

SEARCHING WITHOUT FEAR

INTERNATIONAL STANDARDS FOR PROTECTING
WOMEN SEARCHERS IN THE AMERICAS





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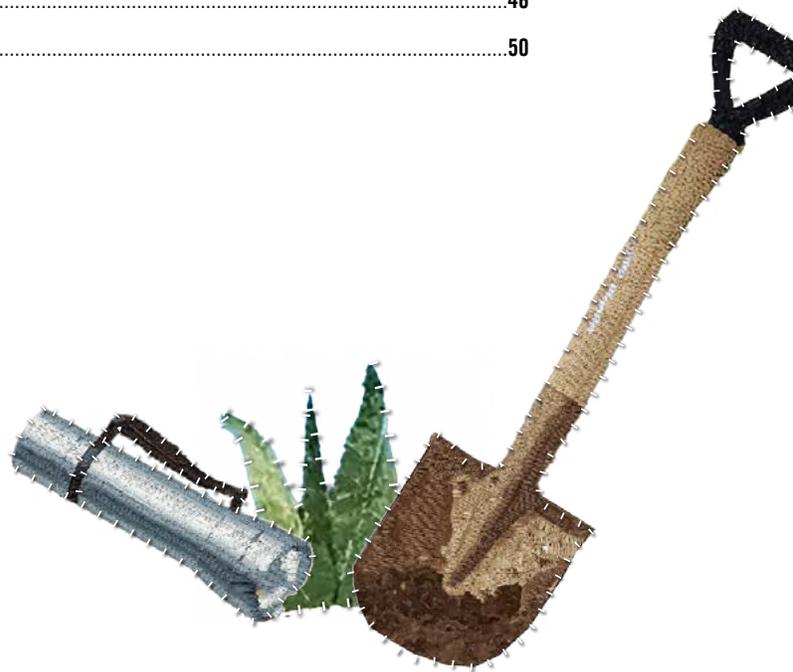
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EXECUTIVE SUMMARY



EXECUTIVE SUMMARY

In the Americas, enforced disappearance has taken the form of a state policy or consistent pattern of behaviour by public and private actors. Dissent, speaking up for rights, living in a war zones or areas with organized crime, migrating without the documents that transit and destination countries require, and many other pretexts have all been used to justify the inexcusable: stripping people of the protection of the law and concealing their fate and whereabouts from their families, loved ones and communities. Enforced disappearance is a serious human rights violation with extremely negative impacts on those subjected to it, as well as on their families, loved ones and communities, who, in the face of uncertainty, often mobilize their support network to search for the forcibly disappeared person.

In the Americas, women have been the driving force behind these searches. They have organized into groups and organizations. Their search has led them to visit state institutions, comb the streets, and enter areas where armed conflicts continue to rage. It has prompted them seek or form support groups and to go to the courts to take action against impunity, among many other measures recognized as part of the right to defend human rights. Enforced disappearance changes the lives of both those forcibly disappeared and those close to them, all of whom are victims of a very grave human rights violation. People who choose to take on the search ultimately assume a role of defending human rights.

The circumstances surrounding enforced disappearances in the Americas (and elsewhere in the world) are often not conducive to defending human rights, or to standing up to authority and the interests of those with legal or *de facto* power. Searching for a forcibly disappeared person involves fighting against oblivion, impunity, marginalization, and structural and discriminatory barriers to receiving justice. Families, loved ones and communities who chose this path face risks, threats, and attacks that intersect with their own life stories, identities, ambitions and dreams, and socio-economic and cultural milieu. They should not have to face these dangers, and the fact that they do is a clear sign of how protections for human rights fall short.

The efforts of family members loved ones and communities to search for those subjected to enforced disappearance are protected under international human rights law, which binds states to respect, guarantee and protect these activities. Thus, **states must first ensure that they themselves search for forcibly disappeared persons with due diligence and using approaches that take into account the specific identity and gender of the victim. States must do so even when family members, loved ones and communities do not search on their own.** Second, **states must ensure that family members, loved ones, and communities can participate, under appropriate conditions and without discrimination, in state search efforts.** Third, **states must create an environment conducive to the search efforts of families, loved ones and communities.** Fourth, **states must protect searchers from risks, threats and attacks on their human rights.**

States' duties towards relatives, loved ones and communities searching for forcibly disappeared persons derive from their general obligations to respect, guarantee and protect human rights. But they also arise from the recognition that **searching is a right in itself**, since searchers can

be considered both victims of enforced disappearance themselves (under the definition given in the International Convention on the Forced Disappearance of Persons) and human rights defenders.

Although search efforts usually involve a wide range of family members, loved ones and community members, **Amnesty International recognizes that in the Americas women lead the way, in both the past and present.** From a feminist perspective, this makes sense if we understand searching as an extension of the societal role and caregiving tasks that women are usually assigned under the traditions, culture and customs of the Americas. On the other hand, women searching for forcibly disappeared persons have also built spaces and forms of resistance that go beyond these prescribed caregiving roles, vindicating their own agency.

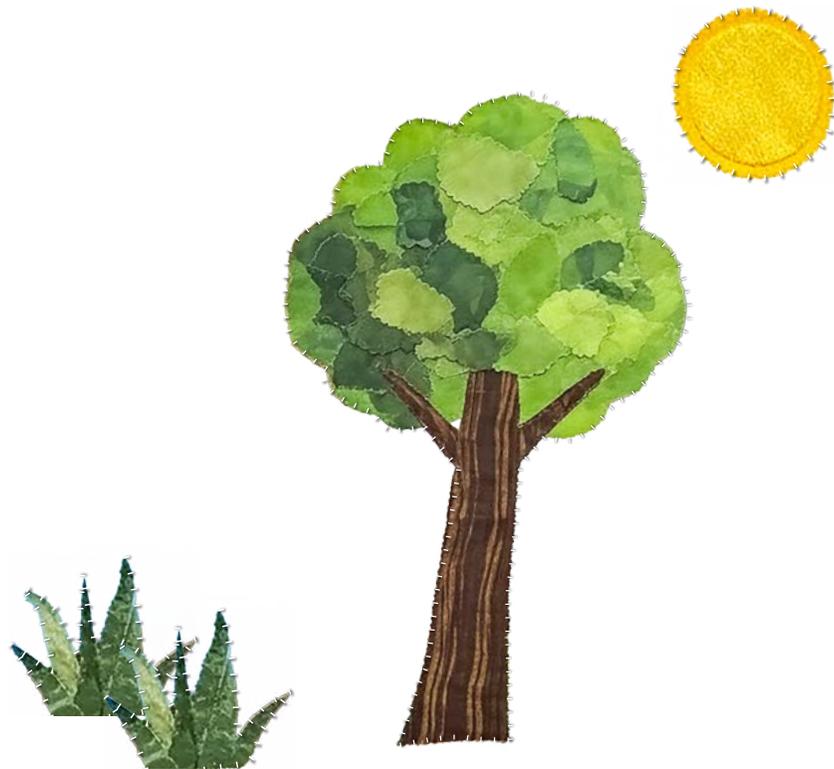
Since the majority of relatives, loved ones and communities who search for forcibly disappeared persons are women, there is a need to explore in more detail, and from a gender-based and differential perspective, the obligations that states have towards them and their work. This in no way means that the rights of other searchers who are not women are any less deserving of protection. Rather, it highlights the international obligations to protect those who exercise their right to search and underscores how states must recognize the major differences in how people go about and experience the process of searching. **In addition to women searchers' potential status as victims of enforced disappearance themselves and as human rights defenders, the way they experience the search and its potential risks, threats and attacks is inseparable from the fact that they are women.** These three characteristics (being victims, being defenders and being women) can be further influenced by other factors like race, sexual orientation, gender identity, disability, social class or age that together shape the women's experiences when searching and states' obligations to them.

For this reason, while Amnesty International asserts that the right to search applies to all family members, loved ones and communities searching for a forcibly disappeared person, this document emphasizes the risks, threats and attacks that women searchers often face and states' obligations to respect, guarantee and protect their rights without discrimination. These protections must guard them against dangers ranging from **physical violence and disproportionate risks of sexual violence during the search, to other instances of human rights violations like stigmatization, criminalization, impoverishment, damage to health, hindrance to organizational work and impunity.**

Amnesty International holds the position that the risks, threats and attacks that women searchers endure go beyond potential violations of rights associated with bodily integrity. The negative effects of enforced disappearances and searches are far broader. Women searchers face stigmatization, criminalization, and obstruction of their organizational work for subverting traditional gender roles, something they must do in order to challenge authority or those with legal or de facto power. Women searchers devote economic and social resources to the search, to the detriment of their own living conditions, especially when they come from impoverished backgrounds. They sacrifice their health—both physical and mental—to continue searches that can last for weeks, months, years, or even decades. They endure the Americas' endemic impunity and fight it directly, all while bearing uncertainty about what happened and institutional inaction. In all these scenarios, gender-based violence and negative gender stereotypes, as well as other systems of oppression, such as racism, ableism, cisheteropatriarchy and others, are present and affect their work.

This report compiles the rules and standards of international law that apply to protecting women searchers from risks, attacks and threats and to safeguarding their right to search for family members and loved ones. In the first section, Amnesty International sets out the most recent advances in the definition of enforced disappearance. In the second section, it affirms that searching for forcibly disappeared persons is an obligation incumbent on states and recognizes that family members, loved ones, and communities have a right to participate in state searches, as well as to search on their own. Their work is part of defending human rights, so women searchers are also human rights defenders. Recognizing that during searches women are victims of various rights violations, Amnesty International describes the main violence against them from a gender-based and intersectional perspective and outlines states' main obligations to guarantee that their rights are protected.

In the final section, Amnesty International lays out a set of recommendations for how states in the Americas can advance protections for women searchers in the region. These recommendations include recognizing the right to search for forcibly disappeared persons without discrimination, recognizing the important work of women searchers and guaranteeing their rights, incorporating a gender-based and intersectional perspective into all measures related searching for forcibly disappeared persons, and guaranteeing all human rights of women searchers, including their economic, social and cultural rights.



INTRODUCTION



1. INTRODUCTION

Women have played a crucial and inspiring role in guaranteeing the rights of forcibly disappeared persons in the Americas. Their leadership can be seen from Tijuana to Patagonia. In Mexico, Guatemala, Colombia, Peru, Argentina, Chile, and many other countries in the region, enforced disappearance has been and continues to be present, and it is **women who for the most part have spearheaded the search for their family members and loved ones under circumstances as dissimilar as they are dangerous. Women in the Americas have searched in the midst of armed conflicts, under governments with systematic policies to forcibly disappear dissidents, in places marred by organized crime and marked by human mobility. They have endured risks, attacks and threats for their work and identities.**¹

Iconic examples of women searching under adverse circumstances for the forcibly disappeared abound: the Grandmothers of Plaza de Mayo in Argentina and the Chilean women of Calama during military regimes and internal armed conflicts; the Indigenous women who led the way amidst armed conflict in countries like Guatemala and Peru; and Central American women who have crossed borders and created transnational mechanisms to search for migrants subjected to enforced disappearance. In places like Mexico, women have searched for those forcibly disappeared at the hands of organized crime, and Colombian women have advocated for specific laws to protect them from the violence they experience on a daily basis.

These women searchers have sought each other out in Latin America and the Caribbean and formed organizations, collectives and groups to uncover the circumstances surrounding enforced disappearances² and support each other in searching for their loved ones. They have taken to the streets to shout the names of the people they are searching for and demand justice. They have also championed proposed laws and public policies on enforced disappearance and searches in various countries in the region. These women have never ceased to fight impunity, ensuring that the memory of their loved ones does not fade.³

There are several possible explanations for why women's have taken such a prominent role in searches. From a feminist perspective, searching can be seen as an extension of the task of caring for dependents, traditionally done by women, to missing family members. Their care transforms into searching, investigating, advocacy, activism and protest.⁴ Thus “their caregiving

[1] IACHR, Press Release: States must protect the rights of women searching for missing persons, 8 March 2023, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/038.asp

[2] UN, WGEID, 98th session, 31 October - 9 November 2012, preamble.

[3] Jomary Ortegón Osorio, *Mujeres buscadoras: elementos de reflexión para contribuir a su reparación integral*, Pensamiento Jurídico, No. 55, Bogotá, 28 March 2022, p. 15.

[4] Camila Ruiz Segovia and Melissa Jasso, “Women in the search for disappeared persons in Mexico face multiple challenges”, OpenDemocracy, <https://www.opendemocracy.net/en/democraciaabierta/mujeres-personas-desaparecidas-m%C3%A9xico-en/>

role becomes a form of collective resistance”.⁵ Other possible factors are negative gender stereotypes that affect women, wage and employment inequalities, the large numbers of single mothers and families with absent fathers.⁶

As is the case for most human rights defenders, women searching for forcibly disappeared people face high risks. They encounter dangers, attacks and threats that jeopardize their human rights. Among the most common are murders, enforced disappearances, threats, revictimization, attacks by organized crime, stigmatization, criminalization, forced displacement, and harm to their health and career. The impacts unique to women of these human rights violations needs to be examined from a gender-based and intersectional perspective, since in addition to being women, many searchers also have disabilities, are racialized, have a diverse sexual orientation or gender identity, or are in a situation of human mobility, among other factors that exacerbate the negative effects of these violations and set their experience of them apart.

Therefore, in the first section of this document Amnesty International frames searching as a specific expression of the defence of human rights during which people, including women, may face harmful attacks, risks and threats that states must prevent or address. The section rests on two premises. The first is that **states have the primary obligation to search for forcibly disappeared persons**. The second is that **relatives, loved ones and communities may be thrust into searching and, in exercising their right to do so, deserve recognition, respect, safeguards and protection, without discrimination**.

Because the effects of searching are so context-driven, it is necessary to define the different forms of violence that searchers experience and determine states’ related obligations. **Amnesty International’s foundational claim in this document is that women make up a majority of those searching for forcibly disappeared persons and that the violence they experience while searching impacts them in a differentiated and intersectional way**. States are thus obligated to protect them against risks, threats and attacks they face as a result of their search activities in a way that avoids all forms of discrimination, applying a differential lens and a gender-based and intersectional perspective. For this reason, the second section provides a non-exhaustive list of the different forms of violence that women searchers endure and outlines states’ relevant obligations under international human rights law.

By no means are we claiming that nobody else is searching or that protecting their rights is any less important. On the contrary, our stance is that there are international obligations to protect those exercising their right to search and that states must recognize the differences that people experience when doing so.

This publication ultimately makes two assertions. First, **given the dire reality of enforced disappearances, state violence, and institutional inaction, states in the Americas (and around the world) must search for those who have been forcibly disappeared**. Second, **in the face of institutional inaction and uncertainty, families, loved ones and communities (and mostly the women among them) are the ones actually searching for the forcibly disappeared, and in doing so they are exercising a right that states must protect**.

[5] Anaís Palacios and Raquel Maroño, La feminización de la búsqueda en México: conclusiones, IMDHD, 8 March 2021.

