUDADANOS EN APOYO A LOS DERECHOS HUMANOS, CADHAC. CITIZENS IN SUPPORT OF HUMAN RIGHTS A.C., CADHAC

CADHAC is a civil and non-profit organization founded in 1993 to contribute to the defense and promotion of human rights in Nuevo Leon in northern Mexico. CADHAC organizes activities to recover public spaces, advocates for respect for human rights in Nuevo Leon's prisons, and monitors the use of force by local police [322]. In 2009, CADHAC was made aware of disappearances occurring in Nuevo Leon and created AMORES, a group of families that meets weekly to offer support to women and children of killed, kidnapped and disappeared persons. Since then, CADHAC has provided psychosocial care and legal representation to families of disappeared persons in the state of Nuevo Leon and Tamaulipas. CADHAC promotes institutional capacity at the local and federal level by creating public policy and cooperation with international organizations. It advocates for legislation to safeguard the rights of families. In 2015, CADHAC supported the adoption of a ‘Declaration of Absence’ as a unique legal instrument in Mexico that served as a model for the General Law on Forced Disappearance and Disappearances committed by private entities (2017); and the creation of the National System of Disappeared Persons. In 2019, in coordination with local authorities in Nuevo Leon, CADHAC has established as an ad hoc point of inquiry and attention for families of disappeared persons within the local government. ICMP has worked with CADHAC for a number of years, providing assistance in civil society development and enhancing cooperation with the Nuevo Leon Attorney General's Office and the forensic DNA laboratory. ICMP has helped the DNA laboratory create a dedicated human identification workflow and a missing persons data processing capability through which the Attorney General's office and other relevant institutions in Nuevo Leon share and analyze data. It has also provided the laboratory with training in new technologies to extract DNA from challenging biological samples taken from human remains, including those that have been badly burned.
CASE STUDY: FUERZAS UNIDAS POR NUESTROS DESAPARECIDOS EN NUEVO LEON, FUNDENL. UNITED FORCES FOR OUR DISAPPEARED IN NUEVO LEON, FUNDENL

Founded in 2012, FUNDENL is a civil society organization that assists families of disappeared persons in Nuevo Leon. FUNDENL was the first organization in the state to become actively engaged with on-site searches for disappeared persons [325]. After years of analyzing case files and victim forensic identification reports, and documenting Nuevo Leon’s inefficiency in conducting basic administrative and forensic processes, FUNDENL paved the way for independent forensic analyses to be carried out. In September 2014, FUNDENL conducted Nuevo Leon’s first citizen-led exhumation. This was done using a provision in the General Victims Law (2013) that allows each family access to independent forensic experts if they cover the costs [278]. To carry out the exhumation and analysis of the remains of Brenda Damaris Solis, FUNDENL brought together the Forensic Anthropology Team of Peru and Mexico (Equipo Peruano de Antropologia Forense, EPAF and Equipo Mexicano de Antropologia Forense and; the Mexican NGO Gobernanza Forense Ciudadana, and secured the support of the project Citizen-led Forensics. FUNDENL’s first citizen-led exhumation was the consequence of years of navigating the cumbersome Mexican judicial system. In the process, the families trained themselves in administrative processes, victims’ rights, and international legislation.

In October 2015, FUNDENL received training from Grupo VIDA, a civil society organization from the northern city of Torreon, in Coahuila. Grupo VIDA has been successful in locating clandestine burial sites and recovering human remains. The collaboration between these two organizations constituted one of the first examples of peer-to-peer training in family-led, grassroots searches processes.

From 2016 to 2019, FUNDENL conducted at least nine on-site searches to locate clandestine burial sites or to (re)analyze sites where human remains had been previously found. Each time FUNDENL organizes a search brigade, it invites the local prosecutor, state police, members of the Institute of Criminalistics and staff from the local Executive Committee for the Attention of Victims to witness the process. Ideally, the public prosecutor will collect any material evidence (in the form of personal effects or bone fragments) that the group may find. Members of local and national media also accompany these searches.

FUNDENL has operated in areas that have been difficult or dangerous to reach, conditions that sometimes make it necessary to halt activities. In December 2016, the organization acquired a drone, making it possible to analyze ground disturbances and access mountainous areas. The group has also solicited the use of sniffer dogs from local authorities. In September 2019, FUNDENL consolidated its independent forensic team, which includes specialists in forensic archaeology and anthropology.

Similar groups of families searching for their loved ones have emerged all over the country [326]. Madres Buscadoras de Sonora, Regresando a Casa Morelos, Red de Enlaces Nacionales or Los Otros Desaparecidos, are some of the community groups that have taught themselves

a variety of investigative techniques including, for example, probing with a T-shaped steel rod into the ground to locate soil disturbances or to find odors of decay. With years of experience, these families have learned how to trace patterns of disappearance in a specific region, interpret various types of terrain and analyze bone fragments [327]. Successful searches are often the result of information provided by anonymous parties, forensic imagination and determination.

FUNDENL and the increasing number of families’ collectives all over the country that organize search brigades show how, in practice, citizen-led data collection and analysis have transformed forensic and investigative processes in the country (Cruz Santiago 2017; 2020). For instance, Ciencia Forense Ciudadana [328] created Mexico’s first citizen-led forensic governance mechanism, where relatives of disappeared persons own and manage a DNA database of family reference samples and a national registry of disappearances. Families collect their own DNA reference samples using cheek swabs and complete a form providing details about the person giving the sample, as well as information about the disappeared person. Details include physical characteristics, height, weight, age, date and place of disappearance, among other information that could be useful for identification purposes. In this registry, there is also provision for families to describe the disappearance in their own words, recording their knowledge of the event, including perpetrators (if known) and possible lines of investigation. The DNA samples are then sent for analysis to the DNA laboratories of the Guatemalan Forensic Anthropology Foundation (FAFG), before being returned to the families. The 18 members of the governing body that manages the database are all relatives of disappeared persons and, in this role, organize monthly or bimonthly public events for the collection of samples [329].

Colombia and Operation Ciriri

Gathering information in public spaces was one of the strategies employed to organize citizen-led datasets on disappearances that are independent from government data [309]. This practice has been adopted in similar circumstances across the Americas. For instance, during 30 years of searching, Fabiola Lalinde systematized crucial information about her son’s disappearance and extrajudicial killing in Colombia. Luis Fernando Lalinde, 26, was detained, tortured, and killed by military forces in Colombia on 3 October 1984. His body was concealed and remained unidentified for more than 12 years. In the aftermath of Luis Fernando’s disappearance, Fabiola visited the Colombian region of Jardin, Antioquia, where Fernando was last seen, and drafted maps of the area; she made enquiries in the local community and sent letters to government officials. In 1988 a formal resolution by the Inter-American Court of Human Rights recognized Luis Fernando Lalinde as the first case of extrajudicial execution in Colombia. Two days after the Court’s resolution, the police raided Fabiola’s family home. Evidence of illegal drugs was planted in her house, and she was detained. Fabiola was sentenced to 25 years in prison but, with the help of human rights activists and the UN, she was released after 12 days. Following this experience, Fabiola coined the term “Operation Ciriri” to describe the strategy she was following in order to search for her son. “Operation Ciriri” adopted the same rationale as the US military strategy to combat political dissidents in the region. It was based on the little bird’s persistence (the Ciriri) as it chases the Sparrow Hawk that took its chicks. The Ciriri doesn’t stop until it gets the chicks back. Fabiola was determined to continue to fight for justice and truth.

At the beginning of her search, Fabiola collected documentary evidence that detailed how, on the same day that Luis Fernando was forcibly detained, a combatant with similar physical characteristics nicknamed “Jacinto” was killed and his body buried under the “NN” alias “Jacinto”. Fabiola was certain that Jacinto’s human remains were those of her son Luis Fernando. However, state authorities constantly denied this. After conducting DNA analysis on the remains, Colombia’s leading geneticist at that time said it was “unquestionable” that the remains he had examined did not correspond to a child of Mrs Lalinde. According to the geneticist’s report, the scientific “results were sufficient, irrefutable and unmodifiable” [330]. Unsatisfied with this conclusion and aided by a group of forensic experts who had helped Fabiola in the exhumation process,
the Lalinde family sent the samples to foreign specialists who were willing to assist. Twelve years after Luis Fernando’s disappearance, the family received two international and independent identification reports stating that the examined remains corresponded to Mrs Lalinde’s offspring. This event and all the documentary evidence that Fabiola collected have had lasting effects on Colombia’s forensic system. Fabiola Lalinde is considered a pioneer in the development of forensic science in the country [278]. In October 2015, UNESCO’s Memory of the World Registry included Fabiola’s Archive in recognition of its outstanding universal value.

Luis Fernando’s disappearance and extrajudicial killing was not an isolated case. In 1982, the first organization of families of victims of enforced disappearance was created. Asociación de Familiares de Detenidos Desaparecidos (ASFADDDES) was initially constituted by 13 families searching for their disappeared loved ones and today is the oldest organization in Colombia. In 2020, a report by ICMP recorded at least 41 organizations of disappeared persons’ families in the country [331]. Most of these organizations are led by women, a condition that highlights how disappearances can exacerbate and reinforce long-standing forms of inequality based on gender. Organizations of disappeared persons’ families have been established in 31 of Colombia’s 32 regions. Families have been collecting information and raising awareness on disappearances in the country with limited resources. The knowledge and experience they have consolidated has impacted individual families and informed national and international policy. According to the ICMP report, fifty non-governmental organizations that deal with human rights abuses and disappearances are also present in the country [331]. Collectively, organizations of disappeared persons and non-governmental organizations have constituted themselves as strategic partners of the State in order to strengthen trust and local community participation in the search for disappeared persons in the country. Their work has been vital for the consolidation of Peace Accords in Colombia.

During more than 50 years of armed conflict, 120,000 people were disappeared by State forces, paramilitary groups, and organized crime in Colombia. According to the Centro de Memoria Histórica (National Center for Historical Memory) – which puts the number of enforced disappearance victims at 80,653 – 88.04 percent of victims were Afro-Colombian and Indigenous men between the ages of 17 and 25 [332]. Since 1985, violence associated with the conflict has forcibly displaced more than 8.2 million Colombians.

Although the 2016 Peace Accord [333] between the Revolutionary Armed Forces of Colombia (FARC) and the government formally brought the fighting to an end, conflict-related violence still exists. The ICRC reports that since 2016 at least 571 persons have disappeared [334]. In June 2017, the United Nations political mission in Colombia verified that FARC guerrillas who accepted the peace agreement with the government had handed over their weapons to the mission [320]. The Peace Accord envisaged the creation of a FARC-National Search Committee to collect information among its members on disappearances, which should facilitate locating mass graves in the country.

In the process of reintegrating in society, some FARC members formed a political party, the FARC-People’s Military (FARC-Ejército del Pueblo). However, a minority of dissident guerrilla fighters rejected the terms of the peace agreement, refused to disarm, and continue to commit abuses. Other FARC fighters disarmed initially but joined or created new groups, partly in reaction to inadequate reintegration programs and attacks against former fighters [320]. During the Covid-19 pandemic, armed groups reportedly enforced their own checkpoints and patrols in areas they control, thus exposing vulnerable populations to greater risk [335]. It has been reported that in 2020 one person disappeared every three days [334]. As part of the Peace Accord, the government created a Search Unit (Unidad de Búsqueda de Personas Dadas por Desaparecidas, UBPD). The UBPD is a humanitarian and extrajudicial institution whose mandate is to lead, manage and coordinate the search for victims of disappearance from the 50-year conflict. It began functioning in 2018. However, state-led measures aimed at establishing the whereabouts of disappeared persons and managing recovery and identification of human remains has been modest when set against the number of victims. Prior to the Peace Agreement, and following the Justice and Peace law, as of October 2011, the Attorney General had exhumed 4,703 bodies, nearly 30 percent of which (1,142) were conclusively identified and handed over to family members [336].

Disappearances continue in Colombia to this day. On 28 April 2021, President Ivan Duque’s controversial tax reform in the midst of the highest unemployment rates and one of the worst death tolls from the COVID-19 pandemic, triggered a series of protests [337]. Thousands of demonstrators were met with disproportionate force by the national security forces and anti-riot
police (Escuadrón Móvil Antidisturbios, ESMAD). The Colombian Office of the Ombudsman as well as local and international NGOs have reported at least 43 deaths, hundreds of wounded individuals, arbitrary detentions and many disappearances, as well as targeted assaults on women, human rights defenders, and journalists by the Colombian police [338].

In recent years, Colombia has seen an increase in the number of migrants from Venezuela, and other parts of South America and the Caribbean. The rainforest that connects Colombia with Panamá, known as the Darien Gap, is a 60-mile strategic stretch of roadless jungle that provides the only land route north of South America and into the US. This migratory route is being used by individuals coming from other continents, for instance, Africa (Cameroon and Congo) and South Asian countries (India, Bangladesh, and Sri Lanka) [339].

Migrants who travel through this area are exposed to multiple threats, including death. The Darien Gap is considered one of the most dangerous migratory routes in the world. This is due to the mountainous terrain and the presence of wild animals as well as criminal organizations. The inaccessibility of the landscape has enabled drug smugglers and paramilitary groups (including the FARC) to proliferate in the region. An increasing number of people go missing along this dangerous migratory route. A report by UNICEF in March 2021 found that the number of children crossing the Darien Gap has increased more than fifteen-fold, from 109 in 2017 to 1,653 in 2020 [259].

The following section examines the region’s efforts to account for missing migrants. It deals in particular with the Central America-United States corridor due to the enhanced vulnerability imposed on migrants after 2019, when the Trump administration implemented the Migrant Protection Protocol (MPP) also known as the “remain in Mexico” policy [340]. Under the MPP, individuals who arrived at the Southwest Border were returned to Mexico to await removal proceedings. Although the US Department of Homeland Security suspended new enrolment in the program on 21 January 2021, there are at least 25,000 individuals with active MPP cases [341]. The situation in the Americas calls for a deeper understanding of the precarious migratory processes prompted by the MPP policy and the humanitarian crisis in Venezuela.

PART 2: MISSING MIGRANTS ALONG THE MEXICO-US CORRIDOR

Since the early 1960s, the US-based program “Alliance for Progress”, created in response to the threat of communism in the region, has offered support for education, health care and housing. The program has also provided unprecedented military aid, training, and advisory assistance to incumbent governments. This has compounded social inequalities that have created conditions for organized crime to thrive amid strengthened corruption networks [342].

