

## BRIEFING NOTE

### URGENT NEED TO STRENGTHEN THE PROTECTION OF RELATIVES OF DISAPPEARED PERSONS FROM TORTURE AND OTHER ILL-TREATMENT

December 2022

#### Introduction

On 22 September 2022, the International Rehabilitation Council for Torture Victims (IRCT) and the OMCT held a thematic briefing with the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) to push for stronger recognition and protection of relatives and other loved ones of those who are forcibly disappeared across the globe.

The OMCT works with around 200 member organisations, which constitute its SOS-Torture Network, to end torture and other ill-treatment, fight impunity and protect human rights defenders worldwide. Together, we make up the largest global group actively standing up to torture in more than 90 countries.

IRCT is a movement of 160 torture rehabilitation centres in 76 countries, specialising in healing and justice. The IRCT is the world's largest membership-based civil society organisation specialised in the field of torture rehabilitation.

The level of anguish and suffering inflicted on family members has been repeatedly considered by the medical, psychological and legal community to be of sufficient severity to meet the threshold of the definition of torture. Yet, relatives of victims of enforced disappearances are systematically harassed in many countries. Searching for the truth expose them to great danger, they may suffer the same fate themselves.

During the briefing, two experts, Pau Pérez, psychiatrist, editor-in-chief of the *Torture Journal* and clinical director at SiRa, and Bernard Duhaime, professor of international law at the Faculty of Law and Political Science of the University of Quebec in Montreal and former member and Chair of the WGEID, presented the main findings of the research that led to the publication of a special section on enforced disappearance as torture in the [Issue 2021/2](#) of the *Torture Journal: Journal on Rehabilitation of Torture Victims and Prevention of Torture*. Helena Solà Martín, senior legal advisor with OMCT, presented the recommendations addressed to the WGEID.

#### A global problem

Enforced disappearances are a global issue as the mandate of the WGEID has documented in the last years. They happen in every region in the world and in a wide range of contexts. Hundreds of thousands of people have vanished during conflicts or periods of repression in at least 85 countries around the world (Declaration on the International Day of the Victims of Enforced Disappearances, 30 August 2022).

Tens of thousands of relatives of disappeared people all over the world face humiliation, threats, coercion, deception and silence in their search, living in suffering and in the permanent doubt, trapped between the need to grieve and the impossibility to do so.

But relatives of victims of enforced disappearances are hardly recognised and treated as victims by their States and criminal justice systems.

In countries like Mexico, with over [100,000 cases](#) of enforced disappearances registered, the massive scope of enforced disappearances impacts millions of relatives. Many of these relatives and relatives' associations looking for their loved ones and demanding justice are subjected to threats, intimidation and even [killed](#) or disappeared.

This briefing note presents a summary of key findings and recommendations shared with the WGEID in the framework of the mentioned thematic briefing. OMCT and IRCT remain deeply concerned about the fact that relatives of victims of enforced disappearances are, in most instances, not seen as individuals entitled to obtain protection, judicial remedy and reparation, including rehabilitation, pursuant to the UN 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, the UN Declaration on the Protection of all Persons from Enforced Disappearances, among others and Article 14 (and [General Comment no. 3](#)) of the [UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#).

### **Why does the suffering of relatives amount to torture, and why do they need protection, rehabilitation and reparation accordingly?**

There is a large body of empirical or testimonial literature that addresses the severe, multifaceted and complex suffering of relatives of victims of enforced disappearance. According to scientific medical and psychological research, five key elements need to be stressed:

1. In many cases relatives **have been direct witnesses of the disappearance**, which can lead to experiences of powerlessness or guilt. In cases where they have not been a witness, relatives often imagine the circumstances of the disappearance, the anguish and helplessness of the victim, the possible acts of torture he or she may have suffered afterwards and the state he or she may be in at this moment. All this generates a very serious direct or vicarious traumatic impact, in the first case as a witness, direct trauma, and in the second, through ruminations and guilt, as secondary trauma or vicarious trauma.
2. Enforced disappearance contains, by definition, an **intentional element**. The State withholds information about the disappeared person with a clear objective: to have an impact, a paralysing effect, create fear and terror, on the social and political network and the loving ones of the disappeared person. This involves not only the family, but also society as a whole.
3. Most relatives are forced to live the pain of the disappearance and the anguish of the search in private. There is a silence and a privatisation of the harm to avoid social stigma. Loving ones suffer isolation as a consequence of the fear that is generated in the environment and the rest of society. The family of the disappeared **suffers isolation and a breakdown of their own support network**.
4. This suffering is reinforced by the elements of **psychological torture** that the state itself generates by denying that it holds the detained person or by giving false information about where he or she might be. Through this, the State generates defencelessness, uncertainty, hopelessness and the impossibility of being able to organise search actions or actions to mitigate the pain.
5. Added to the previous elements, in most cases, messages are spread questioning the social and political values of the disappeared persons. They are **presented as criminals, terrorists or enemies of society**. This generates feelings of humiliation and brokenness in the relatives.