[6] Anaís Palacios and Raquel Maroño, La feminización de la búsqueda en México: conclusiones, IMDHD, 8 March 2021.

METHODOLOGY



2. METHODOLOGY

This document compiles international human rights rules and standards that apply to women searching for forcibly disappeared persons in the Americas. To prepare it, we consulted and analysed relevant international treaties, including the International Covenant on Civil and Political Rights, the American Convention on Human Rights (ACHR), the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), the Inter-American Convention on Forced Disappearance of Persons (IACFDP), the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. We also examined the case law of the Inter-American Court of Human Rights (IACtHR) and the observations of various United Nations committees and special procedures, including the Committee on Enforced Disappearances (CED) and the Working Group on Enforced or Involuntary Disappearances (WGEID), as well as the recent Guiding Principles for the Search for Disappeared Persons. The report also draws from academic and specialized sources.

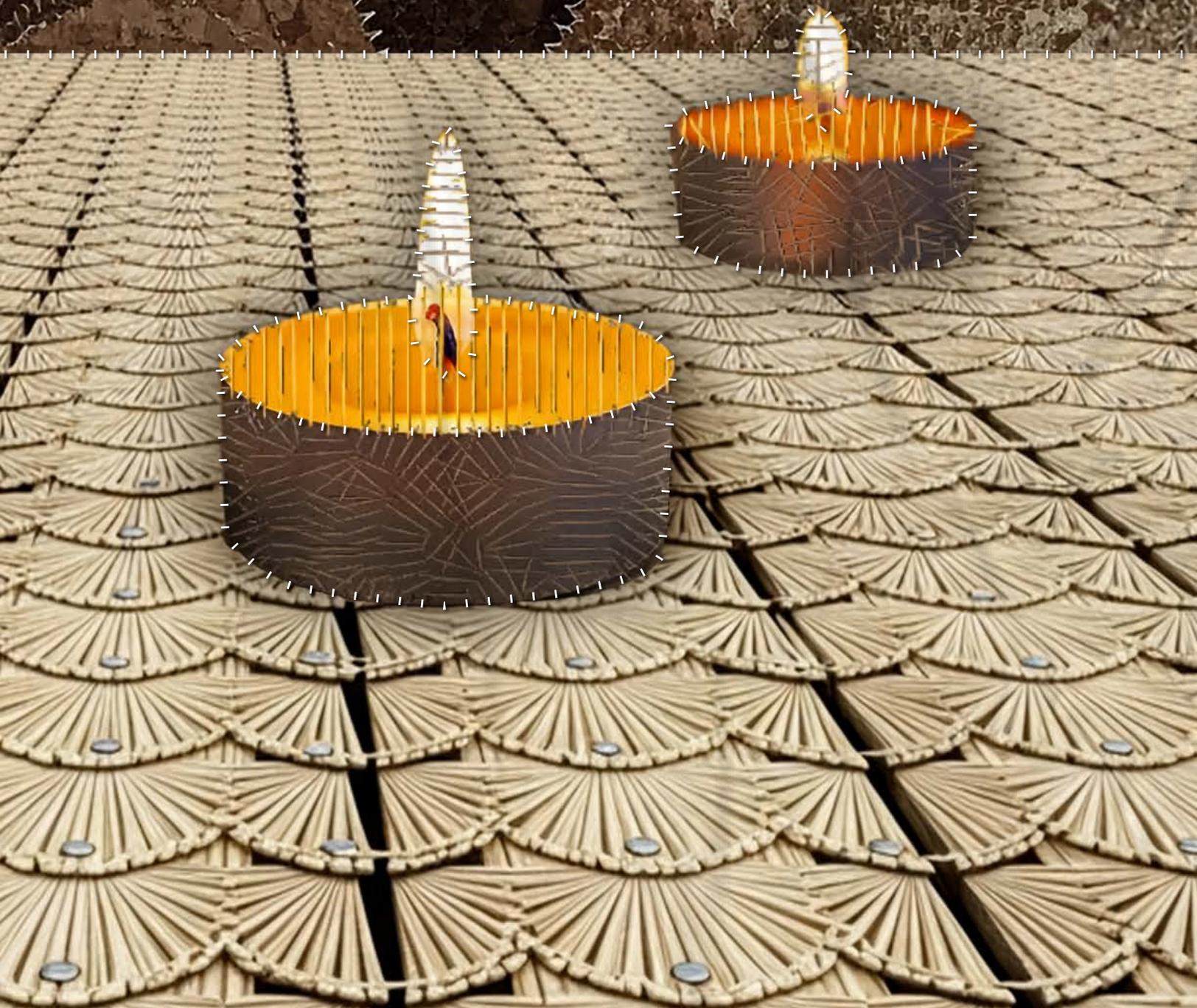
In this document, Amnesty International uses the definition of enforced disappearance established in international human rights law, especially in the ICPPED, as construed by the CED. But the on-the-ground reality of violence and human rights violations and abuses in the Americas makes it challenging to follow this classification. In contexts of endemic impunity, organized violence and institutional inaction, it is difficult to differentiate between enforced disappearances, disappearances and other human rights violations and abuses involving loss of life or liberty. These difficulties should not be felt by victims and their families, loved ones, and communities, much less have a bearing on the scope of states' obligations to search for disappeared persons and protect those who search for them. For this reason, and as explained below, **Amnesty International argues that the obligation and right to search are not limited to a single type of disappearance within the ICPPED's spectrum, but rather cover all of them. For methodological purposes, in this document we therefore use the terms "enforced disappearance" or "forcibly disappeared" to describe all acts covered by the ICPPED.**⁷

This document is the first in a series launched by Amnesty International to document the impact that enforced disappearance and searching have on women; the risks, attacks and threats they face when searching; and states' obligations in this regard. The project will first focus on present the situation in Colombia and Mexico, but the plan is to later expand it to different countries in the Americas.

In the process of writing this report, Amnesty International has been able to witness and document the work and situation of women who search in Colombia and Mexico. While the report does not share their experiences or positions, it is important to Amnesty International to thank them for their generosity in sharing the knowledge and experience they have acquired over years (and sometimes decades) of searching.

[7] This methodological choice aims to make the text clearer. It does not reflect Amnesty International's position regarding the differences between enforced disappearances, disappearances and other human rights violations and abuses that entail deprivation of liberty. Its position follows the provisions of international human rights law.

ENFORCED DISAPPEARANCE IN THE AMERICAS



3. ENFORCED DISAPPEARANCE IN THE AMERICAS

“The forced disappearance of persons in an affront to the conscience of the Hemisphere and a grave and abominable offense against the inherent dignity of the human being”

OAS, IACFD.

When family members, loved ones, and communities do not know where someone important to them is, they are compelled to search for them. Distressed by the lack of information, they go to authorities, scour the streets, ask passers-by, enter areas of armed conflict, and take many other steps to find their loved one alive or, at the very least, determine their fate or whereabouts. The dangers they face are significant. Along the way, searchers endure risks, attacks and threats from those who want to evade responsibility for what happened, from those who benefited from the events, or simply from the context itself that makes searching difficult. They also face structural barriers that hinder their work, such as racism or discrimination. They should not have to face any of these hardships. States have not only an obligation to search, but also the capacity, tools and resources to do so. But in many cases, they do nothing, or what little they do is done poorly. In a few cases, states do fulfil their obligations and guarantee the rights of the forcibly disappeared and of their families, loved ones and communities.

In different parts of the Americas, enforced disappearance has taken the form of state policies or patterns of behaviour by public and private actors, such as state security forces and organized armed groups.⁸ States have used dissent, speaking up for rights, living in a war zone or with organized crime, migrating without the documents required by transit and destination countries, and many other circumstances as excuses for stripping people of the protection of the law and concealing their fate and whereabouts from their families, loved ones and communities. Nothing justifies enforced disappearance, and all of humanity must continue to demand an end to this practice, anywhere and everywhere. But given its reality, states must search for those subjected to enforced disappearance and protect those who search for them.

According to the ICPPED, enforced disappearance consists of **“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”**.⁹ This atrocious act thus implicates the state from the outset, either

[8] Tulio Scovazzi and Gabriella Citroni, *The Struggle against Enforced Disappearance and the 2007 United Nations Convention*, 2007, p. 7-24.

[9] ICPPED, Art. 2.

because it committed the act directly through its agents or because it authorized, supported, or acquiesced to non-state actors who committed it.¹⁰

But **people can also be victims of disappearance at the hands of non-state actors that have not received state authorization, support or acquiescence and suffer its effects.** Regarding these cases, first, the ICPPED reiterates that widespread and systematic use of enforced disappearance is a crime against humanity.¹¹ According to the CED, this means that if the disappearance was committed by a non-state actor acting without the authorization, support or acquiescence of the state, but it falls within the definition of the crime against humanity, it is also considered enforced disappearance for the purposes of that convention and, therefore, all the obligations contained therein apply to the states in these cases.¹² Secondly, the convention also provides that states have an obligation to investigate disappearances committed by “persons or groups of persons acting without the authorization, support or acquiescence of the state, and to bring those responsible to justice”.¹³ The CED stipulates two cases where this applies. First, when someone is forcibly disappeared in the context of a non-international armed conflict and, second, when someone is forcibly disappeared by a non-state actor exercising de facto control and/or government-type functions over a territory.¹⁴ This necessarily implies that states also have obligations to the victims of such acts.¹⁵

In these contexts, family members, loved ones, and communities are also impelled to search. As they seek to determine the fate or whereabouts of the forcibly disappeared person, they often have to confront powerful armed actors and put their lives at risk in areas without state control. This situation is exacerbated by the uncertainty surrounding the enforced disappearance itself. Determining who took the person is one of the most important steps in both the search and the investigation of the events and often comes late in the process, regardless of whether it is the state or family members, loved ones, and communities who are searching.

Regardless of who committed the enforced disappearance, searchers face risks, attacks and threats. But the impact of these dangers is not the same for everyone. The experience of searching is different for women, children, LBGTIQ+ people or migrants. Racialized individuals and communities also have a different experience of the search process and all that comes with it. For example, a search backed by economic resources and a social and family support network is different from one that take place in a context of impoverishment, discrimination, invisibility or isolation.

Here it is important to note that, according to the ICPPED, victims of enforced disappearance include both the forcibly disappeared person and “any individual who has suffered harm as a direct result”.¹⁶ Thus, **the effects of enforced disappearance also extend their families, loved ones and communities, whose human rights are violated by the same act.**¹⁷ The IACtHR has recognized, for example, that “the violation of [the] relatives’ mental and moral integrity is a direct consequence of [the] forced disappearance”,¹⁸ and that “the continued denial of the truth about the fate of a disappeared person is a form of cruel, inhuman and degrading treatment for the close family”.¹⁹

This continued effect of enforced disappearance also has a correlation in the experience of forcibly disappeared persons themselves and forms part of the legal understanding of this serious human rights violation. With enforced disappearance, the clock remains frozen until the disappeared person regains the protection of the law, that is, until their fate or whereabouts are known. Hence

[10] UN, CED, Statement on non-State actors in the context of the ICPPED, CED/C/10, 2 May 2023, para. 2-8.

[11] ICPPED, Art. 5.

[12] UN, CED, Statement on non-State actors in the context of the ICPPED , CED/C/10, 2 May 2023, para. 17 and 21.

[13] ICCPED, art. 2.

[14] UN, CED, Statement on non-State actors in the context of the ICPPED, CED/C/10, 2 May 2023, para. 18.

[15] UN, CED, Statement on non-State actors in the context of the ICPPED, CED/C/10, 2 May 2023, para. 20.

[16] ICPPED, art. 24.1.

[17] IACtHR. Case of Radilla Pacheco v. Mexico, judgment of November 23, 2009, para. 180.

[18] IACtHR. Case of Blake v. Guatemala, Judgment of 24 January 1998, para. 114.

[19] IACtHR. Case of Trujillo Oroza v. Bolivia, Judgment of 26 January 2000, para. 114.

the **assertion that enforced disappearance is a continuing human rights violation**.²⁰ The United Nations Declaration on the Protection of all Persons from Enforced Disappearance states that any act of enforced disappearance “shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified”.²¹ Meanwhile, the IACFDP stipulates that States shall adopt measures to criminalize enforced disappearance and shall consider it to be “(...) continuous or permanent as long as the fate or whereabouts of the victim has not been determined”.²² In the words of the Working Group on Enforced or Involuntary Disappearances, “Enforced disappearances are prototypical continuous acts. The act begins at the time of the abduction and extends for the whole period of time that the crime is not complete, that is to say until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual”.²³ Moreover, the ICPPED establishes a clear rule that for enforced disappearances, statutes of limitations can only be counted from the moment the situation ceases, which also confirms its continuing nature.²⁴

Thus, **the effects of enforced disappearance on families, loved ones and communities of the forcibly disappeared are often drawn out over time by the very nature of this human rights violation**. During this period, the enforced disappearance causes an “ambiguous loss”, a grief marked by not knowing the fate or whereabouts of the disappeared person.²⁵ The informational void halts their decision-making processes and paralyzes or complicates their ability to grieve or deal with what happened.²⁶ That suffering spreads to others not present at the time of the enforced disappearance, such as sons, daughters, grandchildren and granddaughters, who also suffer grief and the effects of the enforced disappearance. This suffering has been associated with a violation of the right to not be subjected to torture or other cruel, inhuman or degrading treatment or punishment.²⁷ Past decisions of the IACtHR have already established this effect as a form of cruel and inhuman treatment against family members,²⁸ and the Working Group on Enforced or Involuntary Disappearances considers it to be on “(...) the threshold of torture”.²⁹

This ongoing nature of these human rights violations also impacts a range of rights—such as the right to the truth—of family members, loved ones and communities searching for forcibly disappeared persons, who, as described above, are themselves victims of enforced disappearance. One act gives rise to multiple offenses because, in **addition to being a serious violation of human rights in itself, enforced disappearance entails**³⁰ **a violation of other human rights**, such as the right to liberty and security of person, to protection of the law, to not to be arbitrarily deprived of liberty, to recognition of personhood, to not be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and various economic and social rights,³¹ among others.³²

[20] UN. HRC. WGEID report. A/HRC/16/48, 26 January 2011, p. 12. IACtHR. *Heliodorus Portugal Vs. Panama*, judgment of August 12, 2008, para. 106.

[21] Declaration on the Protection of all Persons from Enforced Disappearance, art. 17.1.

[22] IACFDP, Article III.

[23] UN. HRC. WGEID report. A/HRC/16/48, 26 January 2011, p. 12.

[24] ICPPED, art. 8.1.b.

[25] ICRC, *Accompanying the Families of Missing Persons: A Practical Handbook*, 2014, p. 42.

[26] Pauline Boss, “Ambiguous Loss Research, Theory, and Practice: Reflections After 9/11”, *Journal of Marriage and Family*, Issue 66, August 2004, p. 554. Simon Robins, *Families of the Missing. A Test for Contemporary Approaches to Transitional Justice*, 2013.