Growing inequality together with the lack of opportunities from low social public spending have resulted in social marginalization, violence, and lack of access to essential services for most of the population [343]. In this context, worsened by insecurity, gang threats, domestic violence and family reunification, migration is often seen as the only option for those who wish to survive. Young people embark on dangerous journeys searching for a better life, as well as opportunities for families back home. In some cases, young families, including children, are fleeing violence and death threats associated with gang recruitment [344]. For thousands of individuals from Central America, the Caribbean and Africa fleeing political and economic instability, Mexico’s southern border has become the starting point for their journey to the United States.

Thousands of persons go missing on this journey. While data on missing migrants is scarce, civil society organizations estimate that between 2006 and 2016, at least 120,000 migrants disappeared along the route [345]. While the Covid-19 pandemic may have reduced the incidence of migration and caused migrants to reconsider their journey, smuggling facilitation has continued during the pandemic [346]. According to Mexico’s immigration agency, between January and November 2020, 50,470 persons were deported from Mexico; 95.7 percent came from the Northern Triangle. The NGO Servicio Jesuita a Migrantes en México reported that in the first trimester of 2021, the disappearance of migrants along the Mexico-US trail increased by 37 percent compared to the same period in 2020 [347].

Missing migrants and asylum seekers may be alive but in situations where they cannot contact their families or choose not to do so for fear of compromising their families’ security back home or because of fear of deportation [348]. Some of these missing migrants are presumed to be dead. The International Organization for Migration (IOM) has reported that 225 migrants died in 2020 along the Central America-US corridor. Migrants and asylum seekers are subject to violence and other abuses throughout their journey. They are constantly preyed upon by immigration officials and criminal organizations, sometimes with national authorities’ tacit approval or complicity.
In Mexico, tens of thousands of migrants and asylum-seekers have disappeared in transit, particularly in the northern part of the country where organized crime networks control the cities near the US. As a result of the MPP more than 71,000 asylum seekers have been sent to Mexico to await asylum hearings. In September 2018, the Department of Homeland Security opened two provisional courts along the border where hundreds of asylum seekers were processed each day. The rationale behind this policy was to “give asylum seekers access to the US court system without giving them physical access to the United States” [340]. The “remain in Mexico” policy has created a situation of enhanced vulnerability to organized crime in the area. Asylum seekers are forced to seek shelter in makeshift camps along the border as they wait for the US to process their immigration requests. Organized criminal networks have taken advantage of this situation. The violence to which migrants are subjected has become clear as authorities and civil society organizations have discovered clandestine mass graves along Mexico’s northern border. On 22 August 2010, police found the tortured bodies of 72 migrants at a ranch in the northeastern state of Tamaulipas. Local authorities were able to locate the ranch thanks to the testimony of a survivor. The migrants had travelled from Central America to Tamaulipas to cross into the US. In one night, approximately 72 individuals were killed by the criminal organization Los Zetas [349]. Investigations in April 2011 unearthed 47 mass graves containing 193 bodies in the same area of Tamaulipas [292]. A similar event was recorded in Nuevo Leon in 2012 and more recently, in February 2021, the bodies of at least 15 migrants were discovered on an isolated path in Tamaulipas.

Central American migrants were formerly able to travel freely across the region, but in recent years, US authorities have put pressure on Mexico and Central American countries to stop migrants and asylum-seekers long before they reach the US-Mexico border [350]. Reportedly, from 25 January to 16 February 2021, 1,200 migrants from Central America, including more than 300 children, were detained along train routes in six southern and central Mexican states [351]. Growing efforts to control migration through the militarization of borders and the deployment of security technologies along the migrant trail from the Guatemalan border to Mexico and into the US oblige migrants and smugglers to use ever more remote and dangerous routes to avoid detection [352]. There is concern among human rights defenders and civil society organizations that the number of migrants who disappear in transit will increase as a result.

Central American mothers who have one or more family members missing have raised awareness about the issue. In 1999, in El Progreso, Honduras, two women who had lost contact with their migrant children got together and organized the Committee of Relatives of Migrants from El Progreso (COFAMIPRO), to search for and locate their loved ones. Their first searches took place in 2000 in Tecún Umán City, northwest Guatemala, on the border with Mexico, and Tapachula, on the Mexican side of the border in the state of Chiapas.

In 2006, Luis Angel Nieto, co-founder of the Mesoamerican Migrant Movement (MMM), met with mothers from Honduras, and since then the MMM has organized a caravan through Mexico, involving mothers from the other Central American countries and raising international awareness about the issue of missing migrants. The goal of the MMM caravans is to find missing family members in transit whether, alive, killed, deprived of liberty, or subjected to trafficking, and to document the criminal aggression that migrants experience in transit through Mexico, and demand that the complicity, impunity, and direct participation of officials and public servants in acts of kidnapping and forced disappearance are eradicated [345]. Since 2012, women from Nicaragua, El Salvador, Honduras, and Guatemala have made the trip together. The families of migrants have established a solid network of organizations in defense of human rights [353].

Reporting a missing person to State authorities is problematic for undocumented immigrants living in the US and for those living in Mexico and Central American countries [354]. Many families do not have access to a phone or computer at home and rely on local church or community leaders for communication with people outside the local town. Many speak an Indigenous language but not Spanish or English, and among many Indigenous peoples in Mexico and Central America there is a deep mistrust of government due to centuries of violence and exploitation at the hands of the State [355]. The networks of expertise and solidarity that families have created have shaped responses to the task of locating missing migrants. These citizen-led efforts are providing new tools to understand the risks and human rights violations that people forced to migrate encounter in the Central America-US corridor.
CASE STUDY: COLIBRÍ CENTER FOR HUMAN RIGHTS

The Colibri Center’s work builds on an earlier Missing Migrant Project, a volunteer initiative in 2006. This initiative aimed to collect information about people who were missing on the border in order to identify the hundreds of deceased individuals who were being examined by the Pima County Office of the Medical Examiner (PCOME) [356]. In 2013, the Missing Migrant Project was consolidated into the non-profit Colibri Center for Human Rights NGO. Colibri maintains a private, independent database of missing migrants and unidentified remains found along the US-Mexico border. The relationship between the PCOME and the Colibri Center is an innovative practice that protects families’ needs and adheres to forensic best practice. Although based in Arizona, Colibri’s database contains reports of migrants missing in all four border States, and the Center has supported more than 100 forensic identifications made in both Arizona and Texas. Colibri collects ante-mortem data from families who believe their missing loved one has disappeared on the US side of the border. Colibri’s bilingual staff seek to collect accurate, forensically relevant data and to approach families with understanding, respect, and an attitude of partnership. Along with families who live in the United States, Colibri is building a family advocacy network to push for better treatment of migrants in the United States [355].

CASE STUDY: PROYECTO FRONTERA (BORDER PROJECT)

Led by the EAAF, the project’s main objective is to create a Regional Mechanism for the exchange of forensic information about missing migrants and unidentified human remains. Since 2009, the EAAF has worked with families of missing migrants, NGOs and government institutions to consolidate a forensic database with details on migrants who have left their countries or communities of origin (i.e., El Salvador, Honduras, Mexico or the US).

In El Salvador, since 2010, the Ministry of Foreign Affairs, the Comité de Familiares de Migrantes Fallecidos y Desaparecidos (COFAMIDE) family organization, and the Procuraduría de Defensa de Derechos Humanos have worked with the EAAF to identify and repatriate the remains of Salvadorans who have died in their migration journey. The forensic database has collected information on 343 cases. To date, 74 disappeared migrants have been identified through DNA analysis [357]. ICMP together with the Human Rights Center at the University of California’s Berkeley School of Law and the Salvadorian organization Pro-Búsqueda de Niñas y Niños Desaparecidos has assisted DNA-based investigations, kinship analysis and database informatics on missing children.38

Forensic data on missing migrants is collected, verified, and catalogued to be cross-referenced later with information on unidentified human remains recovered by forensic institutions in transit and destination countries. The project has led to the creation of forensic databases in Central America and Mexico.39 These databases hold genetic information from DNA samples provided by relatives, as well as details offered by family members on the circumstances surrounding the disappearance. The objective is to improve significantly the search for missing or disappeared migrants among unidentified remains found along the Central America, Mexico, United States migratory corridor.
Unaccompanied migrant children are often detained at the US-Mexico border. Some of these young migrants are travelling to meet family members who have already migrated to the US. For others, their only hope is to obtain legal permanent residence in the US via Special Immigrant Juvenile Status (SIJS), a classification enacted by Congress in 1990 to provide a pathway for undocumented minors abandoned or neglected by their parents [358].

From 2017 to 2020, during US President Donald Trump’s “zero tolerance” policy, migrant families were arrested and at least 5,500 children, including infants and babies, were separated from their parents. These efforts to deter immigration, created a crisis where at least 445 parents of separated children have not yet been located (as of May 2021)[359]. Attempts to locate the parents, have been unsuccessful due to poor record-keeping or because some of the parents of these children had already been deported to their country of origin without them. Grassroots organizations in the US, Guatemala, and Honduras have led the efforts to search for the missing parents. Two initiatives may change this. The DNA Bridge consortium is an interdisciplinary group of physicians, scientists, and human rights advocates focused on developing a science- and ethics-based approach to the use of DNA technology and DNA data management to support the family reunification of migrant children separated from their families.** On 2 February 2021, US President Joe Biden issued Executive Order 14011 to establish an Inter-Agency Task Force on the Reunification of Families affected by the “zero tolerance” immigration policy. The Task Force has since been formed and has issued its first report.[41]

**PART 3: MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS IN THE US AND CANADA**

Of the thousands of people who go missing in the US and Canada, the whereabouts of many are established within days. However, the long history of violence and abuse towards Indigenous girls and women means that they have been disproportionately affected. According to Canada’s Missing, the web portal of the National Center for Missing Persons and Unidentified Remains (NCMPUR), which is part of the Royal Canadian Mounted Police (RCMP), there were 61,593 missing reports from the Canadian Police Information Center in 2020. Fifty-two percent of all missing persons reports involve children or young people. Sixty percent of all missing children/youth reports in 2020 involved females. The Indigenous municipalities of Manitoba had the highest number of missing children reports per capita, with 491 reports per 100,000 people, followed by Saskatchewan with 327 reports per 100,000 people [360].

Colonial processes have deeply affected Indigenous identities and governance. One of the most egregious rights violations has been Canada’s attempt to “assimilate” Indigenous Peoples in the context of residential schools and, later on, within the “Sixties Scoop”, a government policy from the 1960s to the 1990s that saw the large-scale removal of Indigenous children from their homes and communities of birth, often without their parents or communities’ consent, and their subsequent adoption into predominantly non-Indigenous families across the United States and Canada. The Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) department indicates that the number of Indigenous children adopted between 1960 and 1990 was 11,132. However, more recent research suggests that more than 30,000 First Nation, Métis and Inuit children were removed from their homes. Many children were also sent abroad, some as far away as New Zealand. This experience left many adoptees with a lost sense of cultural identity. The physical and emotional separation from their birth families continues to affect adult adoptees and Indigenous communities to this day. Indigenous knowledge systems and ways of understanding land, governance, and identity were targeted.

Girls, women and 2SLGBTQIA+ people have been the most affected by colonial policies towards Indigenous Peoples. For instance, women were portrayed by the government and society as a menace to the emerging non-Indigenous community and suffered forced sterilization. Women were considered a threat to public security and thus criminalized through

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[38] For ICMP’s engagement with El Salvador see https://www.icmp.int/news/accounting-for-the-disappeared-in-el-salvador/


[40] The most prevalent forensic DNA identification method relies on detection of short tandem repeats (STRs). STR analysis is an excellent measure of first-degree genetic relationships but does not generate useful information beyond identity and kinship and could therefore support efforts to reunify families. For a full discussion: https://science.sciencemag.org/content/early/2021/05/26/science.abh3979?fbclid=IwAR2Vv2Ee-l0gmXSGZ255YKVygO0z4y9-n2zwHPEJuqWF1-1gWaVhtKmljplG4

accusations regarding their alleged sexual promiscuity. In addition, European notions of medicine displaced Indigenous medicine practices and the traditional role of women as healers [361].

The history of colonization is gendered [361]. According to the National Inquiry into Missing and Murdered Indigenous Women in Canada, Canadian infrastructures of colonization laid the foundations for the crisis of missing and murdered Indigenous women, girls and 2SLGBTQQIA+ people [361]. As a consequence, the deaths and disappearances of thousands of women have not been recorded. There is no reliable estimate of missing and murdered Indigenous women, girls and 2SLGBTQQIA+ people in Canada. Indigenous peoples from First Nations, Métis and Inuit communities represent around five percent of the Canadian population, with Indigenous women accounting for 2.5 percent of the total population. Yet, Indigenous women and girls are three times more likely to be victims of violence [362]. One RCMP report calculated that in 2015 Indigenous women were four times more likely to go missing and approximately six times more likely to be murdered than non-native Canadian women. The report concluded that 1,181 Indigenous women had been murdered or reported as missing between the 1980s and 2012 [363]. However, independent tallies by families of the victims and the Native Women’s Association of Canada have found that up to 4,000 women have gone missing or have been murdered since the 1970s [364].

According to findings from the report Resource Extraction Projects and Violence against Indigenous Women, work camps associated with the resource extraction industry are implicated in higher rates of violence against Indigenous women at the camps and in neighboring communities. The increased rate of violence is largely the result of the migration into the camps of mostly non-Indigenous young men with high salaries and little to no stake in the host Indigenous community [361].

Indigenous communities have long recognized the connection between people and land. Colonization, forced removal, and continued land dispossession have attempted to suppress or altogether sever this land/body connection. However, Indigenous women, girls and 2SLGTBTQQIA+ people continue to resist this. Everything connected to the land is connected to indigenous bodies [365].

Families’ expertise: “When an Indigenous person goes missing, those closest to her are the experts”.

Police investigations are marked by indifference, and negative stereotypes against Indigenous women that result in fewer reported and solved cases [361]. Families note that the police do not want to take action when missing Indigenous girls and women are reported and when families present information to the police to help search for their loved ones, this information is dismissed or ignored [366]. Many families begin a physical search for their missing loved ones accompanied by their communities. They take on the responsibility of creating posters and travelling to places that their loved ones may have visited, and they conduct extensive ground and water searches. In these searches, families have discovered human remains. When they are forced to initiate their own investigation, families do so at their own cost – which accentuates the vulnerability of these families and their communities [361].