In short, the disappearance generates a direct or vicarious traumatic impact on relatives, feelings of fear or terror, social isolation and stigma, demobilisation, uncertainty, hopelessness linked to the

denial of information, and attacks on the identity and dignity of the disappeared person and the family as a whole.

### **Over time**

As all the search efforts prove unsuccessful, psychological processes are generated in the family members to come to terms with the loss of their loved one. But while in the case of murder or extrajudicial execution there are remains that can be veiled and buried according to rituals, initiating a process of mourning, in the case of enforced disappearance, as there are no remains or evidence, the research shows that the mourning process becomes impossible.

Research shows that there is a life in suspense and a permanent and trans-generational damage derived from the impossibility of recovering a normal life, by condemning the relatives to live permanently in uncertainty and anguish, by the search mandate that is transmitted from the first generation (parents, partner) to the second (daughters and sons) or, as the study published indicates, to the third (granddaughters and grandsons).

The suffering is severe, permanent, it gets transmitted to future generations and has characteristics that make it very difficult to address from a medical or psychiatric point of view. Thus, the rehabilitation efforts are complex and demand special resources and technical skills.

### **Rupture of the life project**

Finally, the missing person used to be one of the pillars of the family. There is often a family breakdown, with confrontation, accusations or polarisation between family members. On many occasions, part of the family prefers to emigrate or go into exile, either because of political risks or due to economic difficulties. Although these impacts differ according to the cultural environment and from a gender perspective, in the vast majority of cases they lead to the breakdown of the life project.

The suffering of the relatives is defined by the word ambivalence: ambivalence between hope and despair, ambivalence between reconstructing life but at the same time feeling betrayed, ambivalence between talking about what happened or making a pact of silence within the family so as not to provoke further suffering, ambivalence between pursuing the search for truth and justice or the risk that this entails.

The relatives are in this sense trapped in a very difficult situation and the legal consideration given to this suffering is of paramount importance for the victims themselves in terms of recognition, dignity and reparation. In this context, calling a spade a spade is of enormous value.

### **Legal background**

As affirmed in the [Declaration on the Protection of all Persons from Enforced Disappearance](#), “[a]ny act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families” that “constitutes a violation of the rules of international law guaranteeing, inter alia ... the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment” (art. 1(2)). In this regard, the WGEID has stressed that a State “cannot restrict the right to know the truth about the fate and the whereabouts of the disappeared as such restriction only adds to, and prolongs, the continuous torture inflicted upon the relatives” ([General Comment on the Right to the Truth in Relation to Enforced Disappearances](#)). In the same General Comment, the WGEID stated that “the enforced disappearance causes ‘anguish and sorrow’ to the family, a suffering that reaches the threshold of torture”.

This is also reflected in the jurisprudence of the Inter-American Court of Human Rights (IACtHR), which has held that direct next-of-kin, namely mothers, fathers, children, siblings, spouses and permanent companions should automatically be presumed to be victims of violations of the prohibition of torture

and other ill-treatment. That Court has stated that “the absence of effective domestic remedies must be considered per se as a source of insecurity, frustration and powerlessness for victims of gross human rights violations and their relatives, amounting to inhuman and degrading treatment” (see, inter alia, IACtHR, [Anzualdo Castro v. Peru](#), Judgment 22 September 2009, para. 113). This too is consistent with the United Nations Human Rights Committee’s case law - which has repeatedly stressed that any act of enforced disappearance “constitutes a violation of many of the rights enshrined in the Covenant, including ... the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (art. 7)” (The first case was [Sarma v. Sri Lanka](#), Comm. No. 950/2000, para. 9.5). Also the European Court of Human Rights (ECtHR) recognised early on that enforced disappearances impose a particular burden on relatives of the missing persons, which could amount to a violation of Article 3 of the European Convention on Human Rights (see e.g. [Varnava and Others v. Turkey](#), Judgment 18 September 2009, para. 200; [Cyprus v. Turkey](#), Judgment 10 Mai 2001, para. 155). The Court has also found in numerous cases that State Parties have failed to respond appropriately to family members’ allegations of disappearance, and that the State is therefore responsible for a violation of article 3.

### **Recommendations and suggestions addressed to the WGEID and the Committee on Enforced Disappearances:**

- Consider adopting a General Comment on enforced disappearance as a form of torture, including for the relatives and other loved ones of those who disappeared;
- Apply a rebuttable presumption that relatives and persons with a close bond are victims of torture. States should bare the evidentiary burden to prove that the latter have not experienced the required level of suffering to constitute torture;
- Promote and encourage States to recognise the relatives of enforced disappearance as victims of torture, in light of the severe psychological suffering inflicted on them;
- Make specific recommendations to governments regarding the importance of adopting measures to protect the relatives of victims of enforced disappearances and the communities affected, their right to effective remedy and their right to reparation, including rehabilitation. As victims of torture, they have specific rehabilitation and other reparation needs, as developed in [General Comment no. 3](#) of the Committee against Torture;
- Systematically include the recognition, safety and integrity of family members in country visits, reviews, communications to governments, public statements, including specific recommendations on the torture dimension and the importance of treating torture trauma in relatives of victims of enforced disappearances.