[27] Bernard Duhaime, Juan Méndez and Pau Perez-Sales, “Current debates, development and challenges regarding enforced disappearance as torture”, *Torture*, Volume 31, Number 2, 2021, p. 3-13.

[28] IACtHR. *Case of Rochac Hernandez et al. v. El Salvador*, judgment of October 14, 201, para. 122. IACtHR. *Case of Radilla Pacheco v. Mexico*, judgment of November 23, 2009, para. 166. IACtHR. *Case of Bámaca Velásquez Vs. Guatemala*, Judgment of November 25, 2000, para. 165.

[29] UN. Human Rights Council. WGEID report. A/HRC/16/48. 26 January 2011, p. 15.

[30] IACtHR. *Case of Gelman v. Uruguay*, judgment of 24 February 2011, para. 64. IACtHR. *Rochac Hernández et al. v El Salvador*, judgment of 14 October 2014, para. 94.

[31] IACtHR. *Case of Gelman v. Uruguay*, judgment of 24 February 2011, para. 64. IACtHR. *Rochac Hernández et al. v El Salvador*, judgment of 14 October 2014, para. 94.

[32] IACtHR. *Case Ibsen Cárdenas and Ibsen Peña Vs. Bolivia*, Judgment 1 September 2010, para. 57. IACtHR. *Case of Goiburú et al. v. Paraguay*, judgment of 22 September 2006, para. 84.

**SEARCHING IN
THE AMERICAS.
INTERNATIONAL
HUMAN RIGHTS
STANDARDS**



4. SEARCHING IN THE AMERICAS. INTERNATIONAL HUMAN RIGHTS STANDARDS

International human rights law has used recognition of the right to the truth, among other concepts, to address the “ambiguous loss” caused by enforced disappearance³³ and the ceaseless entreaty of families, loved ones and communities to know what happened and where the forcibly disappeared person is. In Amnesty International’s view, **uncertainty about the fate or whereabouts of a forcibly disappeared person gives rise to a right for their families, loved ones and communities to know the truth of what happened, including their fate or whereabouts and the circumstances under which the events occurred.**

In cases of enforced disappearances, the right to the truth has three dimensions. The first is the same right as any victim of a human rights violation to a prompt, complete, impartial, independent and effective investigation by the state.³⁴ This right is part of judicial safeguards and protection. The second is the inalienable right of every society “(...) to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent the recurrence of such acts in the future”.³⁵ The third dimension is specific to enforced disappearance, which triggers victims’ right to know the truth about the fate or whereabouts of the disappeared person.³⁶ This right in turn activates the state’s obligation to search for them.³⁷

States are obligated to search for forcibly disappeared persons to guarantee the right to the truth, among other reasons. But the most rapid, constant and persistent searchers tend to be the families, loved ones and communities, who at the same time, together with the forcibly disappeared person, are bearing the negative consequences of enforced disappearance. It is the close circles and support networks of those subjected to enforced disappearance, especially the women among them, who put search mechanisms in motion, alert the authorities and seek by all possible means to determine their fate or whereabouts. Sometimes, states do take action and their search efforts intersect with those of family members, loved ones and communities. In other cases, states refuse to initiate the search, and it is up to families, loved ones and communities to keep it alive. All too often, states not only neglect their obligation to search but also obstruct the process or fail to protect family, loved ones, and communities as they search. All these scenarios underscore the complex

[33] Pauline Boss, “Ambiguous Loss Research, Theory, and Practice: Reflections After 9/11”, *Journal of Marriage and Family*, Issue 66, August 2004, p. 554. Simon Robins, *Families of the Missing. A Test for Contemporary Approaches to Transitional Justice*, 2013.

[34] IACtHR. Case of Valle Jaramillo et al. v. Colombia, Judgment of 27 November 2008, para. 101-102.

[35] OAS. IACHR Annual Report 1985-1986. OAS/Ser.L/V/II.68 Doc. 8 Rev. 1. 26 September 1986. As cited in: OAS. Right to truth in the Americas. OAS/Ser.L/V/II.152 Doc. 2. 13 August 20143, para. 71.

[36] ICPPED, art. 24.2. IACtHR. Case of Terrones Silva et al. v. Peru, Judgment of 26 September 2018, para 215.

[37] I/A Court H.R. Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia, Judgment of 14 November 2014, para. 561.

dynamics of searching for forcibly disappeared persons, as well as the manifest need to apply international human rights standards to examine state obligations in these situations. Meanwhile, family members, loved ones and communities demand the truth. They demand to know what happened to their loved ones and to be able to find them alive make arrangement to lay their remains to rest in according to their customs. This makes them not only searchers but also human rights defenders, as explained later.³⁸

It is important to reiterate Amnesty International's view that the standards applicable to searching for forcibly disappeared persons should be extended to all cases with signs, however minor, that the disappearance falls under any of the definitions set out in the ICPPED. The differences between enforced disappearance, in its strict definition, and other disappearances only become apparent as the search progresses, but in the meantime, the life, wellbeing and other human rights of the disappeared person and of their relatives, loved ones and communities are at stake. The state's response must be commensurate with the intensity of the risk of a rights violation and, given the different possible interpretations of the scope of the obligation, it must apply the highest possible standards.³⁹

This does not mean that every search should follow an identical or standard pattern. The particularities of the disappearance obviously shape how the search should be approached. Searching for a detained person who has been forcibly disappeared by state security forces is not the same as searching for a person who disappeared in the context of armed conflict. Likewise, searching for indigenous people, Afro-descendants, LGBTIQ+ people, women, children, migrants, or others, requires special consideration and measures, given their particular vulnerability before and during the enforced disappearance. For this reason, the Guiding Principles for the Search for Disappeared Persons state that searches must be governed by a public policy with a differential approach that applies to all forcibly disappeared persons, based on an analysis of the different modalities and patterns of crime identified.⁴⁰

In terms of equality and non-discrimination, states are obligated to take affirmative action to change existing discriminatory situations. They also have a special duty to protect against third-party actions and practices that, with state tolerance or acquiescence, create, maintain or favour discriminatory situations.⁴¹ Searching is mostly carried out by women, so states must ensure that they enjoy their right to de jure and de facto equality. Discrimination against women is linked to other factors, such as race, indigenous status, colour, socioeconomic status, language, religion, political opinion, marital status, age, disability, gender, migration status, and being a human rights defender. These multiple forms of discrimination cause gender-based violence to affect women in different ways, each requiring appropriate legal and policy responses.⁴² To fulfil these obligations, states must apply differential approaches to searches and investigate possible discriminatory and gender-based motives, both in enforced disappearances and in violence against searchers. They must also ensure the right to participate in their search processes by preventing direct discrimination (such as institutional violence) and indirect discrimination (such as disproportionate impacts). To ensure material equality, states must take initiative to prevent discrimination and remove barriers to searching in a differentiated manner by, for example, assisting with resources for searches and adopting special and concrete measures specifically for women.

Amnesty International makes two main assertions in this section. The first is that **it is states that have the primary obligation to search for forcibly disappeared persons**. The second is that **victims—mainly family members, loved ones and communities—have the right to search for disappeared persons**, and states have an obligation to protect them from risks, threats and attacks arising from this activity. This second right includes **allowing victims to participate in searches conducted by state authorities**.

[38] Lisa Ott and Natacha Hertig, *Family Associations of Disappeared and Missing Persons: Lessons from Latin America and Beyond*, 2020, p. 5.

[39] Mónica Pinto, "El principio pro homine. Criterios de hermenéutica y pautas para la regulación de los derechos humanos," in Martín Abregú and Christian Curtis, *La aplicación de los tratados internacionales por los tribunales locales*, 1997.

[40] UN, CED, *Guiding Principles for the Search for Disappeared Persons*, CED/C/7, 8 May 2019, principles 3.2, 3.3 and 4.

[41] I/A Court H.R. *Advisory Opinion OC-18/03: Legal Status and Rights of Undocumented Migrants*, September 17, 2003, para. 101 and 104.

[42] CEDAW, *General Recommendation 35 on gender-based violence against women*, 26 July 2017, CEDAW/C/GC/35, para. 12.

4.1 STATES' OBLIGATION TO SEARCH FOR FORCIBLY DISAPPEARED PERSONS

International human rights law and international humanitarian law (IHL) assigns states the obligation to search for forcibly disappeared persons.

The obligation to search for forcibly disappeared persons follows from the obligation to guarantee human rights.⁴³ This means states have a duty to structure the government apparatus in such a way that ensures the free and full exercise of human rights. States must thus prevent, investigate and punish any human rights violation, **in addition to restoring the rights violated** and repairing the damage caused by that violation. According to the IACtHR, if under the state apparatus a violation goes unpunished and the full rights of victim are not restored as soon as possible, the state can be considered to have failed to fulfil its duty to guarantee human rights.⁴⁴ Amnesty International therefore holds the position that, in the case of enforced disappearance, the obligation to guarantee human rights is satisfied only when the state conducts a search with the highest human rights standards.

The first time that international law recognized the obligation to search as such was in international humanitarian law, in relation to disappearances in international armed conflicts and families' right to learn the fate of their missing relatives.⁴⁵ The Fourth Geneva Convention of 1949 is the first international instrument to mention searches, but it recognizes searches undertaken by relatives and states' obligation to facilitate them to reestablish contact between missing people and relatives and reunite them, if possible. It also establishes the obligation to facilitate the work of bodies devoted to searching and ensure that they have safe conditions for doing so.⁴⁶ But it was Article 33 of the Additional Protocol (I) to the Geneva Conventions, relating to the Protection of Victims of International Armed Conflicts, that established that as of the end of active hostilities, each party to the conflict must search for the persons that their foe has reported to them as missing. This obligation to search has been recognized in international humanitarian law as a rule of customary international law that applies to both international and domestic armed conflicts.⁴⁷

Although in 1994 the IACFPD did not recognize a separate right to a search, it did mention an obligation of reciprocal cooperation between states in identifying, locating and making restitution to children and adolescents who had been transferred to another state as a result of the enforced disappearance of their parents or guardians.⁴⁸

The ICCPED was the first international convention to establish the right of every person to not be subjected to enforced disappearance and a strict prohibition of the practice of enforced disappearance.⁴⁹ This convention also established searching as a state obligation that, while related to investigation, is different and separate from it.⁵⁰ Although the obligation to search is not recognized in a specific provision, it is contained in various articles of the convention. The obligation to search for and locate forcibly disappeared persons arises from the convention's recognition of the right to know the truth, as well as the progress and results of the investigation and the fate of forcibly disappeared persons,⁵¹ a recognition inherent in the obligation to take appropriate measures to search for, respect and return their remains, which the convention

[43] ACHR, Art. 1.1.

[44] IACtHR, Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil, Judgment of 24 November 2010, para. 140.

[45] ICRC, International Humanitarian Law Databases, Rule 117, ihl-databases.icrc.org/es/customary-ihl/v1/rule117

[46] Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949, Article 26.

[47] ICRC, International Humanitarian Law Databases, Rule 117, ihl-databases.icrc.org/es/customary-ihl/v1/rule117

[48] IACFPD, Article XII.

[49] María Clara Galvis Patiño and Néstor Oswaldo Arias Ávila, Los Principios Directores para la Búsqueda de Personas Desaparecidas: origen y contenido, Ideas Verdes, Análisis política, Issue 10, August 2019, p. 3.

[50] María Clara Galvis Patiño, De Velásquez Rodríguez a los Principios Rectores para la Búsqueda de Personas Desaparecidas, in IIDH, Desaparición forzada en el Sistema Interamericano de Derechos Humanos, balance, impactos y desafíos, p. 365.

[51] ICCPED, art. 24.2.

does establish.⁵² Searching itself is mentioned when the ICPPED specifies that personal information collected or transmitted as part of the search may not be used or disclosed for purposes other than the search itself,⁵³ as well as when it establishes states' obligation to cooperate with each other,⁵⁴ and when it expressly mentions the obligation to search for and identify children⁵⁵ and the need for states to assist each other in this task.⁵⁶ The separate nature of the right is reflected in the convention's express recognition that the aims of criminal and reparation proceedings are distinct from those of searches⁵⁷ and in the fact that it authorizes the CED to examine urgent requests to search for and locate disappeared persons.⁵⁸

The standalone obligation to search has been reaffirmed by both the CED and the WGEID. The CED, through its observations to countries, has explicitly mentioned searching as a state obligation⁵⁹ and has recommended that authorities in charge of searches and those overseeing investigations coordinate their efforts,⁶⁰ that different states coordinate to search for migrants,⁶¹ and that states create specialized search bodies⁶² and ensure they have economic and technical resources.⁶³ The WGEID, in turn, has affirmed in various reports that states have the primary responsibility to meet international obligations on forcibly disappeared persons, including searching for them.⁶⁴

The obligation to search was cemented by the Guiding Principles for the Search for Disappeared Persons, which, together with the ICPPED, form part of the international body of law applicable to the right and obligation to search for forcibly disappeared persons.⁶⁵ The CED developed these guiding principles to flesh out the content and scope of the obligation to search for and locate persons subjected to enforced disappearance.

In their introduction, the principles mention that they aim to consolidate good practices for searching effectively for forcibly disappeared persons, in fulfilment of states' obligation to search.⁶⁶ They thus both recognize states' obligation to search and give guidelines for doing so properly. They highlight, for example, the separateness of the obligation to search in Principle 13 by noting that searches for forcibly disappeared persons and criminal investigations should reinforce each other and that search processes should be both initiated and conducted as effectively as criminal investigations.⁶⁷ Likewise, Principle 7 explicitly recognizes the continuing obligation of the search, which must go on until the fate and/or whereabouts of the disappeared person has been determined with certainty.⁶⁸

Meanwhile, the IACtHR has cited violations of international obligations related to searching for forcibly disappeared persons, developing its jurisprudence based on violation of the right to judicial safeguards and failure to fulfil the obligation to investigate and punish those

[52] ICPPED, Art. 24.3.

[53] ICPPED, Art. 19 (1)

[54] ICPPED, Article 15.

[55] ICPPED, Art. 25.2.

[56] ICPPED, art. 25.3.

[57] ICPPED, art. 19.1.

[58] ICPPED, art. 30.

[59] CED, Concluding observations on the report submitted by Burkina Faso, UN CED/C/BFA/CO/1, 24 May 2016, para. 40.

[60] CED, Concluding observations on report submitted by Chile, UN CED/C/CHL/CO/1, 18 April 2019, para. 27.a.

[61] CED, Concluding observations on report submitted by Honduras, UN CED/C/HND/CO/1, 25 May 2018, para. 30.f.

[62] CED, Concluding Observations on the report submitted by Spain, UN CED/C/ESP/CO/1, 12 Dec. 2013, para. 32.

[63] CED, Concluding observations on the report submitted by Paraguay, UN CED/C/pry/CO/1, 20 October 2014, para. 27.

[64] UN Working Group on Enforced or Involuntary Disappearances, Report on the mission to Guatemala, A/HRC/2/41/Add.1, 20 February 2007, para. 70.