In the absence of police investigations, community-based search efforts have emerged. “Drag the Red” was created in 2014 after the body of Indigenous 15-year-old Tina Fontaine was found in Manitoba’s Red River wrapped in a duvet cover and weighed down by rocks [367]. Initially organized by Bernadette Smith, whose sister Claudette Osborne has been missing since 2008, the group conduct searches six days a week to locate human remains or any other signs of people who have gone missing or have been murdered. “Drag the Red” has developed its own tools to scour the river in an effective way, and by 2019 had helped in the recovery of three bodies and the location of human remains (teeth and hair) from the banks of the river [368]. Members of the group have received forensic training, including training in forensic anthropology, at the University of Winnipeg [369].

The vulnerability imposed by the state on indigenous communities is a problem in Canada and North America in general. In the state of Montana, for instance, Montana Missing Indigenous Persons (MMIP) has created a community website and database for Tribal nations in Montana and across the Blackfoot Confederacy to facilitate reporting missing persons in the region [370]. According to data collected by the group, Native Americans are four times more likely to go missing in Montana. Women and young girls are the most affected. The data collected through this community-led initiative is owned by the Blackfeet community instead of the Montana Department of Justice.
"The National Inquiry as a beginning, not the end"

In 2016, the National Inquiry into Missing and Murdered Indigenous Women and Girls was established by the Government of Canada under Prime Minister Justin Trudeau as an independent mechanism to investigate violence against Indigenous women and girls, including those who are 2SLGBTQQIA. The National Inquiry’s research practice was rooted in Indigenous methodology, governed by traditional laws and ethics that affirm Indigenous women and girls’ resistance and resurgence. Its final report, published in June 2019, outlines systemic violence and a lack of institutional will to effect change. This has resulted in the normalization of ongoing, extreme levels of violence towards Indigenous communities.

The report condemns state action and inaction rooted in colonialism. It concludes that “the human rights and Indigenous rights abuses and violations committed and condoned by the Canadian state represent genocide against Indigenous women, girls, and 2SLGBTQQIA people” [361]. The Inquiry offers 231 “Calls for Justice”: legal imperatives that must be implemented to ensure that Indigenous women, girls and 2SLGBTQQIA people can live in dignity [361]. The Inquiry established a Forensic Document Review Project (FDRP) to conduct a review of police and other related institutional documents to identify systemic challenges to protecting the rights of Indigenous women, girls and 2SLGBTQQIA people. The FDRP developed a checklist that reflects the minimum investigative tasks and best practice to be undertaken and considered by a police officer in response to missing persons reports and homicide investigations. Canadian Prime Minister Justin Trudeau pledged to turn the Inquiry’s call for justice into “real, meaningful, Indigenous-led action” [371]. A National Action Plan on violence against Indigenous women was due to be delivered in June 2020, but this was postponed due to the Covid-19 pandemic [372].

While the Canadian government has pledged to stop structural violence against Indigenous people, there is evidence of a lack of services in remote communities and failure to consult with Indigenous groups over environmental or land issues [361]. The Canadian government continues to fund mine and pipeline expansion projects [373] that are known to be contributing factors to gender violence within Indigenous communities.

In the United States, on April 2021, the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, the United States Attorney’s Office for the District of Montana, and the Federal Bureau of Investigations announced the Nation’s first Tribal Community Response Plan to address emergent missing person cases. The Community Response plan resolves issues of jurisdictional overlap, and builds trust in the Federal government’s willingness to respond to missing person cases effectively. In order to support Tribal governments and Tribal communities’ efforts to increase awareness of Missing and Murdered Indigenous people, President Biden proclaimed May 5th 2021, as Missing and Murdered Indigenous Persons Awareness Day [374].

An agenda for the future

This section provides some final thoughts about the status of disappeared persons in the region and proposes a set of themes to inform policy and civil society action in the search for the missing.

- From the work of mothers and relatives of the disappeared to the creation of novel international normative frameworks, the Americas has been at the forefront of innovation in the fields of law, science and activism.

- The role of women and civil society organizations as innovators and instigators of political, scientific and legal change should translate into systematic technical and financial support for the development of grassroots and civil society initiatives in the region. Future reports should also analyze disappearances and violence towards LGTBDQ+ communities and other minorities.

- It is necessary to reflect on how disappearances can exacerbate and reinforce long-standing forms of inequality based on gender. As this chapter shows, women (mothers, sisters, and wives) carry a disproportionate social and financial burden, as they are left with responsibility to search for their missing [252]. For instance, in Mexico according to data from Citizen-Led Forensics [375], relatives of the disappeared who are searching for their loved ones lose 69 percent of their income; yet 97 percent invest their remaining resources searching for answers.

- Throughout the region, corruption and a lack of state accountability allow disappearances to continue. As this chapter shows, the issue of disappeared persons cannot be sustainably resolved only by NGOs with international technical
assistance. Despite the work of many independent forensic teams and international organizations, the lack of state responsibility is glaring as is evidenced by insufficient capacities and infrastructures in the region. Policies and investment in the region tend to be premised on short-term solutions, rather than structural problem solving.

- A systematic analysis of existing forensic databases in the region can inform the creation of transnational mechanisms. A transnational infrastructure must harmonize policies across countries and share key information (with data protection safeguards). The challenge of accounting for missing and disappeared persons in the region requires the commitment of local and state-level authorities if it is to be tackled in a meaningful way. Intergovernmental organizations can help collect, process, analyze, protect and share data, to help locate missing persons, both within and between states.

- The Covid19- pandemic presents challenges in accounting for missing persons and managing storage of human remains. A report by the International Organization for Migration (IOM) calculates that a significant number of migrants remained stranded in transit communities when authorities began to apply Covid19- mobility restrictions. Between June and August 2020, the IOM’s local monitoring sites in Guatemala, El Salvador and Honduras reported at least 440 stranded migrants (IOM 350] [2020]. The management of human remains of Covid19- victims has prompted a “forensic crisis” in the U.S (New York), Brazil, Colombia and Mexico, where extra graves have been dug to accommodate new fatalities. However, many times instead of digging a new grave, authorities are opening graves where unidentified corpses have been buried.

- When missing persons are found alive, strategies need to be in place to account for the legal, social, and ethical consequences of their return.
Asia and Pacific
by Tae-Ung Baik

INTRODUCTION

The issue of missing persons and enforced disappearance has been a key human rights problem in countries in Asia and the Pacific. To fight against the gross and systematic human rights violations of enforced disappearance, the United Nations established the Working Group on Enforced or Involuntary Disappearances (WGEID) in 1980 as the first special procedure mechanism of the UN Commission on Human Rights.

In addition, to protect the right to freedom from enforced disappearances, the international community adopted the UN Convention for the Protection of All Persons from Enforced or Involuntary Disappearances (CED) in 2006, which became effective in 2010. However, the number of participating states is still very low compared to other treaties. Among 63 Member States of the treaty, only eight from the Asia-Pacific region have ratified or acceded to the treaty and, only four East Asian states – Cambodia, Japan, Mongolia, and Sri Lanka – have ratified it.

From its inception until September 2020, the WGEID has sent a total of 58,606 case files to 109 States requesting search and investigation of the enforced disappearances. The number of disappearance cases under active consideration by the Working Group stood at 46,271 in 92 States as of May 2021. More than 30 percent of states where this problem has been identified are in Asia, and around 60 percent of the total number of forceful disappearance cases have been submitted from the Asia and Pacific region. Nevertheless, Asia is a region where the smallest number of states have signed or ratified the CED. Unfortunately, the total number of enforced disappearance cases in Asia and the Pacific is not decreasing, and a rapid increase is being witnessed in some countries.

This chapter examines the contexts and patterns of missing persons cases and disappearance in Asia and the Pacific. It also sets out to explain recent developments in selected countries in the region. These countries do not form an exhaustive list of states facing the issue of missing persons and enforced disappearances. However, they are conspicuous in the region in regard to this issue and they each have a sizable number of standing cases.

This text reflects the International Commission on Missing Persons (ICMP) definition of and approach to the issue of missing persons and enforced disappearances. ICMP’s Report on the Study Visit and Seminar for the Office on Missing Persons of Sri Lanka (2018) asserts that a state bears an obligation when missing persons cases occur, to conduct comprehensive and effective investigations of human rights abuses, regardless of who committed violations and abuses. The text does not address all causes of persons going missing – for example, more must be written about the condition of people in situations of vulnerability, including women, children, the elderly, persons with disabilities and persons belonging to minorities and indigenous peoples. In particular, the reasons why very high numbers of women and children are missing across the region need to be closely analyzed.

It is important to understand the context and patterns of enforced disappearance in Asia and the Pacific. In Asia, missing persons and enforced disappearance cases often occur as a result of the failure of systems designed to protect citizens in a society. Many East Asian states experienced some forms of colonialism or occupation in their recent history. The historical background explains the slow development of sound governance systems in Asia, weak democracy, and often fragile rule of law. Disappearances may stem from weak democracy or fragile rule of law and may remain unresolved for these reasons. In recent years, a number of Asian states have experienced challenges in preserving democracy and the rule of law because of the imposition of military regimes or because of lawless government actions. In addition, there are states in Asia that increasingly rely on the pretext of public emergency or domestic or international conflict to justify human rights violations. The complex history of colonialism, transition from authoritarian regimes to democracy, or political or security challenges may aggravate the situation of missing and enforced disappearances. At the sub-regional level in Asia, some common contexts are found in the forms of missing and disappearances. For example, in Northeast Asia, there have been cases of transnational disappearances during specific historical periods involving citizens of China, Japan, North Korea, South Korea, and Russia. In Southeast Asia, enforced disappearances and missing persons cases are frequently connected to authoritarian regimes and international security issues, for example in Thailand, Myanmar, the Philippines, and Lao PDR. In South Asia, domestic and international armed conflicts and counter-terrorism measures have created circumstances in which enforced disappearances have taken place. Examples are found in Sri Lanka, Pakistan, India, Bangladesh, and Nepal.
PART 1: CONTEXTS AND PATTERNS OF MISSING PERSONS CASES AND DISAPPEARANCES IN ASIA AND THE PACIFIC

A number of circumstances contribute to patterns of enforced disappearances in Asia and the Pacific.

**Domestic and international conflicts, civil wars, and other military activities**

Domestic and international military conflicts, civil wars, and other military activities can be the background for cases of enforced disappearances. Enforced disappearances have been reported in the context of, for example, the Korean War (1950-1953), the Pacific War (1941-1945), and the Vietnam War (1955-1975), as well as internal conflicts in the Philippines, the civil war in Sri Lanka (1983-2009), and the conflicts in Kashmir, among others. Avoiding armed conflict and promoting peace often go hand in hand with efforts to account for missing persons.

In areas of armed conflict, civilians as well as combatants are often targeted as part of strategies to impose fear and collective punishment. In some cases, human rights defenders are specifically targeted. Conflicts can furnish perpetrators with false arguments or motives for attacks. In some cases, medical and humanitarian aid workers are targeted as punishment for their activities. Even after the end of hostilities, violence may continue for years before the rule of law is established and impunity is ended [379].

Ways of ending and preventing cases of enforced disappearance and missing persons are closely connected to the operating environment. The actors involved may be the government itself or agencies related to the government, political organizations, individuals, or non-state actors. In the case of domestic or international armed conflict, arrests and detentions are often initiated by military personnel, military law enforcement agencies, military police, military prosecutors, and secret services. Cases of missing persons and disappearances in this context have been recorded in countries such as China, DPR Korea, the Philippines, Thailand, Myanmar, Lao PDR, India, Pakistan, Sri Lanka, and Bangladesh.

**Counter-terrorism, internal security, and political instability**

Many cases of enforced disappearance are reported in Asia where counter-terrorism campaigns have been launched. Many Asian States present public emergencies and security challenges as grounds for impunity and do not take the crime of enforced disappearance seriously. Political instability may also result in cases of enforced disappearance perpetrated on grounds of national security, public emergency, and so on. In the Philippines, since President Rodrigo Duterte declared a “war on drugs” in 2016, police and vigilantes have killed thousands of alleged drug offenders. Human rights defenders documenting violations have faced harassment and intimidation [379].

Examples of missing persons cases and disappearances in the context of counter-terrorism include cases in Xinjiang and Kashmir as well as enforced disappearances of minorities in Pakistan, abductions and enforced disappearances perpetrated by the Rapid Action Battalion of the Bangladesh Police, and cases during and after the civil war in Sri Lanka. Internal security and political instability have been the backdrop against which cases have occurred in Thailand, Myanmar, Hong Kong, and elsewhere. Many cases have taken place in the context of the struggle for democracy and human rights against authoritarian regimes.

The abusive conduct of security forces operating with impunity in a counter-terrorism context has been responsible for large numbers of enforced disappearances. When democracy and the rule of law are not firmly established, law enforcement agencies may be unable to prevent disappearances, arbitrary detention, torture, and other forms of human rights violations, and the police, intelligence agencies, and army units are often cited as perpetrators.

Human rights defenders participating in public assemblies, protesting peacefully and acting collectively to fight injustice and demand rights face a higher level of threat. In many countries there is a sustained pattern of violations against peaceful protesters, including unnecessary and excessive use of force resulting in killings [379].
Non-State actors

Enforced disappearances can be perpetrated by non-state actors. Current international law focuses on the actions of states, but there is evidence of an increasing number of violations committed by non-state actors. When a state does not have full control of its territory, non-state actors may usurp state authority in certain areas. In some cases, governments may not be held responsible for the actions of non-state actors since the legitimate authorities may be unable to enforce laws or provide adequate legal protection to citizens. Political instability and weak governance may therefore be a direct cause of missing persons cases and enforced disappearances. Although UN mechanisms are generally focused on human rights violations committed by state actors, in 2019 the WGEID began documenting and monitoring cases related to non-state actors in order to fill in this protection gap.

Organized crime also poses a risk to human rights defenders, as criminal groups often use violent methods to establish control over the territory and will retaliate against any actor interfering with their interests. Official collusion with criminal groups, or state attempts to clamp down on such groups, particularly when military-style policing is adopted, can also create an environment in which human rights defenders’ risk being targeted both by state actors and criminal actors.

In Sri Lanka, the Tamil Tigers (Liberation Tigers of Tamil Eelam, LTTE) were accused of carrying out enforced disappearances during the civil war. Non-state actors have likewise carried out enforced disappearances in states such as Myanmar, Thailand, and Pakistan, which are involved in armed conflicts.

Migration and human trafficking

Enforced disappearances also occur in the context of migration and border crossing, including human trafficking and people smuggling [380]. As the WGEID stressed in its 2017 Annual Report, enforced disappearance of migrants is a modern-day reality and should not be ignored or underestimated. [380, 381]

Migration has become increasingly dangerous, because State policies designed to deter migrants may result in long and perilous journeys ending with enforced disappearance. A direct link between enforced disappearance and migration is often found when people leave their home country to avoid the risk being victims of enforced disappearance under some political context. Some may become victims of enforced disappearance during migration or in the destination country, or in the process of repatriation or deportation.

Individual states and the international community have not yet begun to devote the necessary attention to this issue. This is partly because – owing to its transnational character– states may find it easier to ignore the problem or transfer blame to another state or to a criminal group. Where disappearances of migrants are carried out primarily by non-state actors but with the direct or indirect involvement of authorities, such acts can clearly be characterized as enforced disappearances. There are also cases in which migrants disappear as a consequence of border enforcement actions of the state. While these may not strictly speaking be classified as enforced disappearances, they may nevertheless trigger state responsibility in the context of international human rights law.

Covid-19, tsunamis, natural disasters, and other public emergencies

Enforced disappearances and missing persons cases may occur in association with natural disasters such as floods, earthquakes, tsunamis, or a pandemic such as Covid-19. Examples of natural disasters leading to large numbers of missing people in the region include the 2004 Boxing Day tsunami, and the 2011 earthquake and tsunami in Japan. Serious concerns have been raised about the on-going global challenge of Covid-19 and its impact on enforced disappearances. Not only have enforced disappearances continued during the pandemic, the virus has created new contexts in which enforced disappearances have taken place. Due to the pandemic, the capacity of all actors to search for and investigate missing persons cases has been reduced, and detainees have been further deprived of contact with the outside world. Some Asian states have been accused of using Covid-19 as a pretext to justify a lack of timely State action to account for disappeared persons or investigate relevant sites. Enforced disappearances must be prevented in all circumstances – and activities to search for missing persons and investigate cases must not be stopped due to the pandemic.
Other patterns of missing persons cases and disappearances, and government efforts

In Asia, deprivation of liberty that leads to enforced disappearance takes many different forms. In some countries, disappearances begin with clearly illegal abductions perpetrated by government or military agencies. In other cases, initial lawful arrests and detentions turn into enforced disappearances. Sometimes, kidnapping for criminal purposes under the auspices of governmental agencies can result in disappearances. As discussed above, domestic or international migration may result in unintentional or involuntary disappearance.

The actors involved in the practice of enforced disappearance also vary. In many cases, governmental agencies are accused of being primary actors. A significant portion of enforced disappearance cases reported in Asia are consequences of acts perpetrated by police, intelligence services, government agencies, or military units with a direct or indirect connection to the authorities or with official acquiescence. However, there are also some Asian countries where disappearances are perpetrated by non-governmental political organizations, by individuals, and by non-state actors. Patterns of disappearances are closely connected to the context and the actors involved, and to government attitudes towards searching for the missing and conducting investigations; willingness – or otherwise – to provide information and support efforts to locate missing persons and establish their fate is an additional key factor.

There are also cases where enforced disappearances occur within a finite time period. Some Asian states allow incommunicado detention in cases involving counter-terrorism or national security. This may leave the detainee entirely out of contact with family members. Some detainees may reappear later in court or in prison after short-term disappearances, while others may disappear indefinitely. “Short-term disappearance” is a serious infringement of the victim’s rights under international human rights law. The ICC’s Rome Statute, under the crimes against humanity provision, prescribes punishment in cases where victims of enforced disappearance have been denied the protection of the law over a prolonged period. The CED and the UN Declaration on Enforced Disappearance (1992) do not exclude short-term disappearances from protection, since short-term disappearances inflict immense suffering on victims and their families. Short-term disappearance may be a result of institutionalized incommunicado detention.

In China, the law permits up to six months of incommunicado detention in cases pertaining to national security, terrorism, and major bribery. Pakistan, India, Sri Lanka also have counter-terrorism or security law provisions that entail incommunicado detention. Cases arising from these legal provisions may constitute long-term or short-term enforced disappearance. Transnational abduction and detention or deportation for political or other reasons may constitute enforced disappearance if it fails to meet international human rights standards and due process. States have frequently resorted to extraterritorial operations that have led to enforced disappearances, with the participation, support or acquiescence of other states, in order to apprehend their own nationals or third country nationals. In the vast majority of cases, this violates national and international law, including the prohibition of enforced disappearances. The systematic practice of forcible repatriation or involuntary return is often justified on national security grounds; it is likely to involve the infringement of fundamental rights and freedoms, but many Asian states have been documented implementing such practices. For example, people attempting to cross borders illegally are sometimes pursued through joint international operations and as a result they become victims of enforced disappearance.

Enforced disappearance cases also arise in the context of transitional justice. When large numbers of people have been victims of disappearance, there may be no prospect of immediate remedy. However, although cases may be old in chronological terms, the resulting pain and suffering are no less serious. This is a continuing crime, which means that cases must be investigated, efforts must be undertaken to locate and identify the missing, and steps must be taken to establish the truth and provide compensation to victims or their relatives. Such efforts may require international cooperation.

PART 2: SELECTED COUNTRY SITUATIONS IN ASIA AND THE PACIFIC

Hundreds of thousands of people are victims of enforced disappearance in the Asia-Pacific region: this grave human rights violation and international crime shows no sign of decreasing. Victims and their families continue to suffer. Many cases that have taken place over decades have never been properly investigated: the whereabouts of victims remain unknown. Governments in the region must search for the missing and investigate all cases of enforced disappearance and they must take steps to bring perpetrators to justice. Victims and their families must be able to access their rights to truth, reparation, and non-recurrence.
In some countries there have been some improvements in government efforts to address the issue of missing persons and enforced disappearances. However, in many countries the number of disappearances shows no sign of significant reduction.

**Northeast Asia**

**i. China**

China amended its constitution in 2004, adding a new provision, Article 33(3) that “the State respects and preserves human rights” [382]. This constitutional amendment was an indication of a slight change from the regime’s former policy of rejecting any human rights discussions based on national sovereignty arguments. However, China is known for the disparity between constitutionally guaranteed rights and substantive rights in practice, and its attitude towards human rights is not fully compatible with international standards. In the State Party Report to the UN Committee on Economic, Social, and Cultural Rights (CESCR) in 2004, the following statement was made concerning Article 2 of the International Covenant on Economic, Social and Cultural Rights (measures taken to guarantee the full realization of rights):

“China is still a developing country. In view of constraints relating to the level of the country’s economic and social development, even though the Covenant has come into force in China, not all its articles have been fully realized. The degree of enjoyment of certain rights does not yet reach the requirements of the Covenant… However, the Government and people of China … will continue to enhance the level of enjoyment of human rights and basic freedoms [383].”

China's development of human rights policy was closely connected to its economic engagement with the West after it joined the World Trade Organization (WTO). However, changes were mostly initiated by the government, while the participation of NGOs and civil society was restricted [384]. This remained insufficient in terms of meeting international standards, and Human Rights Watch expressed concerns about China in its 2009 World Report saying, “The legal system remains vulnerable to arbitrary and often politically-motivated interference” [385].

Along with remarkable economic development, however, China’s approach to human rights has been gradually changing. China is employing more and more alternative interpretations of human rights, and it is trying to defend its human rights violations by tweaking the definition of human rights with a greater emphasis on economic development, eradication of poverty, and improvement of healthcare. In the meantime, cases of missing persons and enforce disappearance are increasing.

Two areas in particular have attracted international attention, disappearances in the Xinjiang Uyghur Autonomous Region and incommunicado detention.

In regard to the first area, there are numerous reports from family members and civil society organizations that a massive number of enforced disappearances have occurred in the Xinjiang Uyghur Autonomous Region. Under the pretext of re-education to prevent terrorism, members of the Uyghur minority ethnic group are being forcibly sent to what Chinese authorities call ‘vocational education and training centers’, with no information on their whereabouts and fate given to their families.

The basis for such forced disappearances is often very trivial: for example, having relatives living abroad or maintaining international contacts can lead to an enforced disappearance.

Human Rights Watch reports that, as many as one million people have been detained in 300 to 400 facilities [386]. Some of these people have been tried in court merely for sending an Islamic religious recording to a family member or downloading e-books in Uyghur [386]. The Chinese authorities impose mass surveillance, controls on movement, arbitrary arrest and enforced disappearance, cultural and religious erasure, and family separation. The US State Department and the parliaments of Canada and the Netherlands have determined that China’s conduct constitutes genocide under international law [386].

The WGEID has also expressed concern about the increasing number of cases sent to China concerning ethnic Uyghur persons who are alleged to have been disappeared in Xinjiang Uyghur Autonomous Region. The Government of China insists that individuals held in vocational education and training institutions in Xinjiang go home regularly, may make video or telephone calls to their relatives after seeking approval, and can receive their relatives in these institutions. The WGEID has requested additional information, including information on the frequency of visits and calls, the leave required,
whether calls can be made internationally, their confidentiality and how individuals in these facilities are made aware of this entitlement [387].

In regard to the second area, ‘Residential Surveillance at a Designated Location (RSDL)’ under Article 73 of the amended Criminal Procedure Law, is used against individuals accused of endangering state security. The WGEID has reported that labor rights defenders Ke Chengbing and Wei Zhili were allegedly placed under residential surveillance in a designated location and taken to an unknown place of detention on 19 April 2019[387]. Because RSDL places individuals in incommunicado detention, it may amount to a form of enforced disappearance.

In addition to this type of enforced disappearance in China, there is a third form of the practice, namely liuzhi. The WGEID has communicated the following charge to China:

“In March 2018, the National Supervision Law (NSL) of China introduced the liuzhi detention system, which is a de facto system of enforced and involuntary disappearances. The new National Supervision Commission (NSC) that was established at the National People’s Congress in 2018 based on the National Supervision Law (NSL), allegedly now has the authority to investigate acts in violation of duties and economic crimes by state functionaries and party members. The NSC now has authority over, not only the CCP members, but also state employees and anyone working for an organization that manages public affairs or is involved in public affairs in any manner. As it is not part of the judicial system, no right to legal counsel exists, and detentions are carried out incommunicado, with the whereabouts of the detainees not announced nor shared. The relatives of the detainees need not be told about their whereabouts, and detainees have no right to access legal counsel. Article 44 of the NSL serves as ground for incommunicado detention allowing exceptions to notification duties. Furthermore, torture or ill-treatment in the form of solitary confinement, sleep deprivation, forced stress positions, beatings, and physical abuse are reportedly widespread in liuzhi. In Zhejiang province, some 266 people were placed into liuzhi for an 11-month period in a pilot project in 2017. The sources estimate that the figure on use of liuzhi for China as a whole is likely between 10,000 and 20,000 per year, possibly higher. Six weeks after the NSC was written into law in 2018, the first known death under liuzhi was reported. It is also asserted that an average of 16 to 76 people is placed into the new liuzhi detention system and, thus disappeared every day. The sources argue that the NSC system and its use of enforced or involuntary disappearances through liuzhi is seemingly designed to deprive the suspects of protections within Chinese law [388].”

China responded to this charge by claiming that stays supervised under liuzhi are one of the statutory supervision measures provided for by the Supervision Law and do not constitute secret detention, and that their applicable conditions, examination and approval procedures, time limits and the protection of the rights of the persons subjected to such supervision are all openly and clearly stipulated by law. However, the WGEID has expressed concern that, “While the information provided indicates that families must be notified of the liuzhi measures, it does not indicate whether notification includes information on the individual’s place of detention or on detainees’ access to family visits or their right to legal counsel [387].” The WGEID reiterated that accurate information on an individual’s place of detention, including all transfers, must be made promptly available to his or her family members; failure to do so can constitute an enforced disappearance [387].

In 2015, five Hong Kong residents who were associated with local publisher Mighty Current and Causeway Bay Books went missing and then reappeared one month later in Chinese custody [389]. One of the five booksellers said that he was kidnapped by “special forces” after crossing the border into mainland China from Hong Kong, and that he was detained in a small room [389].

In China, human rights defenders have been targeted. On 12 March 2020, the UN special procedure mechanisms jointly sent an urgent appeal concerning allegations of arbitrary detention and risk of ill-treatment or torture of Shao Zhongguo, as a reprisal for his activities as a human rights defender, and his association with Gao Zhisheng, a human rights defender whose fate and whereabouts are currently unknown [390].

There is also a pattern of disappearances of Taiwanese citizens in China. According to statistics presented by the Straits Exchange Foundation (SEF) in Taiwan, 149 cases of Taiwanese citizens were missing in China between 2016 and 2019 [391]. Of the 149 cases, 82 people have been accounted for, but 67 cases remain unsolved with no information as to the missing people’s whereabouts. The SEF reported that the disappearances were mostly related to death, detention, or serious injury, but for the 67, the information is either insufficient or has been withheld by the Chinese government [391]. At least four people have disappeared since 2017 on suspicion of spreading information that offends Chinese leaders, and Taiwanese activist Lee Ming-che was disappeared in China in 2017 and was later found to be detained in China [391].
In the context of human trafficking, numerous cases of forced or involuntary labor have been reported in China, affecting internal trafficking victims and international migrant workers. It has been reported that, in rural areas, women are still being lured by false promises of good jobs and a better future, only to be trapped in forced marriages, with some cases constituting sex trafficking and forced labor. In 2009, China ratified the UN Trafficking in Persons Protocol and set about implementing laws and regulations to prohibit human trafficking.

China should change course concerning human rights, in tandem with its growing economy and political influence in the international community. It should actively seek to eradicate enforced disappearances. Human rights violations must stop immediately.