[65] María Clara Galvis Patiño and Néstor Oswaldo Arias Ávila, Los Principios Directores para la Búsqueda de Personas Desaparecidos: origen y contenido, Ideas Verdes, Análisis política, número 10, agosto 2019, p. 9.

[66] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, introduction, para. 2.

[67] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principle 13.

[68] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, 7.1.

responsible.⁶⁹ In examining the obligation to investigate, the IACHR has forcefully stated that it is the authorities that have the legal duty to move investigations forward and that this burden should not be handed over to family members.⁷⁰

As part of the duty to investigate, the IACtHR has explained that states must conduct serious and rigorous searches, making every possible effort to determine the whereabouts of the victim as soon as possible, since “it is of utmost importance for the relatives of the disappeared victim to be able to know the whereabouts or ultimate fate of the victim, since this alleviates their anguish and suffering from not knowing the whereabouts and fate of their disappeared family member”.⁷¹ The search must be systematic and have sufficient and suitable human, technical and scientific resources. States should have a strategy for communicating with family members, develop a framework for coordinated action and, if necessary, request cooperation with other states.⁷² In addition, under the concept of violations of civil rights, the IACtHR has argued that “due diligence also extends to the search for, recovery of, and potential identification of the recovered human skeletal remains”.⁷³

Finally, the IACtHR has interpreted the obligation to search as a measure of satisfaction and non-repetition, as part of the integral redress of harm done. It thus holds that the expenses that family members incur in attempting to locate forcibly disappeared persons, especially in procedures with authorities, must be considered actual damages.⁷⁴ It also asserts that “effective search and immediate location of him, or that of his remains, either through a criminal investigation or through another adequate and effective procedure”,⁷⁵ constitutes a means of restoring the victims’ right to the truth.⁷⁶

A point fundamental to all of these considerations is that “since the families of forcibly disappeared persons are the subject of rights, efforts to account for forcibly disappeared persons go beyond the humanitarian objective of alleviating pain, and are framed in terms of restoring the capacity of the State to fulfil its central obligation to guarantee the fundamental rights of individuals”.⁷⁷

4.2 THE RIGHT TO SEARCH FOR FORCIBLY DISAPPEARED PERSONS

The families, loved ones and communities of forcibly disappeared persons, and especially but not exclusively the women among them, often thrust into searching for them as soon as they become aware of the enforced disappearance. They activate social and family support networks; go to the authorities; search hospitals, prisons, morgues and military or police facilities; and file legal appeals; among many other steps to determine the fate or whereabouts of the forcibly disappeared person, learn what happened and find them alive or, in the worst case, make arrangements for their remains according to their customs.⁷⁸

[69] María Clara Galvis Patiño, De Velásquez Rodríguez a los Principios Rectores para la Búsqueda de Personas Desaparecidas, in IIHR, Desaparición forzada en el Sistema Interamericano de Derechos Humanos, balance, impactos y desafíos, p. 368.

[70] IACtHR. Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia, judgment of 14 November 2014, para. 488.

[71] IACHR. Final Report: Follow-up Mechanism to the Ayotzinapa Case, 2018, para. 45.

[72] IACtHR. Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia, judgment of 14 November 2014, para. 561.

[73] Eduardo Ferrer-Mac-Gregor and Juan Jesús Góngora Maas, Desaparición forzada de personas y derecho a la verdad en el Sistema Interamericano de Derechos Humanos, 2019, p. 74.

[74] IACtHR. Case of Radilla Pacheco v. Mexico, judgment of November 23, 2009, para. 368.

[75] IACtHR. Case of Radilla Pacheco v. Mexico, Judgment of November 23, 2009, paragraph 336.

[76] IACtHR. Case of Radilla Pacheco v. Mexico, Judgment of November 23, 2009, paragraph 336.

[77] International Commission on Missing Persons (ICMP), The Participation of Families of Missing Persons as a Key to Progress: Recommendations to strengthen the efforts of Colombian institutions, 2021, p. 4.

[78] Lisa Ott and Natacha Hertig, Family Associations of Disappeared and Missing Persons: Lessons from Latin America and Beyond, 2020, p. 5.

Searching becomes a path that each family member, loved one and community travels differently and that leads many to become human rights defenders. News of the enforced disappearance sets off a process as diverse as the circumstances of each person, family or community. Sometimes the search starts immediately, while in other cases fear or threats hold it at bay. Sometimes searchers act alone, and sometimes they find support and company in civil society organizations or even band together with others to start their own organizational search process. They may determine the fate or whereabouts of the forcibly disappeared person quickly, or the search may stretch on for years or decades.⁷⁹

The state's reaction to the claims of the forcibly disappeared person's family members, loved ones and communities is among the factors that most influences the shape the search takes, for several reasons. First, states not only have an obligation to search, but are also often in a better position to do so, given their resources and capabilities, their greater access to relevant information, and the possible involvement of state actors in the events. Second, the way that state actors interact with family members, loved ones, and communities strongly determines how the latter perceive the search process itself and how they act.⁸⁰

In Amnesty International's view, **the right to search for persons subjected to enforced disappearance** can take two different forms, depending on how the state reacts to petitions to determine their fate or whereabouts. On the one hand, people **have a right to participate in searches** conducted by state authorities. On the other hand, people **have a right to carry out their own search and receive state protection from the risks, threats and attacks they experience as they do so**. Under either scenario, searchers exercise rights that must be respected, guaranteed and protected by the state, such as the right to the truth; the right to seek, receive and impart information;⁸¹ the right to access public information and the right to defend human rights.

4.2.1 THE RIGHT TO PARTICIPATE IN STATE SEARCHES

The ICPPED states that “[e]ach victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person”.⁸² According to the CED, this implies a right to participate “in all stages of the search process, without prejudice to the measures taken to preserve the integrity and effectiveness of the criminal investigation or the search itself”.⁸³ This right extends not only to victims but also to organizations and associations that are “(...) concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance”.⁸⁴ Participation in state search efforts is thus the first scenario in which the right to search arises. This participation has two facets.

The first is **the state's obligation to give family members, loved ones and communities who are searching adequate information on its actions, the results of the search⁸⁵ and on those**

[79] Briony Jones, Lisa Ott, Mina Rauschenbach and Camilo Sánchez, “Hiding in Plain Sight: Victim Participation in the Search for Disappeared Persons, a Contribution to (Procedural) Justice”, *International Journal of Transitional Justice*, Volume 17, July 2023, p. 238-240.

[80] Briony Jones, Lisa Ott, Mina Rauschenbach and Camilo Sánchez, “Hiding in Plain Sight: Victim Participation in the Search for Disappeared Persons, a Contribution to (Procedural) Justice”, *International Journal of Transitional Justice*, Volume 17, July 2023, p. 242-243.

[81] ICPPED, preamble.

[82] ICPPED, Art. 24.2.

[83] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principle 5.1.

[84] ICPPED, art. 24.7.

[85] Declaration on the Protection of all Persons from Enforced Disappearance, art. 13.4. ICPPED, Art. 24.2. UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principle 5.1. IACtHR. Case of Tenorio Roca et al. v. Peru, Judgment of 22 June 2016, para. 275. IACtHR. Case of Rio Negro Massacres Vs. Guatemala, Judgment of 4 September 2012, para. 268.

individuals' rights within the search and the mechanisms available for their protection.⁸⁶

If the state does not provide information to searching relatives, loved ones and communities, they restrict their right to the truth. This right can only be restricted to protect an ongoing criminal investigation and after fully analysing strict proportionality on a case-by-case basis.⁸⁷ Moreover, the WGEID establishes that any general restriction on providing information to or communicating with people involved in a search is a violation of the right to the truth.⁸⁸

The second facet relates to **states' obligation to consider the courses of action proposed by searching family members, loved ones and communities and the organizations that represent them, as well as to guarantee their right to participate in the proceedings and to request that they be heard and that the authorities be held accountable.** Participation in state searches is valuable in two ways. First, it is a right and therefore has intrinsic value. Second, the families, loved ones, and communities of the forcibly disappeared person typically have useful information for the search, and they deploy valuable skills and capacities in their own search process. In other words, their participation can make the search more effective.⁸⁹ States should thus allow this participation in searches not only because it is a right, but also as part of their duty of due diligence.⁹⁰ Moreover, the CED has clearly stated that “input, experiences, alternative suggestions, questions and doubts should be taken into account at all stages of the search, as contributions to increasing the effectiveness of the search, and should not be subjected to formalities that hold them up”.⁹¹

The CED's Guiding Principles for the Search for Disappeared Persons clearly state that in contexts where enforced disappearance is frequent or massive, searches should fit within a comprehensive public policy on disappearances.⁹² **When designing, implementing and evaluating such policies, it is essential to include the participation of searching family members, loved ones and communities for the same reasons that their participation in specific search efforts is mandatory: because it is their right and because it is part of states' duty of due diligence.** The Guiding Principles themselves recognize this fact by stipulating that “all stages and aspects of the public search policy should be designed and implemented with the participation of victims and all persons and civil society organizations with experience and a willingness to cooperate in the design and/or implementation of the policy.”⁹³ This participation must be genuine, occur in spaces that effectively preclude discrimination, and honour states' obligation to apply gender and intersectional approaches. **This participation should also extend to other spaces for designing, implementing and evaluating public policies that are not related to searching but are related to women's individual and collective rights.**

Additionally, institutions naturally have an obligation to protect the families, loved ones, and communities of the forcibly disappeared person as they participate in state search processes.⁹⁴

Finally, while relatives, loved ones and communities have a right to participate in searches, this does not mean they are obligated to do so. **States cannot use lack of involvement of family members, loved ones, or communities in a search to justify not initiating or moving**

[86] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principle 5.2.

[87] UN. Human Rights Council. WGEID Report. A/HRC/16/48. 26 January 2011, p. 15.

[88] UN. Human Rights Council. WGEID Report. A/HRC/16/48. 26 January 2011, p. 15.

[89] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principle 2.2. María Clara Galvis and Néstor Oswaldo Arias, *Los Principios Rectores para la Búsqueda de Personas Desaparecidas: origen y contenido*, 2019, p. 16-17. Christiane Schulz, *The Search for Victims of Enforced Disappearance. How the human rights obligation to search can be successfully implemented*, 2017, p.2.

[90] On the obligation of due diligence in searches: ICPPED, Art. 12. UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principles 6, 7, 8, 10, 11, 12 and 13. IACtHR. *Case of Velasquez Rodriguez Vs. Honduras*, Judgment of 29 July 1988, para. 181. IACtHR. *Case of Caracazo v. Venezuela*, judgment of 29 August 2002, para. 122.

[91] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principle 5.1.

[92] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principle 3.1.

[93] UN, CED, Guiding Principles for the Search for Missing Persons, CED/C/7, 8 May 2019, principle 3.5.

[94] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principles 2.2 and 14.1. Ariel Dultzky, Isabel Anayanssi Ortega (authors) and Verónica Hinojosa (editor), *Where are they? International Standards for the Search for Forcibly Disappeared Persons*, 2019, p. 86-87.

forward with that search.⁹⁵ Rather, they must take all measures at their disposal to enable their participation, including applying differential approaches in their interactions with them and recognizing specific circumstances that make them even more vulnerable than they already were following the enforced disappearance. Regarding this point, the CED clearly states that “[I]n cases involving adolescent girls and women who have disappeared or are involved in the search, all stages of the search should be conducted with a gender perspective and staff, including female staff, who have received proper training”.⁹⁶

Therefore, alongside states’ obligation to search for forcibly disappeared persons, those searching for them also have a right to be involved in this process, both because of their right to know the truth about the fate or whereabouts of the person they are searching for and because they might contribute valuable information for the search.

4.2.2 THE RIGHT TO MOUNT ONE’S OWN SEARCH

In searching for a forcibly disappeared person, the person’s family members, loved ones and community are exercising their own right to the truth, as well as other rights, such as the right to judicial protection in filing a writ of habeas corpus,⁹⁷ or the right to access information when they ask states to provide information on the fate or whereabouts of the forcibly disappeared person.⁹⁸ Searches thus reflect both the drive to fill the informational void left by the enforced disappearance of a loved one and the exercise of a right to know the truth about their fate or whereabouts.

The rights to the truth, to seek and receive information and to judicial protection combine uniquely in searches for persons subjected to enforced disappearance. **The searching done by a forcibly disappeared person’s families, loved ones and communities is such a specific activity that, in addition to constituting a combination of three human rights, it is in itself a right that must be recognized: the right to search.** The need for a separate right is borne out by the fact that the search becomes part of the very identity of the searchers.⁹⁹

International treaties on the matter do not explicitly establish the right of forcibly disappeared persons to be searched for.¹⁰⁰ But it is simple to conclude that this right does exist—even if it is not explicitly stated and is rather derived from the rights originally violated by the enforced disappearance—based on the premise that the general obligations to guarantee and protect human rights entail a state obligation to search for forcibly disappeared persons, as argued above. An analysis of the general principles of international state responsibility or the rules on reparations for human rights violations yield the same conclusions, for at least three reasons.

First, one of states’ first obligations when responsible for an internationally wrongful act is to end such wrongdoing and guarantee that it will not be repeated.¹⁰¹ For enforced disappearance, the wrongdoing only stops when the forcibly disappeared person has been

[95] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principle 5.1.

[96] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principles 2.2 and 4.3.

[97] Flávia Piovesan and Julia Cortez da Cunha Cruz, “Desaparición forzada de personas en el Sistema Interamericano de Derechos Humanos,” in Juana María Ibáñez, Rogelio Flores and Jorge Padilla (editors), *Desaparición forzada en el Sistema Interamericano de Derechos Humanos. Balance, impacto y desafíos*, 2020, p. 27.

[98] IACTHR. Case of Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil, Judgment of 24 November 2010, para. 201. Flávia Piovesan and Julia Cortez da Cunha Cruz, “Desaparición forzada de personas en el Sistema Interamericano de Derechos Humanos,” in Juana María Ibáñez, Rogelio Flores and Jorge Padilla (editors), *Desaparición forzada en el Sistema Interamericano de Derechos Humanos. Balance, impacto y desafíos*, 2020, p. 28.

[99] Jomary Ortégón Osorio, “Mujeres buscadoras: elementos de reflexión para contribuir a su reparación integral”, *Pensamiento Jurídico*, No. 55, Bogotá, 28 March 2022, p. 24.

[100] Ariel Dulitzky, Isabel Anayanssi Ortega (authors) and Verónica Hinestroza (editor), *Where are they? International Standards for the Search for Forcibly Disappeared Persons*, 2019, p. 33.

[101] International Law Commission. *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Article 30.

diligently searched for and their fate or whereabouts have been determined.¹⁰² Second, every victim of a human rights violation has a right to redress,¹⁰³ which includes actions towards restitution.¹⁰⁴ Although there is no way to fully restore victims of enforced disappearance to their situation prior to the violation given the special gravity of the offence, the state must still attempt to do so. The most appropriate actions are to restore their protection before the law and report their fate or whereabouts. Third, state failure to search for a forcibly disappeared person is a human rights violation in and of itself.¹⁰⁵

Additionally, to search is to guarantee and protect the human rights of the forcibly disappeared person, including the rights to liberty and security of person, to protection of the law, to not be arbitrarily detained, to recognition of personhood, and to not being subjected to torture or other cruel, inhuman or degrading treatment or punishment, all of which are violated by enforced disappearance.¹⁰⁶ **This makes searchers human rights defenders who are exercising their right to defend human rights, which in turn creates certain obligations for states.**

Recently, the IACtHR recognized, in line with prior statements by the Inter-American Commission on Human Rights (IACHR)¹⁰⁷ and in accordance with the contents of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,¹⁰⁸ that **defending human rights is a right in itself.**¹⁰⁹ Additionally, in cases related to human rights violations against relatives of victims of enforced disappearance, the IACtHR has recognized that people often join or form non-governmental organizations to pursue their search and advocate for truth and justice. It has held that in these scenarios, **these relatives' activity is a true instance of the defence of human rights**, stating that "(...) States have the obligation to provide the necessary means for human rights defenders to carry out their activities freely; to protect them when they are threatened in order to prevent attempts on their life and integrity; to refrain from imposing obstacles that hamper the realization of their work, and to investigate violations committed against them seriously and effectively in order to combat impunity".¹¹⁰

Categorizing searchers as human rights defenders is consistent with the current standards of international human rights law. The IACHR and the IACtHR have long held that anyone who defends human rights is a human rights defender.¹¹¹ A person does not have to prove that they practice a specific profession or trade,¹¹² much less have an explicit state recognition or certification, to be considered a defender. All that matters is whether the person takes action to "promote and protect human rights".¹¹³ Moreover, **a person does not have to identify themselves as a human rights defender for the state's international protection obligations**

[102] IACtHR. *Heliodorus Portugal Vs. Panama*, judgment of August 12, 2008, para. 112. UN. Human Rights Council. WGEID report. A/HRC/16/48, 26 January 2011, p. 12.

[103] International Law Commission. Draft Articles on Responsibility of States for Internationally Wrongful Acts, Article 31. ACHR, Art. 63 (1) IACtHR. Case of the "Street Children" (*Villagrán Morales et al.*) v. Guatemala. Judgment of 26 May 2001, para. 62. UN Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Re v.1/Add.13; 26 May 2004; para. 16. UN, Updated set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, 8 February 2005, principle 31.

[104] UN, General Assembly, 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, 21 March 2006, principle 19.

[105] IACtHR. *Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*, judgment of 14 November 2014, para. 486.

[106] Tulio Scovazzi and Gabriella Citroni, *The Struggle against Enforced Disappearance and the 2007 United Nations Convention*, 2007, p.1.

[107] IACHR. Report on the situation of human rights defenders in the Americas. OAS/Ser.LV/II.124, 7 March 2006, para. 36.

[108] United Nations. General Assembly. UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. A/RES/53/144. 8 March 1999, art. 1.

[109] IACtHR. Case of *Members of the "José Alvear Restrepo" Lawyers' Collective Corporation v. Colombia*, judgment of October 18, 2023, para. 977.

[110] IACtHR. *Gudiel Álvarez et al. ("Diario Militar")*, Judgment of 20 November 2012, para. 314.

[111] IACHR. Report on the situation of human rights defenders in the Americas. OAS/Ser.LV/II.124, 7 March 2006, para. 18-19.

[112] IACtHR. Case of *Baraona Bray v. Chile*, judgment of 24 November 2022, para. 70.

[113] IACtHR. Case of *Human Rights Defender et al. v. Guatemala*, judgment of 28 August 2014, para. 129.

to apply to them. Someone could thus identify themselves, for example, as a woman searcher rather than a human rights defender, but states will still have an obligation to respect, guarantee and protect their right to defend human rights and their right to search, as well as an obligation to ensure that they can conduct their activities safely and without fear of reprisals.

Searching for forcibly disappeared persons is therefore an exercise of both the right to search and the right to defend human rights.

This dual characterization of searching as the exercise of the right to search and the right to defend human rights has many consequences. But the primary one is that states are obligated to respect, guarantee and protect both rights. For example, they must refrain from impeding the exercise of the right or hindering it; they must provide people with the institutional conditions needed to exercise the right; and they must prevent third parties from impeding the exercise of the right or violating it.¹¹⁴

Regarding the right to defend human rights, over the years international law has specified states' obligations to these defenders in more detail. For example, the IACtHR has established that states must, at minimum, (i) provide the necessary means for defenders to freely carry out their activities;¹¹⁵ (ii) protect them from threats to prevent attacks on their life and integrity;¹¹⁶ (iii) refrain from hindering their work¹¹⁷ and, (iv) combat impunity by investigating violations committed against them.¹¹⁸ And with regard to defending human rights specifically by searching, the WGEID has explained that under the right to the truth, “the state has an obligation to give full access to information available, allowing the tracing of disappeared persons”.¹¹⁹ And the International Committee of the Red Cross clearly states the obligation of parties in conflict to “do everything possible to restore family ties, that is, to not only allow searches to be undertaken by members of families that have been scattered, but even to facilitate them”.¹²⁰

4.3 THE RELATIONSHIP BETWEEN THE OBLIGATION TO SEARCH; THE OBLIGATION TO INVESTIGATE, PROSECUTE AND PUNISH; AND THE RIGHT TO SEARCH

The IACtHR has established that “the duty to determine the whereabouts of victims is independent of the obligation to investigate the events that have been reported and punish the perpetrators when warranted”.¹²¹ Similarly, the CED Guiding Principles for the Search for Disappeared Persons clearly state that **searches and criminal investigations should reinforce each other, be given the same priority and be interconnected**, regardless of whether or not

[114] UN HRC General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 26 May 2004.

[115] IACtHR. Case of Digna Ochoa and relatives Vs. Mexico, judgment of 25 November 2021, para. 100.

[116] IACtHR. Case of Digna Ochoa and relatives Vs. Mexico, judgment of 25 November 2021, para. 100.

[117] IACtHR. Case of Nogueira de Carvalho et al. v. Brazil, judgment of 29 November 2006, para. 77.

[118] IACtHR. Case of Nogueira de Carvalho et al. v. Brazil, judgment of 29 November 2006, para. 77.

[119] UN. Human Rights Council. WGEID report. A/HRC/16/48. 26 January 2011, p. 15.

[120] ICRC, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, para. 4553. IACtHR. Case of Rochac Hernández et al. v El Salvador, judgment of 14 October 2014, footnote 195. Cited in: Eduardo Ferrer-Mac-Gregor and Juan Jesús Góngora Maas, Desaparición forzada de personas y derecho a la verdad en el Sistema Interamericano de Derechos Humanos, 2019, p. 99.

[121] IACtHR. Case of Blanco Romero et al. v. Venezuela. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of 22 November 2011, para. 13. As cited in: Ariel Dulitzky, Isabel Anayanssi Ortega (authors) and Verónica Hinestroza (editor), Where are they? International Standards for the Search for Forcibly Disappeared Persons, 2019, p. 41.

they are conducted by different government agencies.¹²² The WGEID has also called for similar coordination.¹²³

Lack of coordination between government institutions with different responsibilities regarding enforced disappearances can often undermine efficiency and cause undue delays. When one authority interferes with the work of another, this often discredits them in the eyes of the public and complicates the process for victims, who must repeat their testimony. This situation puts victims at risk of further trauma or forces them to act as a liaison between different authorities.¹²⁴ Thus, states' obligations to search for persons subjected to enforced disappearance and to investigate, prosecute and punish that crime include a requirement that institutions must coordinate with each other to do so.¹²⁵ The CED's Guiding Principles for the Search for Missing Persons also explicitly state that when authorities end a criminal investigation, this cannot hinder an ongoing search, which must continue until the fate or whereabouts of the forcibly disappeared person has been determined.¹²⁶

The duty of coordination extends to the right of family members, loved ones, or communities to participate in state searches. The same holds for criminal investigations into enforced disappearances. If they decide to participate, thereby exercising their right to search, the state is obligated to find solutions that allow them to: (i) determine the fate or whereabouts of the forcibly disappeared person; (ii) investigate, prosecute and punish in a fair trial the perpetrators of the enforced disappearance; and (iii) safeguard the rights of family members, loved ones and communities before, during and after the search. That is, **states must create environments conducive to searching, without ignoring their own obligation to search and investigate, prosecute and punish or their duty of inter-institutional coordination (when required).**

This difficult task requires the utmost diligence from authorities in charge of searches. Circumstances such as time passing, the characteristics of each enforced disappearance or how institutions initially reacted to the events can complicate coordination between the search and criminal investigation. For example, sometimes search mechanisms are guided by different principles than criminal investigation institutions. While the former are focused on determining the fate or whereabouts of the forcibly disappeared person, the latter seek to find the perpetrator and prosecute them. Sometimes investigative agencies have broader powers of access to public information and restrictions on sharing it with other institutions.¹²⁷ **In all these scenarios, it is essential to ensure that family members, loved ones and communities who are searching are truly able to participate, in accordance with the standards applicable to each activity.**

[122] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principle 13.

[123] UN, WGEID, Report of the WGEID on Standards and Public Policies for the Effective Investigation of Enforced Disappearances, A/HRC/45/13/Add.3, 7 August 2020, para. 56.

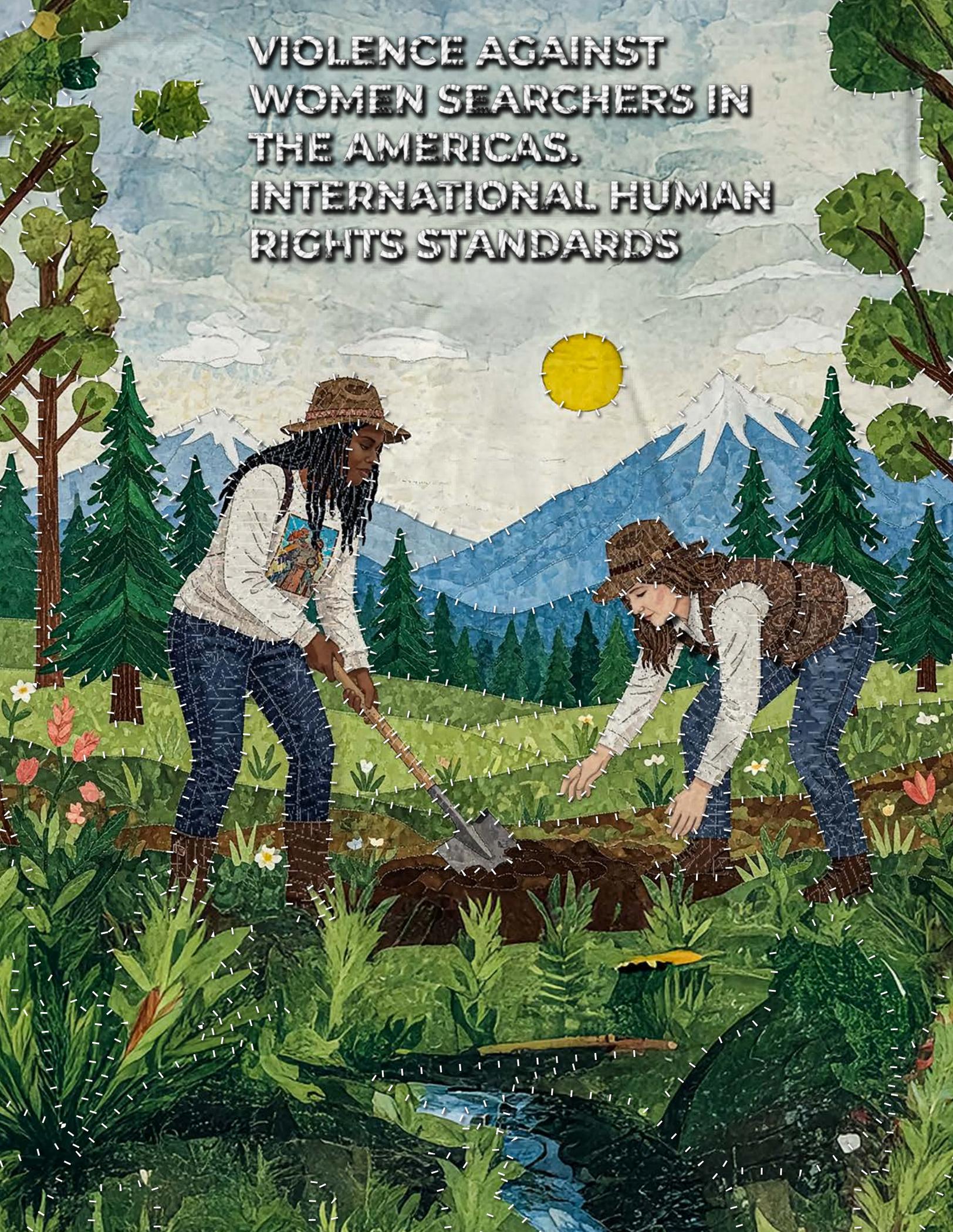
[124] UN, WGEID, Report of the WGEID on Standards and Public Policies for the Effective Investigation of Enforced Disappearances, A/HRC/45/13/Add.3, 7 August 2020, para. 56.

[125] Ana Srovin, Coordination between the search and criminal investigations concerning disappeared persons, 2021, p. 12-13.

[126] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principle 13.

[127] Gabriella Citroni, Report. Coordinating the Search and Criminal Investigations concerning Disappeared Persons, 2020, p. 5.

**VIOLENCE AGAINST
WOMEN SEARCHERS IN
THE AMERICAS.
INTERNATIONAL HUMAN
RIGHTS STANDARDS**



5. VIOLENCE AGAINST WOMEN SEARCHERS IN THE AMERICAS. INTERNATIONAL HUMAN RIGHTS STANDARDS

Women have played a crucial and inspiring role in fighting for the rights of forcibly disappeared persons in the Americas. **But their search activities are extremely dangerous, and states must take special protection measures that take into account three characteristics that make them especially vulnerable** and put them at serious risk of suffering various forms of violence and human rights violations. First, women searchers are victims of a crime under international law. This in itself harm them, but it also puts them at risk of institutional violence and further harm. Second, women searchers are human rights defenders acting individually or collectively who, given the adverse conditions for defending human rights in the Americas,¹²⁸ are exposed to particular risks from both state and non-state actors because they are women. Third, other systems of oppression can converge to make these women even more venerable due to traits like race, migratory status, belonging to an indigenous group, having a disability, or living in peripheral or rural area.