**ii. North Korea**

Enforced disappearance is a key human rights issue in North Korea, a country which is not always viewed in a human rights context [392]. The most common perception of North Korea tends to be as a regional and global security threat. Additionally, humanitarian crises have drawn international attention, with pictures of starving, under-nourished children, and statistics showing the great number of refugees in China and the continuous suffering caused by food shortages. Because of these circumstances, the human rights issue has often been downgraded by the international community, even though there is abundant and compelling evidence of grave human rights violations in the country. Torture, extrajudicial killing and disappearances, suppression of freedom of expression and association, and other breaches of fundamental human rights are widespread and systematic [393].

Article 182 of the Criminal Procedure Act provides that, when a decision on arrest and detention is made, the examiners should notify the accused of the decision, and should also inform the family or his or her work unit within 48 hours of the reason for the detention and the place where the person is held. However, this provision is not fully enforced. Especially, if a person commits “anti-state” or “anti-nation” offenses or happens to be related to political offenders, they may be sent to a special facility called kwanriso. Political offenders who are not sent to a regular prison, but to kwanriso are treated in two different ways. Those accused of serious political crimes are believed to be sent to a “completely controlled area” of a kwanriso. On the other hand, those who are accused of minor political offenses or who are simply related to serious political offenders are sent to a “special dictatorship area” or a “revolutionizing area” of kwanriso without going through an actual criminal trial process. In the many enforced or involuntary disappearance cases being reported in North Korea, the fate and whereabouts of arrestees are generally not known to their families, which serves as grounds for widespread fear of the penal process.

The United Nations has appointed a Special Rapporteur on DPRK human rights since 2004 [394], and, in March 2013, the UN Human Rights Council established the Commission of Inquiry on Human Rights in the DPRK to investigate the systematic, widespread, and grave violations of human rights [395]. The Report of the Commission of Inquiry was submitted to the UN Human Rights Council on 17 February 2014, which recommended that the UN Security Council should refer crimes against humanity in North Korea to the International Criminal Court [396]. North Korea customarily responds to such international criticism with a flat denial.

North Korea has been blamed for the abduction of Japanese nationals in the 1970s, while large numbers of South Korean citizens have raised enforced disappearance cases against North Korea, some of which date back to the Korean War. Disappearances have occurred across North Korea’s borders with South Korea, Russia, China, and Japan. The majority of abductees who remain in the DPRK are fishermen who were taken by force at sea. Others include office workers, passengers of a commercial Korean Air flight, vacationing teenagers, members of the South Korean Navy, Vietnam War POWs wrongly repatriated to the DPRK, and at least one government inspector. In almost all these cases, guns or the threat of violence were used by DPRK forces to abduct ROK citizens [397].

Against a backdrop of campaigns for denuclearization, and peace negotiations undertaken through North Korea-South Korea Summits and North Korea-US Summits, there has been concern that human rights issues in North Korea have not been properly considered. The UN Special Rapporteur on DPRK Human Rights, Tomas Ojea Quintana, wrote in his 2019 report, “Despite the fact that there is no sign of improvement in the situation of people’s human rights in the DPRK, human rights considerations have not been part of the agenda in the peace talks to date.” He emphasized that “peace, if achieved, will be significant for the citizens of the DPRK only if it guarantees them an improvement in the exercise of their most fundamental rights.”
The WGEID reported that it had dealt with 43 cases in the DPRK in its 120th Session in February 2020, and, as of 2020, it has around 275 outstanding cases of alleged disappearances related to the DPRK. The WGEID has also reiterated its serious concern regarding lack of cooperation, including identical replies it continues to receive in relation to transmitted cases. It has demanded that North Korea carry out investigations, including searches, in order to clarify the fate or whereabouts of disappeared persons, and provide precise information.

North Korea cannot completely deny human rights criticisms. However, it generally responds with a categorical rejection to international calls related to human rights, arguing that human rights criticisms are based on inaccurate information from hostile forces [396].

North Korea seems to be following the example of China in terms of dealing with human rights issues. It amended its Constitution in 2009, adding a reference to human rights in the same way as China. Article 8 of the amended Constitution provides that “the State shall defend the interests of the workers, peasants and working intellectuals and respect and protect their human rights.” In the same vein, in 2006, the Criminal Procedure Act of North Korea added Article 5, which stipulates that, “The State should thoroughly protect human rights in dealing with criminal cases [236].” North Korea adopted a number of recommendations made during the UPR in May 2014, in contrast to its flat rejection in 2009. However, no real progress has been made in resolving enforced disappearance cases.

North Korea is repatriating some human remains to the United States and South Korea. The US Government has been trying to recover US human remains from the Korean War (1950-1953). According to the US Defense POW/MIA Accounting Agency, more than 7,200 Americans are unaccounted for from the Korean War [398]. In the Singapore Summit in 2018, US President Donald Trump and North Korean President Kim Jong-un agreed to repatriate identified bodies, and 55 boxes of human remains were returned by North Korea in July 2018. In the same vein, in the North-South Korean Summit held in September 2018, both governments agreed to a joint operation to recover remains in the Demilitarized Zone (DMZ) in Korea [399].

Southeast Asia

i. Socialist Republic of Vietnam

After the end of the Vietnam War/American War in 1975 the United States Government (USG) maintained that more than 2,200 individuals had not returned to American soil [400]. These personnel (military as well as some civilian contractors) were categorized in various administrative ways depending on the circumstances in which they were lost. The main categories were: Killed in Action (KIA), Missing in Action (MIA), Last Known Alive (LKA) and Prisoner of War (POW) [401].

In the 1970s and into the 1980s the US Department of the Army-Central Identification Laboratory, Hawaii (CILHI) was tasked with locating and identifying remains of these service members and personnel. However, it wasn’t until the late 1980s that more effective efforts to locate the missing took place in the Socialist Republic of Vietnam (SRV). This was achieved via Joint Field Activities (JFAs) with a newly formed collaboration between the USG and the Vietnamese Office Seeking Missing Persons (VNOSMP).

The VNOSMP was formed in 1973 and is made up of representatives from the Ministry of National Defense (MND), the Ministry of Public Safety and the Ministry of Foreign Affairs [402]. However, it wasn’t until 1988 that the USG and the VNOSMP launched their first JFA. Since then, the USG and the SRV have had increasingly closer ties. The VNOSMP and the US Department of Defense, via the Defense POW/MIA Accounting Agency (DPAA) work closely together on the issue of accounting for the missing and the USG reports only approximately 1,500 [400] individuals are still missing from the conflict (this includes Vietnam, Laos and Cambodia).

The legacy of missing persons has had a profound and long-term impact on Vietnam, affecting society as a whole, and societal well-being and development, including economic development, as well as families of the missing. A more inclusive approach to the missing within Vietnamese society in the context of democratization has been a significant development in overcoming past division [403]. By 1975 there had been more than one million casualties from the American War, with an estimated 300,000 [404] members of the Vietnamese military still missing. The SRV has initiated a program to attempt to identify these individuals. From 2013-2018 initiatives to gather and identify remains of Martyr’s from the American War
were carried out at the behest of Deputy Prime Minister Vũ Đức Đam. The initial efforts were coordinated by the Ministry of Labor – War Invalids and Social Affairs (MoLISA) and the Ministry of National Defense (MND), particularly their DNA laboratory components. During this time the Vietnamese Academy of Science and Technology (VAST) also became involved in the nascent efforts to identify the remains of missing Vietnamese citizens.

The challenge before the SRV is a daunting one. With so many missing, the scientific technological capacity and policy goals need to be closely aligned. However, recent collaborations between MoLISA, the MND, VAST, the VNOSMP, the United States Agency for International Development (USAID), and now, the International Commission on Missing Persons (ICMP) have refocused the effort to implement a multi-disciplinary approach to this large-scale human identification project. The collaboration is expected to result in a technology transfer and capacity building of Vietnamese institutions so that this expertise can be applied in the Vietnam context.

**ii. The Philippines**

The Marcos dictatorship, from 1972 to 1986 [405], resulted in gross human rights violations, including political detentions, killings, extrajudicial executions, and enforced disappearances [397]. According to Amnesty International, more than 1,600 people were victims of enforced disappearance in the Philippines between the 1970s and 2007 [406]. Many disappearances took place in the context of counter-insurgency operations against the New People’s Army (NPA), and the Moro Islamic Liberation Front (MLF) and other Muslim secessionist groups. Victims of enforced disappearance include political sympathizers of these groups [406]. The perpetrators of the disappearances were reported to include the armed forces of the Philippines, the Philippine Constabulary/Integrated National Police, the Philippine National Police, the Citizen Armed Force Geographical Unit, the Integrated Civilian Home Defense Forces, the National Bureau of Investigation, and government officials and unidentified state agents, as well as vigilante and extremist groups [397]. Local activists raise concerns that a perceived climate of impunity protecting perpetrators linked to security forces has contributed to renewed patterns of disappearances [406].

In 2012, the Philippines passed the Anti-Enforced or Involuntary Disappearances Law (Republic Act 10353) after years of lobbying by civil society organizations led by Families of Victims of Involuntary Disappearance (FIND). The law adopted the definition of enforced disappearance in the CED, and it distinguishes enforced disappearance from the crime of kidnapping and serious illegal detention. The law also considers enforced disappearance as a continuing crime, and it provides for restorative justice, pecuniary compensation, restitution of honor and psychological rehabilitation for victims and offenders [397]. However, due to the strong climate of impunity, the total number of reported enforced disappearance cases during 2014-2017 stands at 75. There have been no convictions under the Anti-Enforced or Involuntary Disappearance Law because of the Department of Justice's refusal to recognize the continuing character of enforced disappearances [407]. In the meantime, at least 41 lawyers and 21 judges are reported to have been killed between 2001 and 2015, including Judge Wilfredo Nieves, whose murder was believed to be in relation to his sentencing of a criminal gang leader. AFAD 2018 report

Since Rodrigo Duterte assumed the Presidency in 2016, systematic human rights violations have taken place in the country under the "war on drugs." AFAD 2018 report Extrajudicial killings, enforced disappearances, and torture and ill treatment of individuals are taking place. According to the Philippine Alliance of Human Rights Advocates (PAHRA), “Duterte effectively defined a particular section of Philippine society worthy of elimination which he regards as ‘not part of humanity’ by dehumanizing drug dependents and petty drug peddlers in public through fear mongering and spurious statistics, thereby fomenting popular hatred towards this ‘inconvenient’ sector [407].” Human rights defenders have been maligned as protectors of criminals, encouraging criminal activities and posing obstacles to development [407]. On 23 May 2017, President Duterte declared martial law and suspended the writ of habeas corpus in the whole of Mindanao. Martial law in Mindanao has resulted in massive internal displacement, thousands of deaths, torture, mass arbitrary arrests, destruction of the social fabric and disregard for political and traditional mechanisms in many areas [407]. There have been reports of looting by the military, cases of profiling and vilification, enforced disappearance, torture, extra-judicial killings and harassment [407]. The Philippines has yet to ratify the CED, and the Anti-Enforced or Involuntary Disappearances Law has not been properly implemented. As a result, human rights defenders experience extreme difficulty in documenting disappearance cases amid a climate of fear.
iii. Thailand

Thailand has experienced a succession of unrepresentative, military-dominated governments since the end of the absolute monarchy in 1932. No regime was able to survive for any length of time without the interest, articulation and participation of the monarchy, bureaucratic elites and military cliques [407]. After successive coups and democracy movements [408], a progressive constitution was adopted in 1997 [378]. On 19 September 2006, a military coup ousted Prime Minister Thaksin Shinawatra from office, and the 1997 constitution was abrogated. In 2002, the People Power Party (PPP) won the election, and the 2007 constitution removed these changes. Nevertheless, the constitution has a new provision, which enshrines the rights and liberties of the armed forces, the police force and government officials. This pro-military stance embedded in the constitution explains the continuing influence of the military in politics [378]. After the general election of 2011, the Pheu Thai Party won a majority, and Yingluck Shinawatra, Thaksin’s younger sister, became prime minister. Yingluck was removed from office by a court ruling in May 2014 and in the same month there was another military coup. In the 2019 general election, a coalition led by the Palang Pracharath Party secured a majority.

To date, the WGEID has recorded 82 cases of enforced disappearance in Thailand since 1980, including that of prominent Muslim lawyer Somchai Neelapaijit in March 2004. Successive governments have failed to make progress in resolving cases of enforced disappearance. The enforced disappearance of more than 20 people since the escalation of political violence in southern Thailand in 2004 has not been fully investigated. Further, perpetrators have not been brought to justice for killings and enforced disappearances during a military crackdown on pro-democracy demonstrators in Bangkok in May 1992. The National Legislative Assembly has approved proceeding with the ratification of the CED, which Thailand signed in 2012 [409]. The Government has also announced that it will ratify the CED and enact a law to criminalize torture and enforced disappearances. However, Thailand has not yet ratified the treaty or provided a timeframe for doing so.

There are also concerns that human rights defenders attempting to conduct investigations and document individual cases of enforced disappearance face serious obstacles, including death and other threats [406]. Harassment, intimidation, raids on homes, arrests, criminalization, and extrajudicial killings of human rights defenders are continuously reported.

iv. Myanmar

On 1 February 2021, the military launched a coup that overthrew the democratically-elected government led by Aung San Suu Kyi’s party, the National League for Democracy (NLDP). The military proclaimed a state of emergency and Commander-in-Chief Min Aung Hlaing seized power. Many prominent members of the NLDP were arrested. A mass movement against the coup began with peaceful demonstrations before showing signs of developing into guerilla-style resistance.

More than 700 people have been killed by the military according to the Assistance Association for Political Prisoners, and thousands more are reported to have been arrested or attacked during the protests. The military is committed to suppressing popular opposition, and the police have responded with unrestrained violence to those demanding freedom of expression and the restoration of democracy. Police actions have included the systematic humiliation of detained demonstrators, who have, for example, been forced to crawl on all fours.

The United Nations and governments including the United States have condemned the atrocities committed by the military in Myanmar. UN human rights experts have urged the military to restore democracy, immediately end the violent crackdown on peaceful protests occurring countrywide and allow freedom of expression. They have warned that those who are responsible for the repression and killing of peaceful protesters, as well as the detention of government officials and journalists, will be held accountable in international jurisdictions. Following the coup, the WGEID began receiving reports of enforced disappearances from the families of victims. Human Rights Watch reported on 1 April 2021 that Myanmar’s military junta had forcibly disappeared hundreds of people since the coup [410].