Women and girls can be victims of enforced disappearance in a variety of ways. They can be forcibly disappeared themselves, or their family members or loved ones can be subjected to enforced disappearance. They can also suffer damages or losses as a result of an enforced disappearance. Regardless of the scenario, they are often exposed to gender-based violence, which is “violence which is directed against a woman because she is a woman or that affects women disproportionately”.¹²⁹ Thus, when women are victims of enforced disappearance because they are women, this is among the most brutal forms of gender-based violence.¹³⁰ Among the particular harms suffered by women who are victims of enforced disappearance are stigmatization, psychological damage, and the destruction of family structures. They experience disproportionate rates of sexual violence and endure suffering and humiliation and even

[128] Front Line Defenders, Global Analysis 2022, 2023.

[129] UN, Committee on the Elimination of Discrimination Against Women, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, 26 July 2017, para 1.

[130] UN, Committee on the Elimination of Discrimination Against Women, Views of the Committee under article 7, paragraph 3, of the Optional Protocol concerning communication No. 153/2020, 22 November 2022, CEDAW/C/83/D/153/2020, para. 7.4.

unwanted pregnancies.¹³¹ Women searchers can also be victims of gender-based violence, which disproportionately affects them and puts them at greater risk than men doing the same work.

Women and girls whose relatives or loved ones have been forcibly disappeared experience differentiated impacts, especially because of the gender roles they have been given, which are usually deeply rooted in history, tradition, religion and culture.¹³² For this reason, to guarantee the rights to equality and non-discrimination, it is essential to incorporate a gender-based perspective into any state measure to respect, guarantee and protect their rights.

The IACHR has defined the concept of a gender-based perspective as something that on the one hand raises awareness of women's and girls' position of inequality and structural subordination to men due to their gender; and on the other hand becomes a key tool to combat discrimination and violence against women, as well as against people with sexual and gender diversity.¹³³ According to the WGEID, "A gender perspective is crucial in explaining, understanding and dealing with unique disadvantages and obstacles that women face in the exercise of their human rights and to outline solutions to try and address these issues."¹³⁴ It is also essential to consider how other factors like race, ethnicity, disability, sexual orientation, age, or migratory status¹³⁵ can compound the vulnerability of a woman or girl and apply an intersectional approach that takes these situations of vulnerability into account and recognizes their differentiated impacts on women and girls as they search.¹³⁶

The IACtHR has also examined the obligation of non-discrimination¹³⁷ with a gender-based perspective in relation to enforced disappearance. It has ruled: i) that the responsibility of prevention is even greater when there is a known and widespread pattern of gender-based violence; ii) that searches must be launched as soon as news of a disappearance is received, and they must be even more urgent and rigorous when the victim is a woman or a girl; iii) that the state must investigate, prosecute and punish the perpetrators; and iv) that there is a duty to provide redress to victims in ways designed to transform structural discrimination.¹³⁸ Despite this important jurisprudence, the IACtHR has only tangentially examined the violations suffered specifically by women searchers from a gender-based perspective, despite recognizing that they are victims and that they may suffer human rights violations that also have gender components.¹³⁹

Amnesty International recognizes the important work of women searchers in demanding the rights of forcibly disappeared persons in the Americas, as well as the need for states to safeguard the rights of women searchers using a gender-based and intersectional approach. This section provides a gender-based perspective on the most common forms of violence that women experience as they exercise their right to search for the forcibly disappeared. It also outlines states' human rights obligations for each form of violence.

[131] UN, WGEID, General Comment on Women Affected by Enforced Disappearances, A/HRC/WGEI/98/2, 14 February 2013, para. 9; Flávia Piovesan and Julia Cortez da Cunha Cruz, "Desaparición forzada de personas en el Sistema interamericano de Derechos Humanos," in Juana María Ibáñez, Rogelio Flores and Jorge Padilla (editors), *Desaparición forzada en el Sistema Interamericano de Derechos Humanos. Balance, impacto y desafíos*, 2020, p. 35.

[132] UN, WGEID, 98th session, 31 October - 9 November 2012, preamble.

[133] IACHR, Violence and Discrimination against Women and Girls, OAS/Ser.LV/II, 14 November 2019, doc. 233, para. 8.

[134] UN, WGEID, General comment on women affected by enforced disappearances, 98th session, 31 October-9 November 2012, preamble.

[135] Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Article 9.

[136] IACHR, Violence and Discrimination against Women and Girls, OAS/Ser.LV/II, 14 November 2019, doc. 233, para. 8.

[137] ACHR, Article 1.1.

[138] IACtHR. Case of Gonzalez et al. ("Cotton Field") Vs. Mexico, judgment of November 16, 2009, para. 195, 293, 450 and 509.

[139] Flávia Piovesan and Julia Cortez da Cunha Cruz, "Desaparición forzada de personas en el Sistema interamericano de Derechos Humanos," in Juana María Ibáñez, Rogelio Flores and Jorge Padilla (editors), *Desaparición forzada en el Sistema Interamericano de Derechos Humanos. Balance, impacto y desafíos*, 2020, p. 37.

CASE OF MOVILLA GALARCIO ET AL. VS COLOMBIA*



In 1993, Pedro Julio Movilla Galarcio—a trade union leader, member of the Communist Party of Colombia, Marxist-Leninist and social activist—was forcibly disappeared. His wife, Candelaria Nuris Vergara Carriazo, set aside her life ambitions to search for Pedro Julio, while at the same time becoming the head of her household.

In its decision, the IACtHR recognized that following the disappearance of their close relatives, women may experience gender-related stigma, violence and discrimination and, when the forcibly disappeared person is a male head of household, the victimization of family members can be heightened even further.

Moreover, it held that states are obligated to recognize women's work to prevent and investigate enforced disappearances. It also specified that states must ensure that this work is conducted without obstacles, intimidation or threats by safeguarding the bodily integrity of women searchers and their rights to political participation, addressing historical and cultural hindrances to the search, and guaranteeing that the women and their dependents can continue to go about their lives in decent conditions.

* IACtHR Case of Movilla Galarcio et al. v. Colombia. Merits, Reparations and Costs. Judgment of 22 June 2022. Series C No. 452.

5.1 STIGMATIZATION OF FORCIBLY DISAPPEARED PEOPLE AND WOMEN SEARCHERS

One of the most common forms of violence in cases of enforced disappearance is stigmatization, both by authorities and by victims' families and communities, society, the media and other powerful actors. Stigma has been defined as “a process of dehumanizing, degrading, discrediting and devaluing people in certain population groups”.¹⁴⁰ It is often used to justify discrimination.¹⁴¹

Stigmatization by authorities usually first occurs when relatives or loved ones go to them to report an enforced disappearance, and this stigmatization has long-term and ongoing effects. In these cases, it is common to hear inappropriate phrases such as “they were taken for a reason” or “they were up to something”.¹⁴² When victims of enforced disappearance are women, these expressions are also often loaded with gender stereotypes, like references to the way they dressed or comments like “she must have taken off with a boyfriend”.¹⁴³

[140] UN, Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catalina de Albuquerque, A/HRC/21/42, 2 July 2012, para. 12.

[141] UN, Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catalina de Albuquerque, A/HRC/21/42, 2 July 2012, para. 3.

[142] USAID, ITESO, Jesuit University of Guadalajara, Nadie merece desaparecer, diagnóstico sobre la estigmatización hacia las personas víctimas de desaparición, sus familiares y las organizaciones que las acompañan, p.28

[143] USAID, ITESO, Jesuit University of Guadalajara, Nadie merece desaparecer, diagnóstico sobre la estigmatización hacia las personas víctimas de desaparición, sus familiares y las organizaciones que las acompañan, p.37.

These stereotypes can also be amplified by social media and traditional media, which often disseminate fake or distorted news that stigmatizes victims¹⁴⁴ in an attempt to justify the situation by blaming them. This minimizes the gravity of the enforced disappearance and the urgent need for authorities to intervene. Thus, “victims are accused of being violent or are branded with historically negative stereotypes, which denigrates them while legitimizing the aggression”.¹⁴⁵

THE CASE OF COTTON FIELD VS. MEXICO*



In 1993, people began to see femicides skyrocket in Ciudad Juárez, Mexico, amid a culture of discrimination against women. Mothers and relatives of the forcibly disappeared went to the authorities, who treated them in derogatory, disrespectful, and even aggressive ways when they tried to get information about the investigations. This fomented distrust and fear, and even a reticence to report crimes. The women’s representatives and civil society organizations also became targets of harassment and threats. Through their behaviour, officials sent the message that they did not need to respond to reports of crimes with any urgency or immediacy.

The IACtHR established a duty of strict diligence in responding to reports of missing women, a duty that especially applies during the first hours and days of the search. It also ordered restitutionary and transformative measures, such as including a gender-based perspective in documents related to investigating crimes against women, as well as implementing education programs and courses for public officials and the people of Chihuahua.

* IACtHR Case Gonzalez et al. (“Cotton Field”) v Mexico. Merits, Reparations and Costs. Judgement of 16 November 2009. Series C No. 205.

Beyond those subjected to enforced disappearance, **families and loved ones are also often stigmatized. For women, stereotypes arise from preconceived notions about which attributes, behaviours or characteristics are considered manly or womanly.** According to the IACtHR, the “conception and use [of stereotypes] becomes one of the causes and consequences of gender-based violence against women, conditions that are exacerbated when they are reflected, implicitly or explicitly, in policies and practices, and particularly in the reasoning and language of the State authorities”.¹⁴⁶

For example, mothers of forcibly disappeared persons are often blamed for not taking good enough care of their children and accused of being “bad mothers” or “bad women”.¹⁴⁷ Families themselves sometimes reject women searchers by claiming that in searching, they are neglecting to care for other family members. This can make these women feel worried and guilty.¹⁴⁸ Families often fall apart amidst fights and recriminations about the search and

[144] Ana Hortensia Gómez San Luis, Estigma y acompañamiento psicosocial a víctimas indirecta de desaparición, A dónde van los desaparecidos, 29 May 2023, [//adondevanlosdesaparecidos.org/2023/05/29/estigma-y-acompanamiento-psicosocial-a-victimas-indirectas-de-desaparicion/](https://adondevanlosdesaparecidos.org/2023/05/29/estigma-y-acompanamiento-psicosocial-a-victimas-indirectas-de-desaparicion/)

[145] Carlos Beristáin et al., Metodologías de investigación, búsqueda y atención a las víctimas. Del caso Ayotzinapa a nuevos mecanismos en la lucha contra la impunidad, 2017, p. 115.

[146] I/A Court H.R., Case of Velásquez Paiz and others v. Guatemala, Judgment of 19 November 2015, para. 180.

[147] IACHR, Violence and Discrimination against Women and Girls, OAS/Ser.L/V/II, 14 November 2019, para. 126.

[148] IACHR, Press Release: States must protect the rights of women searching for missing persons, 8 March 2023, https://www.oas.org/en/iachr/jsForm?File=/en/iachr/media_center/preleases/2023/038.asp

pressure to give it up.¹⁴⁹ Women whose husbands or partners have been forcibly disappeared often face the stigma of ending up alone and of supposedly having failed in their caregiving roles.¹⁵⁰

Family members or loved ones might also experience stigma related to suspicions that they are linked to certain groups, like criminal or rebel groups. They are also often considered to be against the government or to be trying to damage its reputation.¹⁵¹ This type of stigmatization can also come from family members or others who are close to the person and who may be afraid of being affected by the situation.¹⁵² They also may directly question those who continue to search, calling them “foolish” and suggesting that they stop looking, accept the disappearance and start living their life again. Finally, stigmatization also affects human rights organizations, legal representatives and psychologists who help women searchers pursue justice. These entities and professionals are often belittled for the work they do.¹⁵³

Social media has also been used for smear campaigns and to threaten human rights defenders, including relatives of forcibly disappeared people and women searchers. These attacks are often marked by gender stereotypes and discrimination,¹⁵⁴ conveying sexist and misogynistic messages “aimed at smearing them by attacking their image, their sexual orientation, their reputation and their families”.¹⁵⁵

Finally, women searchers can also be stigmatized when they advocate for states to address enforced disappearance and participate in state searches for loved ones. When their opinions are ignored, their experiences discounted or their knowledge minimized, this not only violates their right to participation, as explained above, but in many cases it can also be considered gender-based violence, given how prejudices and negative gender stereotypes shape these behaviours.

Stigmatization can violate human rights, especially the right to human dignity and non-discrimination. Likewise, stigmatization can affect states’ obligation to investigate possible gender or discriminatory motives. For this reason, the Guiding Principles for the Search for Disappeared Persons expressly mention authorities’ obligation to ensure that victims, including family members, are not subjected to stigmatization or other moral ill-treatment or defamation that harms their dignity or reputation or those of their forcibly disappeared loved ones. The Principles also set out the obligation to take action against defamatory attacks where necessary.¹⁵⁶ The WGEID, in turn, has referenced the obligation to prevent and combat social stigmatization of women for their activism in response to enforced disappearances and the need to train state agents to recognize social stigma and include programs designed to change stereotypical attitudes.¹⁵⁷ Additionally, the IACTHR has determined that the suffering caused by the loss of a loved one and by the difficulties of a search may violate the right to personal integrity of family members and women searchers, and that stigmatization is one of the circumstances that can contribute to that suffering.¹⁵⁸

States therefore have several obligations for combatting the stigmatization women searchers. First, they must refrain from stigmatizing both those subjected to enforced disappearance and searchers, and instead commend these women for their important work of searching and defending human rights. Second, they must educate public officials and

[149] ITESO, USAID, Nadie merece desaparecer, diagnóstico sobre la estigmatización hacia las personas víctimas de desaparición, sus familiares y las organizaciones que las acompañan, September 2021, p. 59.

[150] ICRC, Accompanying the Families of Missing Persons: A Practical Handbook, 2015, p. 53.

[151] ICRC, Accompanying the Families of Missing Persons: A Practical Handbook, 2015, p. 53.

[152] ICRC, Accompanying the Families of Missing Persons: A Practical Handbook, 2015, p. 58.

[153] Amnesty International, Perseguidas: criminalización de mujeres defensoras de derechos humanos en México, (Index: AMR 41/8035/2024), May 2024.

[154] UN, Working Group on Enforced or Involuntary Disappearances, New Technologies and Enforced Disappearances, A/HRC/54/22/Add.5, 54th session, 11 September – 6 October 2023, p. 4.

[155] IACHR, Violence and Discrimination against Women and Girls, OAS/Ser.LV/II, 14 November 2019, para. 129.

[156] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principle 2.

[157] UN, WGEID, General Comment on Women Affected by Enforced Disappearances, 14 February 2013, para. 36 and 45.

[158] IACTHR, Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia, 14 November 2014, para. 538.

society at large, and set up programs designed to change stereotypical attitudes. Third, they must acknowledge and combat gender-related stigma and ensure that any action they take to do so is based on a gender and intersectional perspective.

5.2 CRIMINALIZATION OF WOMEN SEARCHERS

Perpetrators of enforced disappearance can perceive the search for victims as a threat, and searching can also stir up political and organized crime interests, as is true in many other cases where people defend human rights. In an attempt to prevent searches and perpetuate impunity, many states have resorted to deterrence strategies, including turning the criminal system against women who search and other human rights defenders by opening arbitrary and often illegal criminal investigations against them.¹⁵⁹ According to the IACHR, this phenomenon is usually driven by tensions or conflicts of interest with state and non-state actors, who instrumentalize the criminal justice system to hinder human rights defenders' work and thus curb their causes because they consider them contrary to their interests.¹⁶⁰ Criminalization has individual and collective effects. One of the most significant is intimidation, which can affect both the direct targets of criminalization and others who defend the same causes. As a result, searchers may choose to abandon the search or take more tentative action.¹⁶¹

Successive United Nations Special Rapporteurs on the situation of human rights defenders have documented the impact of criminalization and identified a rise in legal action against human rights defenders who denounce violations. Abusive tactics that turn the legal system against defenders include arrests and trials on false charges, as well as arrests without charges, without access to legal counsel or without informing of the reasons for arrest.¹⁶² Searchers, including women, are targeted just like any other defenders, and in some cases the effects of the attacks may be intensified and extend to others, especially the forcibly disappeared person. Criminalization severely undermines the effectiveness of women's searches.

States must therefore, first and foremost, refrain from criminalizing women searchers for searching and for defending human rights. Second, states must refrain from violating due process in criminal proceedings against human rights defenders, including searchers who are women.¹⁶³

5.3 PHYSICAL VIOLENCE AGAINST WOMEN SEARCHERS

Through a variety of circumstances, the very lives and bodily integrity of women searchers are jeopardized by the attacks and threats they experience because of their work. Threats, killings, torture and forced displacement are common consequences of the violence committed by those who target searchers to ensure their crimes go unpunished.

When perpetrators' actions affect the bodies of women searchers, they do unique and differentiated harm. Gender-based violence that targets the bodies of women searchers, especially sexual violence, highlights the particular vulnerability they endure while searching.

The way the buck gender roles and the extreme circumstances in which the search often unfolds, among other factors, subject women searchers to special risks that states must address.

[159] Amnesty International, *Persecuted: Criminalization of Women Human Rights Defenders in Mexico*, (Index: AMR 41/8035/2024), May 2024, p. 2.

[160] IACHR, *Criminalization of the Work of Human Rights Defenders*. OAS/Ser.L/V/II. UN Doc. 49/15, 31 December 2015, page 30.

[161] IACHR, *Criminalization of the Work of Human Rights Defenders*. OAS/Ser.L/V/II. UN Doc. 49/15, 31 December 2015, p. 213.

[162] See for example UN, General Assembly, *Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor. Pathways to peace: women human rights defenders in conflict, post-conflict and crisis situations*. A/78/131. 7 July 2023, para. 41; UN Human Rights Council. *Report from Ms. Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders*. A/HRC/13/22. 30 December 2009, para. 31.

[163] IACtHR. *Case of Manuela et al. v. El Salvador*, Judgment of 2 November 2021, para. 118.

5.3.1 MURDERS, THREATS AND ATTACKS

For years, the Americas have been considered the most dangerous region for defending human rights. More defenders are murdered there than anywhere else in the world.¹⁶⁴ This tendency to attack those who stand up for rights and raise their voice against impunity unfortunately holds true for searchers, including women and their families.¹⁶⁵ Women searchers also often receive multiple threats of physical violence in a bid to halt their search efforts. The threats are increasingly made digitally. The WGEID has identified these practices and their purpose: to use the internet to threaten and harass, including sexually.¹⁶⁶

The IACHR has clearly stated that threats and attacks against human rights defenders are especially serious, as they affect not only the defender but society as well, “which is kept in the dark about whether people’s rights have been violated”.¹⁶⁷ This effect is particularly serious in attacks against searchers, since uncertainty is part of the personal, family, community and societal trauma.

States have a duty to fully respect, protect and guarantee rights like the right to life and personal integrity of searchers, including those who are women. This means they must not only refrain from attacking searchers through their agents, but also take legal, political, administrative and cultural measures to prevent attacks; protect searchers from attacks by both authorities and third parties; and safeguard their rights, including their right to defend human rights. States are also obligated to bring to justice those suspected of violating the rights of searchers, as well as to ensure full reparation for harm.¹⁶⁸ The CED has reiterated these obligations in its recommendations to Mexico, emphasizing the need to redouble efforts, including awareness-raising campaigns, to prevent acts of violence, surveillance, threats and retaliation against the relatives of forcibly disappeared persons, those supporting the relatives, human rights defenders, journalists, environmental defenders, and government officials involved in the search and investigation.¹⁶⁹

The CED has also stressed the obligation to protect women searchers from attacks and threats to their wellbeing. For example, it has recommended that Mexico strengthen its existing protection mechanisms, have enough and sufficiently qualified staff, and, ultimately, guarantee that women searchers will be protected and recognized as defenders.¹⁷⁰ These recommendations all align with the CED’s Guiding Principles, which establish authorities’ obligation to guarantee the safety and protection of victims involved in search processes.¹⁷¹

[164] For example, according to Front Line Defenders, 79% of the 300 human rights defenders murdered worldwide in 2023 were killed in the Americas, especially in Colombia, Mexico, Brazil and Honduras. Meanwhile, Global Witness noted that the majority of land and environmental defenders killed in 2022 worldwide lived in Latin America: 60 in Colombia, 34 in Brazil, 31 in Mexico and 14 in Honduras. Front Line defenders, Global Analysis 2023/24, 2024, https://www.frontlinedefenders.org/sites/default/files/1578_fld_ga23_online_u02.pdf. Global Witness. Almost 2,000 land and environmental defenders killed between 2012 and 2022 for protecting the planet. 13 September 2023. Available at: <https://www.globalwitness.org/en/press-releases/almost-2000-land-and-environmental-defenders-killed-between-2012-and-2022-protecting-planet/>.

[165] In Mexico alone, there have been 16 cases of searchers killed for their work between 2019 and 2024, 13 of which were women. Artículo 19, Derechos pendientes: informe sexenal sobre la libertad de expresión y derecho a la información en México, p. 91, <https://articulo19.org/derechospendientes/>

[166] UN, WGEID, New Technologies and Enforced Disappearances, A/HRC/54/22/Add.5, 11 September 2023.

[167] IACtHR. Members of the “José Alvear Restrepo” Lawyers’ Collective Corporation v. Colombia, judgment of October 18, 2023, para. 478. IACtHR. Case of Nogueira de Carvalho et al. v. Brazil, judgment of 29 November 2006, para. 76.

[168] IACtHR. Case of Human Rights Defender et al. v. Guatemala, judgment of 28 August 2014, para. 138-140. UN. Human Rights Council. Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor. A/HRC/46/35, 24 December 2020, para. 27-28.

[169] CED, Concluding Observations on the supplementary information submitted by Mexico under Article 29, paragraph 4 of the Convention, CED/C/MEX/OAI/2, 29 September 2023, para. 36 a)

[170] CED, Concluding Observations on the supplementary information submitted by Mexico under Article 29, paragraph 4 of the Convention, CED/C/MEX/OAI/2, 29 September 2023, para. 35 b) and 36 b)

[171] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principle 14.

5.3.2 FORCED DISPLACEMENT

As explained above, women searchers face constant security risks when reporting or searching for forcibly disappeared persons. In many cases, these risks have forced them to move, either within their own countries or across international borders. **Women who are forced to move experience the double pain of “losing their relatives and having to move, all of which is very damaging to their mental health”.**¹⁷²

The many consequences for victims of forced displacement include having to leave their homes, families and communities, way of life, jobs and academic studies.¹⁷³ Forced displacement can also affect their immediate families and uproot them from their communities, which has a profound effect on Indigenous Peoples and Afro-descendants due to the cultural value of their lands and because this loss can severely affect their way of life, traditions, language and ancestral past.¹⁷⁴ Forced displacement can also hinder search efforts, as families may be forced to reside somewhere other than where the enforced disappearance occurred.

ALVARADO ESPINOZA VS. MEXICO*



In 2009, Nitza Paola Alvarado Espinoza, José Ángel Alvarado and Rocío Irene Alvarado Reyes were forcibly disappeared, allegedly by state agents in Ejido Benito Juárez, in the state of Chihuahua. The IACtHR issued its decision in the case in 2018, at which time their fate or whereabouts were not yet known.

In the years following the enforced disappearance, some family members endured threatening phone calls and physical attacks, among other aggression and harassment. As a result of these attacks and the fear that similar events would happen again, the relatives of the three victims had to be forcibly displaced on several occasions.

The IACtHR ruled that the Mexican State had not guaranteed these families' right to freedom of movement and residence and right to protection of family.

* IACtHR Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 370.

The IACtHR has held that it can be a violation of the right to freedom of movement and residence when a person suffers threats or harassment and the state does not guarantee the conditions needed for them to move about and reside freely in the territory in question, even when the threats and harassment come from non-state actors. It has also asserted failure to effectively investigate violent acts can lead to or perpetuate exile or forced displacement.¹⁷⁵ **In these cases, states have two obligations. First, they must guarantee the rights of displaced**

[172] UN. Report of the Special Rapporteur on the human rights of internally displaced people, Cecilia Jiménez-Damary. A/HCR/53/35/Add.2, 27 June 2023, para. 33.

[173] UN. WGEID. Study on enforced or involuntary disappearances and economic, social and cultural rights, A/HCR/30/38/Add.5, 9 July 2015, para. 28.

[174] IACtHR. Case of Chitay Nech et al. v. Guatemala, Judgment of 25 May 2010, para. 146.

[175] IACtHR. Case of Alvarado Espinoza et al. v. Mexico, judgment of November 28, 2018, para. 274.

families, including the right of family members to fully, effectively and safely participate in searches.¹⁷⁶ Second, they must adopt lasting solutions for internally displaced families, after designing those solutions in coordination with the affected families.¹⁷⁷

5.3.3 SEXUAL VIOLENCE

Women are victims of sexual violence with disproportionate frequency, a statistic that holds true for women human rights defenders and searchers.¹⁷⁸ The IACTHR has recognized sexual violence as a paradigmatic form of violence against women¹⁷⁹ and as an “extremely traumatic experience that may have serious consequences, and it causes great physical and psychological damage that leaves the victim ‘physically and emotionally humiliated’, situation difficult to overcome with time, contrary to what happens with other traumatic experiences”.¹⁸⁰

Sexual violence is generally understood to involve “acts of a sexual nature, committed against a person without their consent, and that in addition to the physical invasion of the human body, [it] may include acts which do not involve penetration or even any physical contact”.¹⁸¹

Intense suffering is an inherent consequence of sexual violence, which aims to intimidate, denigrate, punish or control the person who experiences it.¹⁸² In fact, the IACTHR has determined that sexual violence constitutes torture when it is intentional, causes severe physical or mental suffering, and is committed for a certain purpose or aim.¹⁸³ In addition, it has defined rape committed by non-state actors as torture when committed with the state’s tolerance, complicity and/or acquiescence or when the state deliberately fails to prevent it.¹⁸⁴

The search process often thrusts women into situations with a high risk of sexual violence. As women, and as women who have decided to challenge those empowered by impunity, they are vulnerable to this type of attack in a variety of scenarios. States have various obligations in relation to this issue. They must respect and guarantee the right to a life free of violence.¹⁸⁵ This includes refraining from any act or practice of violence against women through its agents, as well as diligently striving prevent, investigate and punish violence against women; changing domestic laws to achieve the same outcome; and establishing procedures so that women who have suffered violence can obtain protection and receive a fair trial.¹⁸⁶

States thus have specific duties related to sexual violence. First, they must prevent acts of sexual violence. Second, they must conduct prompt and effective investigations, with a gender-based and differential perspective, as well as initiate criminal proceedings, bring suspected perpetrators to trial, and impose the relevant punishments for crimes. Third, they must have staff trained in gender issues to handle these cases. Fourth, they must ensure comprehensive reparation for harm suffered by victims, including medical care and psychological support.

[176] UN. Report of the Special Rapporteur on the human rights of internally displaced people, Cecilia Jiménez-Damary. A/ HCR/53/35/Add.2, 27 June 2023, para. 74.

[177] UN. CHR. Guiding Principles on Internal Displacement, Section V: Principles relating to return, resettlement and reintegration. E/CN.4/1998/53/Add.2. 11 February 1998.

[178] IACTHR. Case J. Vs. Peru, Judgment of 27 November 2013, para. 359.

[179] IACTHR. Fernández Ortega et al. v. Mexico, Judgement of 30 August 2010, Para: 119.

[180] IACTHR. Miguel Castro-Castro Prison Case Vs. Peru, Interpretation of the Judgment, August 2, 2008, para. 311.

[181] IACTHR. Rosendo Cantu et al v. Mexico, judgment of 31 August 2010, para. 109.

[182] Fernández Ortega et al. Vs. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of 30 August 2010, para. 127.

[183] IACTHR. Rosendo Cantu et al v. Mexico, judgment of 31 August 2010, para. 109-110. IACTHR. Atenco v. Atenco, Women Victims of Sexual Torture Mexico. Preliminary objections, Merits, Reparations and Costs, Judgment of 29 November 2018, para. 193.

[184] IACTHR. Lopez Soto et al. v. Venezuela. Interpretation of the Judgment, 14 May 2019, para. 192.

[185] Belém do Pará Convention, Art. 3.

[186] Belém do Pará Convention, Art. 7.

5.4 IMPOVERISHMENT OF WOMEN SEARCHERS AND THEIR FAMILIES AND COMMUNITIES

While there is no universally accepted definition of poverty, the Committee on Economic, Social and Cultural Rights (ESCR Committee) describes it as a chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other rights.¹⁸⁷ According to the WGEID, impoverishment is intertwined with enforced disappearance in at least three ways.¹⁸⁸ First, it heightens vulnerability to enforced disappearance. Second, it can be the result of the violation of the economic, social and cultural rights of the forcibly disappeared person. Third, it can be a consequence of the violation of economic, social and cultural rights of relatives, loved ones and communities, who are also considered victims an enforced disappearance.

First, **people living in poverty are often especially vulnerable to enforced disappearance**, as they generally lack political recognition and legal and de facto protection of their rights. For example, when people living in poverty interact with justice systems, they often have no means to challenge decisions against them, such as arrests, convictions and imprisonments.¹⁸⁹

Second, **because enforced disappearance is such multifaceted offense, it itself may violate economic, social and cultural rights.**¹⁹⁰ For example, the WGEID states that forcibly disappeared people are unable to exercise their right to work from the moment they are deprived of their liberty and no longer receive the income needed for a decent standard of living. These effects that can persist even after the enforced disappearance has ended and the person is found alive.¹⁹¹ Enforced disappearance also has clear impacts on health, education and nutrition (especially for children), and heightens women's risk of gender-based violence.¹⁹²

Third, **enforced disappearance is detrimental to families, loved ones, and communities, who are also victims of the violation.** This is seen most clearly when a household's breadwinner is subjected to enforced disappearance. In those scenarios, the family, loved ones and community lose the significant support for meeting basic needs and fully enjoying rights like housing, education or nutrition.¹⁹³ This hardship is often compounded by loss of benefits, salaries and care services that were contingent on the forcibly disappeared person's employment status,¹⁹⁴ or when families of a forcibly disappeared person lose the ability to use or manage the assets and resources that were legally in that person's name, including housing,

[187] UN. ESCR committee. Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights. E/C.12/2001/10. 10 May 2001, para. 8.