The military authorities have shown no sign of moderating their brutal crackdown. Nor has there been any weakening of the resolve of the civil disobedience movement and other facets of opposition to the coup. As of 10 May 2021, UN High Commissioner for Human Rights Michelle Bachelet asserted that the security forces, using unnecessary, disproportionate and lethal force to suppress demonstrations and other forms of public participation, had killed at least 782 individuals since the coup. She urged states with influence over Myanmar’s leaders urgently to apply concerted pressure on the
military to halt the commission of grave human rights violations and possible crimes against humanity [411]. Myanmar is likely to end up with a plethora of cases of enforced disappearances, torture, arbitrary detention, and murder if the present situation continues.

Myanmar has also been criticized for abuses perpetrated by its security forces against ethnic Rohingya. The arrest of journalists under the 1923 Official Secrets Act appears to have been aimed at stopping independent reporting of the ethnic cleansing campaign against the Rohingya [412]. The secret, incommunicado detention of journalists has also been heavily criticized [412]. The WGEID has expressed its concern at the scale of enforced disappearances in Myanmar, and proposed that an independent international fact-finding mission on Myanmar should be established (A/HRC/39/64, paras. 2, 63 and 88) [413].

The international community should act swiftly to find a way to end the violent crackdown in Myanmar and restore democracy.

v. Indonesia

In 1957, 12 years after independence, Indonesia abolished its elected parliament in favor of a dictatorial ‘guided democracy’. The country adopted international human rights norms in a constitutional amendment in 2000.

Between 1965 and 1967, massacres were perpetrated against alleged members of the Communist Party of Indonesia, many of whom were victims of enforced disappearance. Surviving families have been stigmatized because of their association with those who were massacred. According to the Asian Legal Resource Center (ALRC), the enforced disappearances of 13 student activists in 1997-1998 remain unsolved [414]. These enforced disappearances were reportedly conducted by the military, police, intelligence agencies, and other state agencies, and Prabowo Subianto, former commander of the Special Armed Forces, who is accused of being responsible, is currently serving as Minister of Defense, while the families of the victims continue to suffer.

The National Commission on Human Rights has been urged to document, investigate, and report all cases of enforced disappearances since 1965, and to ensure government support for the effort to resolve disappearance cases. However, the government has not made any concerted effort or any progress in solving enforced disappearance cases [397].

Although President Joko Widodo has expressed his commitment to settling past cases of human rights violations, including cases of enforced disappearances, civil society organizations report the continuing curtailment of fundamental freedoms including freedom of speech, freedom of assembly and freedom of religion. The culture of impunity is still strong in Indonesia. Despite repeated government commitments and recommendations by the Human Rights Council in the Universal Periodic Review (UPR), the country has not yet ratified the CED.

South Asia

i. Sri Lanka

Sri Lanka, which experienced more than three decades of domestic conflict, has one of the highest numbers of disappearance cases in the world. As the WGEID reports, enforced disappearances have been used in a massive and systematic way to suppress political dissent, to advance counter-terrorist activities, and in the internal armed conflict [415]. Some enforced disappearances have been carried out for purely economic reasons, including extortion by some state officials and affiliated paramilitaries, according to Amnesty International. The mass disappearance of those who surrendered at the end of the country’s armed conflict is a clear indication of the institutionalization of the practice, with the state concealing the fate and whereabouts of the missing [416, 417].

ICMP’s Report on the Study Visit and Seminar for the Office on Missing Persons of Sri Lanka (2018) [377], which asserts that a state bears an obligation when missing persons cases occur, to conduct comprehensive and effective investigations of human rights abuses, regardless of who committed violations and abuses [377], also emphasizes that disappearance can constitute a continuing breach of fundamental human rights of both the missing persons and their family members [377]. ICMP also categorizes some missing persons and disappearance cases as enforced disappearances, defined as international
crimes under the CED, the Rome Statute of the International Criminal Court (ICC), and the UN Declaration on the Protection of all Persons from Enforced Disappearances (1992) (UN Declaration) [377]. ICMP cites enforced disappearance as a grave abuse of rights including violation of due process and prohibition of torture, inhuman and degrading treatment and violation of the right to a family life and the right to recognition as a person before the law [377].

The WGEID has transmitted communications concerning more than 12,000 cases of enforced disappearance to the Government of Sri Lanka. A large number of cases before the Working Group concern disappearances that occurred in the late 1980s and early 1990s, and a considerable number relate to the disappearance of Tamils throughout the armed conflict between government forces and the LTTE, which ended in May 2009 [415]. Other types of enforced disappearance include so-called "white van" disappearances, disappearances in the context of anti-terrorism operations, disappearances conducted for ransom or economic extortion or a combination of all three. A large number of abductions carried out by the LTTE are tantamount to enforced disappearances and should be properly investigated and sanctioned in accordance with international standards [415].

There have been some positive developments. For example, the Sri Lankan government ratified the CED in 2016, and ratification was followed by the setting up of the Office on Missing Persons [407]. Progress has been very slow, however [415], and, in February 2020, the Sri Lankan government withdrew from the UN Human Rights Council’s resolution 30/1, which the previous government had co-sponsored, to promote reconciliation, accountability and human rights in the country. In addition, a climate of impunity and the slow pace of criminal investigations and lack of progress on a small number of emblematic cases have been raised as concerns [418].

Unfortunately, Sri Lanka may now be showing signs of a regression from earlier commitments. Gotabaya Rajapaksa won the presidential election in November 2019, and the party supported by the Rajapaksa family won a parliamentary majority in August 2020, and former president Mahinda Rajapaksa became the new prime minister. As a result, the prospect of confronting abuses perpetrated in previous decades seems to be disappearing. Sri Lanka has begun to backslide on its efforts to end the suffering that is a legacy of enforced disappearances, and the Government is weakening initiatives previously launched to search for and investigate enforced disappearances.

ii. Bangladesh

Enforced disappearances have continued to occur with alarming frequency in Bangladesh amid a tense and highly polarized political environment. At least 92 people were believed to have been subjected to enforced disappearance by the authorities in 2018 – bringing the total number of cases documented since the beginning of 2009 to 507. The highest number of cases of enforced disappearance were recorded in 2016 and 2018 [418]. These included cases for which human rights activists have been able to collect corroborating testimony by family members and witnesses. Although enforced disappearances have occurred in Bangladesh since the country’s independence and under successive governments, including military-controlled emergency governments in 2007 and 2008, the media, independent human rights defenders, and local civil society organizations began the systematic monitoring and documentation of enforced disappearances when the number of such cases dramatically increased starting in 2009. 42

According to the WGEID, 507 cases of enforced disappearance were documented from January 2009 to the end of 2018, and 62 of the disappeared were reportedly found dead; 286 returned alive; and the whereabouts of 159 disappeared persons remained unknown [419]. The substantial rise in enforced disappearances has been accompanied by an increased pattern of targeting political opponents and other dissidents often in the framework of the government’s anti-terrorism policy. The WGEID emphasized that the widespread impunity of state agents has not only permitted this rise in enforced disappearances and associated crimes, it has greatly eroded the rule of law in Bangladesh. The Rapid Action Battalion (RAB), a joint task force composed of members of the police, army, navy, air force, border guards, and Ansar (a paramilitary auxiliary force), is cited as the alleged perpetrator of violations including enforced disappearances [419]. The overall political and human rights situation in Bangladesh is worsening, and the incidence of enforced disappearances has escalated in tandem with continuous government denial and refusal to take steps to account for those who have disappeared [407].

42 While it may be impossible to say for certain that all of the reported cases of individuals who have gone missing are indeed cases of enforced disappearances, solid evidence points to the fact that a great majority of them are, in fact, enforced disappearances. See FIDH, Vanished Without A Trace: The enforced disappearance of opposition and dissent in Bangladesh (2019).
iii. Pakistan

More than a thousand enforced disappearance cases in Pakistan have been submitted to the WGEID. The State Commission of Inquiry on Enforced Disappearances has recorded 1,874 cases that remain unresolved. Several hundred enforced disappearances have taken place in the context of the “war on terror” since 2002, but there are also long-standing cases from the beginning of President Pervez Musharraf’s rule in 1999 that remain unresolved.

The authorities in Pakistan are blamed for systematic enforced disappearances in Sindh, in Pashtun areas, and in Balochistan. Enforced disappearances of people from Pakistan-Administered Kashmir are also reported; these cases include prolonged secret detention. Victim groups allege that Pakistani intelligence agencies are responsible for disappearances, and there are fears that people subjected to enforced disappearances from Pakistan-Administered Kashmir may have been detained in military-run internment centers in Pakistan. Those who were released from detention were intimidated into silence about their experience. Many detainees in Pakistan have reported being tortured and otherwise ill-treated while subjected to enforced disappearance [406].

Concerns have also been raised about the harassment of relatives of the disappeared. Families are reportedly pressured to drop allegations or to change complaints to state that “unknown persons” took their relatives, rather than state officials. In January 2017, five human rights defenders went missing after being subjected to suspected enforced disappearance by security forces. The Defence for Human Rights organization registered 147 disappearance cases in 2018 [407].

Following the election of Imran Khan as Prime Minister in August 2018, there have been some positive expectations. The Senate of Pakistan passed Resolution No. 398 on 30 August 2018 acknowledging the need to criminalize enforced disappearance by ratifying the CED, and to ensure the right to the truth, to justice, and non-recurrence. During the third UPR cycle in November 2017, 12 countries recommended Pakistan’s ratification of the Convention [407]. However, Pakistan has not yet ratified the CED.

iv. India

Since gaining independence from Britain in 1947, India has been considered a democracy. However, the international human rights community has identified failings in the country’s application of the rule of law.

Many human rights violations including enforced disappearances are commonly reported in Indian-Administered Jammu and Kashmir. Amnesty International reports that, in Jammu and Kashmir, almost 4,000 people have disappeared since the onset of armed conflict across the state in 1989 [406]. AFAD’s 2018 Report cited 8,000 cases of disappearance from 1989 until 2012 [407]. The WGEID cited 426 outstanding cases in India in its 2020 Annual Report. The WGEID also raised serious concerns about the lack of progress in addressing cases of enforced disappearance in Jammu and Kashmir.

Enforced disappearances were regularly reported in Punjab during the period of violent political opposition in the 1980s and 1990s, and have also been reported in Northeast India [406]. India signed the CED on 6 February 2007, but has not yet ratified it.

v. Nepal

The ten-year conflict between the government and the Communist Party of Nepal (Maoist Center) ended with the signing of the Comprehensive Peace Agreement (CPA) in May 2006.

The conflict cost an estimated 17,265 lives and resulted in 1,327 cases of enforced disappearance. The ICRC in Nepal says it has documented more than 800 people whose whereabouts remain unknown at the hands of both the government and the Communist Party.

A Truth and Reconciliation Commission (TRC) was established by the government on 10 February 2015 in accordance with the Enforced Disappearances Inquiry, Truth and Reconciliation Commission Act of 2014 [406]. The Commission of Investigation on Enforced Disappeared Persons (CIEDP) was also formed in 2015. The TRC and CIEDP had the primary objectives of resolving conflict issues and providing transitional justice to war-era victims [407]. Victims and civil society groups, however, have criticized the absence of substantial progress in addressing the issues these agencies have been tasked to address.
On 13 January 2020, the government conducted province-level consultations with victims and civil society organizations regarding amendments to the transitional justice law, and new office bearers of the TRC and CIEDP were appointed on 18 January 2020. Nepal has also enacted a new Penal Code, effective from August 2018, in which, for the first time, enforced disappearance is recognized as a distinct crime.

Nepal continues to undergo a political transition but efforts to search for missing persons and investigate perpetrators and resolve cases of enforced disappearances have been slow. Human rights abuses and violations continue, and victims are still waiting for justice and reparation [397].

On 15 October 2020, Nepal's National Human Rights Commission (NHRC) reported that out of 286 individuals the Commission said should face legal action, only 30 had been held accountable [420]. Of 1,195 recommendations made by the Commission over the last 20 years, the government has failed to act on half, and only 163 recommendations have been fully implemented.

**The Pacific**

Enforced disappearances in the Pacific island states are rare. There are no known enforced disappearance cases in Australia and New Zealand. Australia has incorporated in its Criminal Code the crime of enforced disappearance of persons as part of the crimes against humanity defined in the Rome Statute of the ICC. Neither Australia nor New Zealand has ratified the CED, but New Zealand has promised to consider acceding to the CED, in accordance with its domestic processes in the third cycle of its UPR.

Cases of missing persons are more common in the two countries for other reasons. Australian Federal Police statistics indicate that about 38,000 people are reported missing in the country every year [421]. About 64 percent of reports are resolved within 24 hours. Eighty-six percent are resolved within a week and 99 percent are resolved within a year with the help of the community [421]. Around 51 percent of missing persons are male and 49 percent are female. Young people aged between 13 and 17 make up the highest demographic, accounting for 49 percent of cases. Aside from teens, the biggest groups of missing people are those with mental health issues and intellectual or physical disabilities [421]. In New Zealand, more than 8,000 people are reported missing each year. Nearly all are located within two weeks [422].

In Papua New Guinea, during the 1989-1997 civil war in Bougainville, up to 20,000 people were killed, and a large number of those who disappeared during the violence remain unaccounted for [423]. The Papua New Guinea authorities have finalized a policy on missing persons, and some detainees have received family visits facilitated by the ICRC [424]. In Fiji, natural disasters and weather patterns have been a major cause of casualties, including missing persons [424].

There is a high rate of missing aboriginal people, particularly women, in Australia. Reportedly, Aboriginal women are 17 times more likely to suffer a violent death compared to non-Indigenous women.43 As indicated at the beginning of this chapter, persons belonging to minorities and indigenous peoples, in particular women, are subject to vulnerabilities and abuse that needs to be much more closely analysed than has been the case to date.

**CONCLUSION**

Why has the practice of enforced disappearance not been eradicated in Asia and the Pacific? There are many factors. One reason is that governments ignore state obligations, including the obligation to investigate cases and search for the missing, the obligation to protect the rights of victims and their families, and the obligation to uphold the right to truth, justice, non-recurrence and memorialization.

Some leaders and some regimes act in the mistaken belief that they are entitled to do anything to maintain their power in the name of sovereignty. This includes using enforced disappearance as a repressive tool.

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43 For a first international case study that compares missing and murdered Indigenous Australian women to missing and murdered Indigenous women in Canada and the US see: ‘Why isn’t this a national crisis’: Report calls for action on Indigenous women’s deaths | NITV(sbs.com.au)
However, under international law, States bear clear legal obligations in regard to missing persons and victims of enforced disappearance. First of all, States bear an obligation, under international human rights law and international humanitarian law, to take appropriate steps in order to account for those who are missing. Second, States bear an obligation to investigate the crime of enforced disappearance. Third, states bear an obligation to provide victims and their families with remedies including ensuring the right to truth, compensation, non-recurrence, and memorialization.

The right to life in particular rests on the procedural guarantee that abuses will be officially investigated irrespective of whether such abuses are considered attributable to actions or omissions by the State [424]. States have obligations to ensure and respect the rights of everyone within their territory and subject to their jurisdiction, power and effective control. This entails that not only its citizens but "all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State" are entitled to all human rights [425].

In May 2019, the Committee on Enforced or Involuntary Disappearances adopted Guiding Principles for the search for disappeared persons [426]. Relying on the CED, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147), the updated Set of Principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), the general comments of the WGEID and the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), the Guiding Principles emphasized the state’s obligation to search and prescribed the principles that States should follow in the process of searching for missing and disappeared persons.

In August 2020, the WGEID released the Report on Standards and Public Policies for an Effective Investigation of EnforcedDisappearances [427]. It emphasized that an effective investigation of enforced disappearances must include information about the fate and whereabouts of disappeared persons, the circumstances of their disappearance and the identity of the perpetrators. Such an investigation is not only required under the State’s international obligations, but is the best way of effectively combatting impunity and realizing the right to truth, for victims and for society as a whole.

In order to eradicate the practice of enforced disappearance, Asian countries must take their obligations and responsibilities seriously and reject a culture of impunity. They must also understand that their domestic systems of criminal law are not sufficient to deal with this crime. Enforced disappearance is a continuous crime that can only be addressed effectively through a comprehensive approach.

The contexts and patterns of enforced disappearance in Asia-Pacific countries are not uniform. In many Asian states there is an inadequate understanding of the nature of the crime, and often a belief that this issue is not relevant to a given country. This is compounded in some states by the absence of an independent judiciary, and limited scope for action by lawyers, human rights defenders, and civil society actors to check the otherwise unrestrained power of agents who carry out enforced disappearances.

One of the most tragic dimensions of this crime is that suffering is often inflicted by people who are known to the victim. Enforced disappearance is a serious crime that violates basic human precepts. The pain of family members does not end until they find out the fate and whereabouts of their loved ones. Mothers look for children, wives look for husbands, and children look for parents – it is an endless chain of tragedy and it continues today.
INTRODUCTION

Missing persons cases are a global phenomenon that exists on a shocking scale. As amply outlined, described and analyzed in all five preceding regional reports, persons go missing during armed conflict, migration, as a result of systematic human rights abuses, disasters or organized crime. The reports paint stark and often harrowing pictures: the many missing persons cases arising from migration hotspots and routes in the MENA region; missing persons as a result of trafficking, particularly in relation to women and children, in African states; hundreds of unresolved missing persons cases as a legacy of armed conflict in the Balkans; the remarkable activism of mothers and relatives in spurring on the development of frameworks for investigation, legislative developments and redress in Latin America; and the impact of natural disasters, such as the 2004 tsunami, amid a plethora of causes for persons going missing in Asia.

The reasons for persons going missing are undoubtedly diverse, as reflected in the broad mandate of the International Commission on Missing Persons (ICMP). Places, circumstances and reasons may all differ. However, this Global Report highlights a commonality: a family or community suffering from anguish and grief as a result of their loved ones going missing. They need answers and have the right to know the truth what happened to those that went missing. This, as reflected in the many chapter recommendations, requires first and foremost clear action by the State, which has obligations primarily to protect individuals and resolve the fate of missing and disappeared persons.

But there is another common challenge arising from the chapters’ stocktaking exercise, that of accurately quantifying and measuring the scale of missing persons cases at country level. A lack of coherent statistics, data and essential context information on institutional structures and processes renders it difficult, if not impossible, to assess to what extent rights attaching to missing persons and their families are safeguarded and what the scale of the problem is. While all reports have drawn on many data sources, there is a continuing need for coherent linkage between the data points.

Based on the premise that such information is not only desirable and beneficial but indeed essential in the quest to better understand missing persons cases across the globe, this chapter presents a first conceptual sketch on how rights attaching to missing persons cases might be rendered more connected and measurable. To achieve this, the development of missing persons indicators is proffered and explored. Accordingly, the chapter begins (1) with a brief overview of what data sources are readily available, before (2) offering an appraisal of the rationale for indicators. This is followed (3) by an outline of the core legal framework that governs the subject of missing persons. Finally, (4) the chapter presents a first attempt at concretizing what missing persons indicators might look like.

PART 1: MISSING PERSONS DATA

International mechanisms and institutions as providers of data

At an international level, a number of organizations gather and hold information on missing persons cases. The International Commission on Missing Persons, with its broad mandate on the subject of missing persons operates an Online Inquiry Center whereby it can capture reports of missing persons. The International Committee of the Red Cross has its Missing Persons Project, primarily to develop technical standards and expertise on the subject; it also operates a Central Tracing Agency. Depending on where both organizations are operational, detailed information and statistics on missing persons cases, successful investigations and resolution can be ascertained.

A further key actor in relation to missing persons is INTERPOL through its Yellow Notices, a searchable public database for missing persons and its well-established Disaster Victim Identification approach [428]. A most valuable resource in ascertaining global figures tracking deaths along migratory routes and persons going missing when crossing State borders,

The author expresses her gratitude to Dr Luke Nwibo Eda for his advice on human rights indicators.
is the International Organization for Migration’s Missing Migrants Project where data is compiled based on estimates from IOM, national authorities and media sources.45

Also noteworthy are the various international and regional fora where victims are seeking redress for rights breached. For a number of key international human rights treaties, such as the International Covenant on Civil and Political Rights or the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for example, so called “Treaty Monitoring Bodies” have been established to further compliance of State Parties. They also enable individual victims who suffered human rights violations to file a complaint against State Parties to the respective treaty subject to the State recognizing the Committee’s competence. Regional human rights bodies are tasked with safeguarding human rights protection. They comprise the European Court of Human Rights; the human rights protection system of the Organization of American States with its interplay between the Inter-American Commission on Human Rights and the Inter-American Court for Human Rights; the Arab Charter on Human Rights; and the African Court on Human and People’s Rights, which seeks to complement the African Commission on Human and Peoples’ Rights.

Complaints may be lodged by individuals alleging their rights have been breached by the State. There are, however, strict admissibility requirements: Individuals who allege they have suffered violations of rights contained within the relevant human rights instrument can submit a complaint, provided that domestic avenues and remedies have been exhausted and the object of the complaint is not pending before another international jurisdiction. While not necessarily yielding quantitative data46, such cases do offer important qualitative assessments on whether a state has conducted an effective investigation, “based on thorough, objective and impartial analysis of all relevant elements” (Kukhalashvili and others v Georgia 2020, para 130) and on the harm suffered. In Velásquez Rodriguez v Honduras (on enforced disappearance) compensation was awarded to the family of the victim for loss of earnings, and pecuniary and moral damage, including emotional harm.

**Data on reporting and investigation**

States, through their structures, are arguably best placed to gather information on missing persons. The United Kingdom, for example, has a Missing Persons Unit and general advice on reporting a missing person is available through a dedicated government website.

When gross human rights abuses at state level are suspected, the number of persons found at illegal detention centers can give an indication of scale. During armed conflict the numbers of missing and displaced persons are often interlinked; statistics on those going missing in action should also be compiled. In circumstances of illegal migration, trafficking and organized crime, the relevant authorities should be able to track the numbers of individuals going missing in those circumstances as well as investigation efforts that follow.

The focus of this inaugural edition of the Global Report is to point to the systematic and complicated landscape of missing persons, often with staggering numbers. For completeness, it is however worth listing certain factors that may result in individual missing persons and with it sources of useful data. They include persons going missing as a result of lost documents, miscommunication, domestic abuse, absconding, mental health issues, asylum or refuge seeking or the start of a new relationship [429].

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45 For further information on the methodology employed by the IOM Missing Migrants projects and its sources see https://missingmigrants.iom.int/methodology.

46 Though interestingly, in the case of Aslakhanova and Others v Russia, the European Court of Human Rights pays attention to statistics saying: “As a rule, investigations of abduction in circumstances suggesting the carrying out of clandestine security operations do not reveal the fate of the disappeared persons. Despite the magnitude and gravity of the problem, noted in many national and international reports, the response to this aspect of human suffering by means of the criminal investigations remains inadequate. Thus, as attested by the statistics submitted by the Russian Government, the average rate of success in solving such crimes in Chechnya was 7.5%, falling to 3.5% in 2002 - the year when the largest number of disappearances occurred” (para 224). The case (concerning the practice of enforced disappearances in the context of the armed conflict in Chechnya) is further noteworthy for the Court’s recommendation that urgent steps should be taken, with the clear aim of “putting an end to the continued suffering of the relatives of the disappeared persons; conducting effective investigations into the cases of abduction unlawful detention and disappearance allegedly committed by servicemen; and ensuring that the families of the victims are awarded adequate redress” (para 221).
When information on missing persons is not forthcoming, the issue may be one of structures, capacity and/or political will, for the level of information provision is contingent on States having pre-existing structures to deal with the issue of persons going missing, whether in relation to conflict, human rights abuse, irregular migration or disaster. Where such a legal and institutional framework does not exist or has been compromised, the relevant data may not be gathered or may not be publicly available.

**Civil Society, victim groups and community information**

The needs of survivors to have their loved one’s fate revealed can be both overwhelming and enduring. It is therefore unsurprising that individual victims and victim groups may wish to influence and participate in processes to help access information and, where possible, participate in justice processes.

At a global level, a number of NGOs such as the International Center for Transitional Justice, Human Rights Watch and Amnesty International are reporting, monitoring and offering assistance following human rights abuses. This can include efforts to ameliorate the cause and alleviate the impact of persons going missing.

NGOs assisting with scientific-investigative work, such as forensic groups and digital, open source fact-finding organizations, can offer invaluable data and data sets. A growing body of literature testifies to the advances that digital evidence and technological documentation have made for human rights investigations (e.g. [430, 431], including in relation to the benefits of solving missing persons cases through the use of DNA (e.g. [432]).

Local, regional and national civil society groups are also instrumental in documenting missing persons cases, offering valuable support systems while seeking avenues for resolution of missing persons cases and redress. Crucial in this regard can be the activities by individuals, community leaders and victim groups in compiling lists of missing or deceased persons. The publication “Pursuing Justice for Mass Atrocities. A Handbook for Victim Groups” [433], an educational source for victim groups, suggests the following actions and benefits:

Victim groups may decide to record the number of people who have disappeared or been killed. They may keep a tally or even record victims’ names if it is safe to do so. Keeping these records not only can help communities memorialize what has happened but also could help data experts estimate the total number of victims. For example, it may shed light on the nature of the violence by demonstrating that a particular group has been persecuted and that the violence is not random or perpetrated equally by all sides. Because governments and armed groups do not typically keep detailed records of their crimes, this information would otherwise be difficult for outsiders to learn [433].

Undoubtedly, an accurate record of what happened and the impact it has on affected individuals and communities, can assist in putting pressures on the relevant authorities to investigate missing persons cases. But of course, such sources of information may be fragmented. Any attempts at integration inevitably raise data protection, privacy, ethics, safety and data security concerns and is contingent on the desire for collaboration and much needed trust. Missing Persons Indicators may serve as a conceptual avenue for seeking to integrate and carefully connect some of the data from disparate sources.

**PART 2: THE RATIONALE FOR MISSING PERSONS INDICATORS**

Human rights indicators have gained recognition as a useful tool in “articulating and advancing claims on duty-bearers and for formulating public policies and programs that facilitate the realization of human rights” [434]. Indicators serve to measure the extent to which policy objectives are achieved. Indeed, there is a need to better articulate, safeguard and measure the full range of human rights issues associated with missing persons. But what are indicators?

Indicators are commonly understood as an observable and measurable characteristic that evidence changes over time [435]. In the context of human rights, it is data (quantitative and qualitative) relevant to the enjoyment of specific human rights. To be meaningful, indicators should be valid, reliable, objective, precise and timely but also be clearly aligned with policy goals as well as feasible in the sense that generating or acquiring the data is not too resource-intensive [435, 436]. Finally, indicators should ideally be capable of disaggregation to ensure data can be disaggregated to measure non-discrimination and equality (this cross-cutting human right is very pertinent to missing persons cases).
Fundamentally the point and purpose of indicators is to help record information effectively and allow for links and patterns to become visible. To achieve this, the literature on the subject uses the following three indicator categories:

**Structural indicators:** Structural indicators examine the legal, regulatory and institutional structures in place. A state who has signed and ratified a human rights treaty has expressed commitment to a certain set of human rights. Therefore, the state should have domestic legislation, institutional mechanisms and policies to safeguard the right and secure redress when it is breached. Consequently, the UN Guide stipulates that structural indicators “focus first and foremost on the nature of domestic law in relation to a specific right – i.e., whether it incorporates the required international standards – and the institutional mechanisms that promote and protect those standards” [434].

Since the United Nations Treaty mechanism is much concerned with monitoring progress; that is, how states progress over time in their protection of human rights, a set of process indicators is suggested. Process indicators evaluate, for example, public programs designed to implement better human rights compliance; and budget allocation to address shortcomings or other specific measures taken by the state to implement commitment for a particular human right.

Finally, **outcome indicators** are designed to “provide summary information on the extent of realization of a human right” [437]. They assess, whether a right (or set of rights) is indeed “enjoyed” by the population. Outcome indicators are therefore results-oriented and measure the results that the State has achieved through its various regulations, policies, programs and activities.

Within the realm of the United Nations human rights mechanisms, the benefits of indicators are clear: they help with the monitoring process. A core activity of the UN Human Rights Council is the Universal Periodic Review whereby the human rights situation in member states is subjected to scrutiny. Indicators will assist states in evidencing and reporting and the reviewing body in its assessment.

The development of human rights indicators, as amply outlined in the UN Guide on the subject, requires a robust methodology; a methodology that fully considers all ethical, data protection and statistical issues that attach to the indicator selection. A clear understanding of data generating mechanisms is also required. Furthermore, due regard must be given to the ability to disaggregate data and the processes of identifying indicators are often predicated on detailed consultations with States and the relevant Treaty Monitoring bodies. Such detailed considerations on method are beyond the scope of this conceptual sketch. Nor is creating a tool to hold States to account the purpose of this exercise. The purpose of this outlook is distinctly more modest as it seeks to conceptualize indicators primarily as a tool to assist stakeholders in better understanding the global phenomenon, albeit from a rights-based perspective.

*With this limitation in mind, what might be the wider benefits of creating missing persons indicators?* At a foundational level, a better understanding of the legal framework a state has subscribed to, the structures that are in place at state-level, and an awareness of constraints and outcomes will benefit a number of stakeholders:

- First and foremost, any progress in collating such information will assist families of the missing in understanding their rights under international law, domestic law and how they are institutionally safeguarded (or not) at country level.

- In the regional reports the importance of civil society organizations, family organizations and community leaders in advocating investigations into missing persons cases and advancing the rights of families has been highlighted. Indicators would provide them with information that might contribute to optimizing their own strategies.

- States will benefit from a set of indicators that would assist them in optimizing their present commitments, legislation, and operationalization mechanisms to take forward and resolve missing persons cases. They can help highlight the need for specific assistance mechanisms or technical support required to fulfill state obligations.

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47 Non-discriminatory investigative approaches into missing persons cases ought to apply without adverse distinction and regardless of political or other opinion, association with a national minority, sex, sexual orientation, gender identity, religion or belief, age, race, color, language, ethnicity, caste, national or social origin, physical or mental disability, health status, property, birth, marital status, or any other ground recognized by international legal instruments.
• It will further assist when collaboration between and across state borders is required; firstly, because it aids transparency in state processes and secondly, good state practice can be discerned and disseminated.

• For international organizations (and the international community as a whole) it will offer information that paints a more precise and coherent account of the full scale of the global issue that missing persons cases present and galvanize support where it is most needed.

It is from this perspective of supporting, assisting and encouraging all stakeholders in missing persons processes that this preliminary outlook chapter understands the remit and purpose of missing persons indicators.

PART 3: DEVELOPING INDICATORS ON MISSING PERSONS: THE LEGAL FRAMEWORK

There are some challenges when seeking to transfer the language and framework of human rights indicators to the topic of missing persons.

Firstly, depending on circumstances, a number of right bearers may exist: the individual who went missing; the family that is seeking to understand the fate of the missing individual; and, in circumstances of gross human rights violations such as enforced disappearance and the context of transitional justice, the wider public who may have an interest in knowing what happened [438].

Secondly, a number of human rights coalesce under the wider issue of missing persons: At the most fundamental level are the right to life, and the right to security and liberty, as well as the dignity of the person. The right to be free from torture also serves as a good example to illustrate how rights may apply concurrently: to the individual that was taken and to the family members since not knowing what happened to a loved one may constitute a form of inhumane and degrading treatment. The catalogue of rights can be further expanded to include: the right to family life and privacy and, as argued in cases of mass atrocity, the right to the truth (which includes a public aspect). Also noteworthy are the procedural rights that arise when the right to life has been breached. This includes the right to an effective investigation, an obligation placed on the state to conduct comprehensive and effective investigations of human rights abuses, regardless of who committed violations and abuses (State or non-State actors). Failure to investigate the fate and whereabouts of missing persons in an effective way, including the circumstances of their disappearance, can constitute a continuing breach of fundamental human rights of both the missing person and their family members.

It may also be useful to draw attention to what are known as “cross-cutting” human rights such as non-discrimination and equality, participation, access to remedy, accountability, the rule of law and good governance. Missing persons and their families should enjoy such rights.

Furthermore, the subject of missing persons is complex often straddling various branches of international law and, where border crossing is concerned, may involve more than one state.

The importance of a comprehensive and holistic approach to the subject of missing persons is not new and has been noted. The ICMP Paris Principles, for example, seek to build a global consensus on how to address the issue of persons going missing. They highlight the importance of the State as the primary entity for solving missing persons cases while noting the different rights that missing persons cases bring to the fore, as well as the critical requirements of cooperation and capacity to realize those rights.

48 For a discussion on the subject, particularly in relation to the right to the truth, see Klinkner and Davis, The Right to the Truth in International Law (Routledge 2020), where the individual and public aspect of the right are examined.
At the PARIS PEACE FORUM on 12 November 2018, the International Commission on Missing Persons (ICMP) presented the eight “Paris Principles” to reflect and advance an emerging global consensus on how to address the issue of persons going missing.

1. State responsibility
States bear a responsibility for ensuring lasting peace, reconciliation and social cohesion – resolving the fate of missing and disappeared persons, and protecting persons against disappearance, is an integral element in securing this objective.

2. Substantive rights
The right to dignity and to life, the right not to be subjected to torture or degrading treatment, the right to a family life and to privacy, and the right to recognition as a person before the law – are all invoked when a person goes missing or is a victim of enforced disappearance.

3. Capacities
Investigations are credible only if they are capable of establishing the facts – adequate capacities cannot be ensured ad hoc or through philanthropy: they require official and sustained efforts and permanent provisions.

4. Cooperation
The issue of missing persons does not respect borders: it has an international dimension – cooperation between States and with international institutions is an indispensable element in effective measures to account for the missing.

5. Procedural rights
Rights have meaning only if violations and abuses are investigated. Persons who go missing or are victims of enforced disappearance are entitled to protection under the law; relatives and others close to a missing or disappeared person have the right to an effective investigation.

6. Truth
The right to the truth means that the circumstances of disappearances are made known – including establishing cause and manner of death in cases where the missing person is deceased.

7. Justice
Criminal activity is behind the vast majority of disappearances – the justice system must lead efforts to investigate disappearances and prosecute those responsible.

8. Rule of law
Rule-of-law failures are a cause and a consequence of persons going missing or disappearing – all measures to address the issue must uphold and advance the rule-of-law.]
Joseph Beuys, *Rose for direct democracy, documenta V, Kassel 1972 – glass graduated cylinder with inscription and rose, here representing transformation*
PART 4: FIRST STEP TOWARDS THE DEVELOPMENT OF MISSING PERSONS INDICATORS

In light of the exposition above, is the endeavor of creating missing persons indicators doomed? While it is certainly true that there is not one "Missing Persons Right" that might lend itself to a rigorous indicator development exercise (as developed, for example, in the context of Violence against Women and Girls), persevering with missing persons indicators has real merit, particularly when adopting the nomenclature of structural indicators and outcome indicators; a more cautious approach may be necessary when seeking to conceptualize process indicators, since the processes, actors and rights at issue are multi-faceted and multi-layered rendering evaluative efforts more challenging. Nevertheless, attempting to advance indicators that logically link state commitments, efforts and outputs is compelling.

**Working towards Structural Missing Persons Indicators**

As outlined above, structural indicators measure legal, regulatory and institutional mechanisms and these can be related to missing persons cases.

A systematic review of international treaty obligations that contain provisions relevant to missing persons and their families will help to ascertain the various obligations that States have ratified. There is no one missing persons treaty. Instead a number of applicable treaties can be listed as indicative of a number of rights that attach to missing persons:

- the International Covenant on Civil and Political Rights (ICCPR),
- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- the International Convention for the Protection of All Persons from Enforced Disappearance (CED).

More such instruments can be cited, including at regional level and provisions contained in soft law. What the three aforementioned treaties illustrate is that a structural indicator on missing persons could capture the progress of states agreeing to be bound by international treaties relevant to the subject of missing persons. This is also easily measurable as the UN regularly updates a dashboard that tracks Treaty ratifications. Date of entry into force can also be recorded. **Suggested Indicator 1: Recognition of the rights of Missing Persons and their families in international law.**

A further structural examination can then follow at national level. The International Convention for the Protection of All Persons from Enforced Disappearance requires relevant authorities to have official records and registers of all persons deprived of their liberty (Article 17(3)). This would require implementation in domestic law. Therefore, a further structural indicator could measure the extent to which international treaties are reflected in national law. **Suggested Indicator 2: Domestic Legislation enshrining rights of Missing Persons and their families.**

Structural indicators also seek to ascertain what national institutions exist to address human rights issues. In the case of missing persons this could be a designated Missing Persons Authority for the co-ordination of the missing persons effort (the 2004 Bosnian Law on Missing Persons, Article 7, for example provides such legislation). Such national mechanisms are designed to put in place safe reporting structures to create a registry of missing persons and associated information; it may also serve to start the process of investigations. Such information should be in the public domain and easily accessible. **Suggested indicator 3: Institutional mechanisms dedicated to Missing Persons.**

**A cautious approach towards charting Process Indicators on Missing Persons**

While process indicators are incredibly important for human rights monitoring, a wholesale translation into the realm of missing persons is not without its challenges. And this is perhaps most visible in the very differing data sources canvassed above in section 1 pertaining to very different stages in the processes of resolving missing persons cases: at a minimum there are reporting, investigation and communication of results stages.

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49 Such provisions include the 2018 UN Global Compact for Safe, Orderly and Regular Migration; the Guiding Principles for the Search for Disappeared Persons of 2019 and the 2005 Basic Principles and Guidelines for the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.
The UN Guide (2012) usefully lists some process indicators in relation to the Disappearance of Individuals and includes:

- Proportion of communications from the Working Group on Enforced or Involuntary Disappearances responded to effectively by the Government in the reporting period;
- Proportion of cases where pre-trial detention exceeded the legally stipulated time limit [434].

Therefore, process indicators in relation to missing persons would require a careful examination of the proportion of missing persons cases reported that have been investigated by the government effectively and, depending on the circumstances, adjudicated at the national level in a certain period of time. Further, the proportion of cases that have been investigated ex officio and where the Government responded in an effective manner could be constructed into an indicator.

The right to an effective investigation is an essential procedural right, particularly pertinent to cases of enforced disappearance and missing persons cases resulting in death. It is clearly articulated in jurisprudence with obligations placed on the State (Cyprus v Turkey 2001). In circumstances of death, the duty to conduct an effective investigation means that the investigation needs to be independent, adequate (for example, Article 12 of the CED) and capable of determining facts and identifying those responsible (Kukhalashvili and others v Georgia 2020). The investigation must have sufficient authority to obtain information and hold officials to account. It must be conducted promptly; overall, it is a continuing obligation to investigate (Aslakhanova and others v Russia 2012) but an obligation of means and not of ends. The Inter-American Court of Human Rights stresses the need for an investigation to consider the broader context and complexities surrounding events (The Massacres of El Mozote and other Places v El Salvador 2012) to achieve the "most complete historical truth possible, including the determination of patterns of collective action" (Valle Jaramillo et al. v Colombia 2008, para 102) in line with the right to know the truth (for example, CED Article 24(2)). In short, there are a number of factors that would render an investigation "effective". The complex set of requirements might make the development of process indicators rather convoluted, as it would most likely include indicators to ascertain what proportion of officials are held to account as part of the effective investigation requirement.

To be clear, the justice system, including courts, prosecutors, law enforcement and related institutions, constitutes the most comprehensive investigative resource in any country. Working with and through justice and related institutions represents the strongest possible commitment to dealing with the issue of missing persons in a non-discriminatory, rights-based manner, and contributes directly to building the credibility of these institutions. Their aim is also, where possible, to prevent people from going missing. Scrutinizing their effectiveness has benefits but is, arguably, the prerogative of the United Nations review system.

While such a granular set of process indicators may therefore be ill-aligned with the spirit of supporting, assisting and encouraging states and stakeholders, an indicator to measure an increase in collaboration between intra-state, inter-state and international actors would greatly help to identify and close any gap. Such an indicator would further dovetail with a recommendation from the Americas chapter which argues for greater harmonization in infrastructure and policies. This, in turn will facilitate greater alignment between all actors and with it the likelihood of protecting the safety of those that have gone missing while also seeking to minimize the distressing effect felt by the families. **Tentative Indicator 4 - Missing Persons Collaboration.**

There is further scope to sub-divide such a collaboration indicator to allow the assessment of cooperation in areas such as secure data sharing and identification efforts.

**Working towards Output Missing Persons Indicators**

As outlined above, outcome indicators are designed to offer summary information on the realization of a right. In the case of missing persons, it might be useful to distinguish negative and positive outcome indicators.

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50 For a summary of the requirements see also Da Silva v United Kingdom, Grand Chamber Judgment, ECHR Application No 5878/08 (30 March 2016) paras 231–238.
A negative output indicator could measure the reported missing persons cases (as reported to an international organization or a State). Such an indicator could also take into account the data sources identified in section 1.3, where civil society organizations compile lists. Such different sources of data can appear as sub-indicators and be cross-referenced with official statistics.

Conversely, a positive output indicator would serve to quantify the proportion of missing persons cases that were, in fact, clarified by the state. Such statistics would clearly demonstrate the link between the structural indicators achieving the desired and intended effect as evidenced by the positive output indicator.

**Suggested indicator 5 – Reported Missing Persons Cases.**  
**Suggested indicator 6 – Resolved Missing Persons Cases.**

**PART 5: SERVING MISSING PERSONS AND THEIR FAMILIES BETTER**

The past decades have seen an increase in the level of attention directed towards the issue of missing persons and how it is addressed. In particular, law-based institutional approaches, the use of modern forensic methods and advanced data processing systems have made it possible to locate missing persons with a level of effectiveness that was not possible before. However, despite such progress, there is more to be done to enable states to address this issue in all its aspects.

The conceptual outline presented here is intended to support truth and justice-seeking through the creation of rights-based missing persons indicators for inclusion in future editions of the present Global Report, offering a systematically enhanced, factually-informed picture at the levels of countries and global regions.

The development of indicators, as tentatively mapped out here, will help create systematic links between different types of quantitative and qualitative data. The extent to which states subscribe to international law and the degree to which public authorities implement policies to address missing persons issues is measurable. Indicators will help build a more comprehensive, convincing and systematic account of how the issue of missing persons permeates international law and domestic state spheres, and connects actors for the benefit of the affected communities.

Aside from seeking to lay a useful foundation for future editions of the Global Report, the development of missing persons indicators will make visible, and to some extent quantifiable, missing persons processes that are consistent with international human rights norms and rights-informed processes. But, ultimately, they are geared towards clear goals: to bring answers to families of the missing, and advance the cause of justice for society at large.
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