[188] UN, WGEID, Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights, A/HCR/30/38/Add.5, 9 July 2015, para. 8.

[189] UN, WGEID, Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights, A/HCR/30/38/Add.5, 9 July 2015, para. 8-10.

[190] Gabriella Citroni, "La desaparición forzada como violación de los derechos económicos, sociales y culturales en la jurisprudencia de la Corte Interamericana de Derechos Humanos", in Juana María Ibáñez, Rogelio Flores and Jorge Padilla (editors), *Desaparición forzada en el Sistema Interamericano de Derechos Humanos. Balance, impacto y desafíos*, 2020, p. 137-145.

[191] UN, WGEID, Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights, A/HCR/30/38/Add.5, 9 July 2015, para. 17.

[192] UN, WGEID, Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights, A/HCR/30/38/Add.5, 9 July 2015, para. 18-22. International Center for Transitional Justice. *The Disappeared and Invisible. Revealing the enduring impact of enforced disappearance on women*, 2015, p. 5.

[193] UN, WGEID, Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights, A/HCR/30/38/Add.5, 9 July 2015, para. 23.

[194] UN, WGEID, Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights, A/HCR/30/38/Add.5, 9 July 2015, para. 25.

pensions and bank accounts.¹⁹⁵ Since most victims of enforced disappearance are men,¹⁹⁶ it is **often women and children who are forced to take on provider roles, in addition to the other responsibilities and care work they already had before the enforced disappearance. This misfortune can be exacerbated by inequality tied to tradition, race, culture, religion or class.**¹⁹⁷ Racialized women provide a clear example of this differentiated impact. For them, the additional load of enforced disappearance comes on top of structural inequalities like disproportionate poverty rates that they face in their communities.¹⁹⁸

The harms caused by enforced disappearance, which on their own are quite severe, are intensified when family members, loved ones and communities choose to devote substantial time, energy and industry to searching for the forcibly disappeared person.¹⁹⁹ Searching takes a toll in terms of money, time and health. In many cases, especially for impoverished family members, loved ones and communities, searchers lose their jobs (either because they resign or are dismissed) or have to cut back their hours because they are traveling; carrying out administrative procedures; or seeking medical, legal or psychosocial support; among other measures, all of which require significant time, effort and money.²⁰⁰ **Additionally, searchers who, willingly or not, have a caregiving role have to figure out how to both replace the forcibly disappeared person as breadwinner and continue to providing care to their dependents.** This situation is most frequent in women, who seem moved to action by their emotional bond, but also by an extension of their caregiving role.²⁰¹ Thus, for example, women searchers say that “their bond with their children is so strong that their disappearance makes it impossible for life to go on without searching”,²⁰² or that “(...) for me searching meant I had to learn to push myself, to manage my time, to juggle caring for children, working and searching”.²⁰³

[195] UN, WGEID, Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights, A/HCR/30/38/Add.5, 9 July 2015, para. 26.

[196] International Center for Transitional Justice. The Disappeared and Invisible. Revealing the enduring impact of enforced disappearance on women, 2015, p. 4. UN, WGEID, General comment on women affected by enforced disappearances. A/HCR/WGED/98/2, 14 February 2013, para. 12.

[197] International Center for Transitional Justice. The Disappeared and Invisible. Revealing the enduring impact of enforced disappearance on women, 2015, p. 4. UN, WGEID, Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights, A/HCR/30/38/Add.5, 9 July 2015, para. 23.

[198] UN, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/68/333, 19 August 2013, para. 20-25.

[199] UN, OHCHR, Enforced or Involuntary Disappearances Fact Sheet 6/Rev.3, 2009, p. 2.

[200] International Center for Transitional Justice. The Disappeared and Invisible. Revealing the enduring impact of enforced disappearance on women, 2015, p. 7.

[201] Jomary Ortégón Osorio, Mujeres buscadoras: elementos de reflexión para contribuir a su reparación integral, Pensamiento Jurídico, No. 55, Bogotá, 28 March 2022, p. 22. Camila Ruiz Segovia and Melissa Jasso, “Women in the search for missing persons in Mexico face multiple challenges”, OpenDemocracy, <https://www.opendemocracy.net/en/democraciaabierta/mujeres-personas-desaparecidas-m%C3%A9xico-en/>

[202] Jomary Ortégón Osorio, Mujeres buscadoras: elementos de reflexión para contribuir a su reparación integral, Pensamiento Jurídico, No. 55, Bogotá, 28 March 2022, p. 23.

[203] Jomary Ortégón Osorio, Mujeres buscadoras: elementos de reflexión para contribuir a su reparación integral, Pensamiento Jurídico, No. 55, Bogotá, 28 March 2022, p. 26.

CASE OF MOLINA THEISSEN VS GUATEMALA*



Marco Antonio Molina Theissen, a 14-year-old student, was forcibly disappeared by members of the Guatemalan Army on 6 October 1981 after they searched his entire home. Marco Antonio came from a politically active family that opposed the country's government.

His mother, Emma Theissen Álvarez Vda. de Molina, testified before the IACtHR about the economic impact of the enforced disappearance and search for her son, stating that it led everyone in her family to stop working and subsequently have no income. Marco Antonio's mother and father quit their jobs, and his sisters stopped attending school and university. These circumstances, together with the murder of the husband of one of Marco Antonio's sisters, pushed the family into exile for years.

While the IACtHR did not find a violation of the family's economic and social rights in this case, it did include material losses when deciding the reparations that the State of Guatemala owed them.

* IACtHR Case of Molina Theissen v. Guatemala. Merits. Judgment of 4 May 2004. Series C No. 106. IACtHR Case of Molina Theissen v. Guatemala. Reparations and Costs. Judgment of 3 July 2004. Series C No. 108.

The ICPPED states that States Parties must take “the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights”.²⁰⁴ The WGEID and bodies of the Inter-American System for the Protection of Human Rights have examined the matter, but the Inter-American System still lacks coherent jurisprudence on the issue.²⁰⁵

According to the WGEID and the Declaration on the Protection of all Persons from Enforced Disappearance, **States are obligated to provide reparations, social assistance and rehabilitation to the families of forcibly disappeared persons.**²⁰⁶ Economic, social and cultural rights must play an important role in fulfilling those obligations. According to Article 19 of the Declaration on the Protection of all Persons from Enforced Disappearance, victims are entitled to comprehensive reparations, including adequate compensation and mechanisms for as complete a rehabilitation as possible. Meanwhile, Article 24 of the ICPPED binds states to take appropriate measures regarding the legal status of forcibly disappeared persons in matters such as social security, personal finances and property rights.

The WGEID establishes that the relatives of someone subjected to enforced disappearance should receive social security benefits and other social support measures, including medical care, education and psychological assistance, as reparations for the human rights violations they have suffered and continue to suffer.²⁰⁷ But it has also clearly stated that reparations

[204] ICPPED, art. 24.6.

[205] Gabriella Citroni, “La desaparición forzada como violación de los derechos económicos, sociales y culturales en la jurisprudencia de la Corte Interamericana de Derechos Humanos”, in Juana María Ibáñez, Rogelio Flores and Jorge Padilla (editors), *Desaparición forzada en el Sistema Interamericano de Derechos Humanos. Balance, impacto y desafíos*, 2020.

[206] UN, WGEID, Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights, A/HCR/30/38/Add.5, 9 July 2015, para. 42.

[207] UN, WGEID, Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights, A/HCR/30/38/Add.5, 9 July 2015, para. 60.

are different from, and should be distinguished from, the social protection and other measures designed to mitigate the negative effects on families of a breadwinner's absence, measures which include the legal support and assistance with searches.²⁰⁸ The IACtHR has taken a different stance. In cases of enforced disappearance that placed family members and loved ones in a vulnerable situation, it has ordered reparations for the socio-economic effects of the enforced disappearance and search but has not found there to be a violation of their economic, social and cultural rights.²⁰⁹

However, the CED has recently clarified in the Guiding Principles for the Search for Disappeared Persons that “States should provide financial support to the victims who search for a disappeared person, bearing in mind the harm caused to the household income by the disappearance of a family member and the additional costs incurred during the search.”²¹⁰ It thus recognizes not only the tangible ways in which enforced disappearance and searches can impoverish family members, loved ones, and communities, but also states' international obligations to mitigate that impoverishment.

States therefore have several obligations regarding the way in which impoverishment from enforced disappearance and searching can impact economic, social and cultural rights. These obligations all match their duties under the International Covenant on Economic, Social and Cultural Rights or similar instruments. **First, they must provide comprehensive reparations that include compensation for past, present and future economic losses and access to rehabilitation mechanisms. Second, they must ensure that the status of the property of forcibly disappeared persons and their relatives and loved ones is resolved in a way that respects the rights of all parties and guarantees continued access to resources needed for decent living conditions. Third, they must implement protection and social assistance mechanisms for relatives, loved ones and communities of forcibly disappeared persons, taking into account how this violation of human rights has left them vulnerable and how it intersects with other vulnerability factors like machismo, racism, classism or homophobia. Fourth, they must provide financial support to searchers so they can conduct their own search or participate in state search processes.**

5.5 NEGATIVE HEALTH IMPACTS FOR WOMEN SEARCHERS

The grief of the enforced disappearance of a family member, combined with the decline in standard of living and constant stress that family members and loved ones experience, significantly impact their physical and mental health. **The complex effects of enforced disappearance on loved ones have been termed “ambiguous loss”, a phrase that conveys the ongoing nature of the source of families’ stress, anguish, and grief, which “disrupts their lives completely”.**²¹¹ Effects observed include sleep disturbances, irritability, nervousness, anxiety and depression, as well as feelings of guilt, self-reproach and anger.²¹²

In addition, the enforced disappearance of a loved one usually causes family members to neglect their health, nutrition, exercise and rest, so they often develop new ailments or conditions or see pre-existing ones get worse.²¹³ These conditions include diabetes, hypertension, overweight and obesity, chronic infectious diseases, chronic fatigue, chronic

[208] UN, WGEID, Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights, A/HCR/30/38/Add.5, 9 July 2015, para. 69.

[209] Gabriella Citroni, “La desaparición forzada como violación de los derechos económicos, sociales y culturales en la jurisprudencia de la Corte Interamericana de Derechos Humanos”, in Juana María Ibáñez, Rogelio Flores and Jorge Padilla (editors), *Desaparición forzada en el Sistema Interamericano de Derechos Humanos. Balance, impacto y desafíos*, 2020, p. 168-171.

[210] UN, CED, Guiding Principles for the Search for Disappeared Persons, CED/C/7, 8 May 2019, principle 14.2.

[211] ICRC, *Accompanying the Families of Missing Persons: A Practical Handbook*, 2014, p. 42.

[212] ICRC, *Accompanying the Families of Missing Persons: A Practical Handbook*, 2014, p. 43-44.

[213] IDHEAS, *Informe sobre afectaciones a la salud de familiares de personas desaparecidas y la respuesta institucional en México*, 2023, p. 10.

pain and memory loss.²¹⁴ In particular, searching in the field can lead to accidents like falls and infections,²¹⁵ as well as physical and mental exhaustion, including trauma when they have to search through corpses and mass graves.²¹⁶ The physical and mental health problems that arise from enforced disappearances can persist if not treated properly and even develop into more serious conditions like heart problems and psychosis.²¹⁷

CASE OF GÓMEZ PALOMINO VS PERU*



During the armed conflict in Peru, enforced disappearance became a systematic and widespread state practice. On 9 July 1992, a group of men and women wearing balaclavas, uniforms, and military boots and armed with long guns carried off Mr. Gómez Palomino after violently searching his home.

The IACtHR decided the case in 2005, recognizing the emotional and psychological suffering caused by the enforced disappearance and over 13 years of impunity. It acknowledged the widespread depression in the family, including the physical and psychological impact on his mother; a suicide attempt by one of his sisters; post-traumatic stress in his partner; and harm to his daughter's psychological and emotional development. As reparations, it ordered the state to provide them with the medical and psychological treatment they needed, for as long as necessary, through its specialized health institutions. It specified that the treatment should be free and include the required medications and tests.

* IACtHR Case of Gómez Palomino v. Peru. Merits, Reparations and Costs. Judgment of 22 November 2005. Series C No. 136.

According to the WGEID, enforced disappearance can be a violation of the right to the highest attainable standard of physical and mental health.²¹⁸ The health of close family members is affected by a “a drawn-out shock, a state of latent and prolonged crisis, in which the anguish and sorrow caused by the absence of the loved one continues indefinitely”.²¹⁹ For its part, the IACtHR has recognized the emotional and psychological effects on relatives as a direct consequence of the enforced disappearance²²⁰ and even as a violation of their right to mental and moral wellbeing.²²¹ Although the IACtHR has not examined whether enforced disappearance is a direct violation of the right to health, it has ordered reparations meant to guarantee this right, such as immediate, appropriate and effective medical and psychological

[214] International Center for Transitional Justice, *The Disappeared and Invisible*, p. 11. and Ximena Antillón, *Yo solo quería que amaneciera. Informe de impactos psicosociales del caso Ayotzinapa*, p. 382.

[215] IDHEAS, *Informe sobre afectaciones a la salud de familiares de personas desaparecidas y la respuesta institucional en México*, 2023, p. 34

[216] ICRC, *Accompanying the Families of Missing Persons: A Practical Handbook*, 2014, p. 43-44.

[217] International Center for Transitional Justice, *The Disappeared and Invisible*, p. 11.

[218] Covenant on Civil and Political Rights, art. 7; Additional Protocol to the ACHR on Economic, Social and Cultural Rights, Protocol of San Salvador, art. 10.

[219] UN, WGEID, *Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights*, A/HCR/30/38/Add.5, 9 July 2015, para. 31.

[220] IACtHR. *Blake v. Guatemala*, Judgment of 24 January 1998, para. 114

[221] IACtHR, *Case of Gómez Palomino v. Peru*, Judgment of November 22, 2005, para. 61.

or psychiatric care through specialized public health institutions for as long as necessary in order to treat the physical and psychological conditions victims suffer from as a result of the disappearance.²²² Finally, the UN Human Rights Committee established that enforced disappearance violates the prohibition of torture and cruel, inhuman or degrading treatment or punishment because of the anguish and suffering that it causes.²²³

Therefore, states must ensure the highest standard of physical and mental health for women searchers and their families. First, they must work with civil society groups and organizations to create a health plan specifically for victims of enforced disappearance. Second, they must ensure the highest possible level of psychological and psychiatric care for victims of enforced disappearance. Third, they must train all medical personnel on the situation of victims of enforced disappearance, ensuring that they avoid doing anything that could stigmatize or revictimize them.

5.6 ATTACKS ON SEARCHERS' ORGANIZATIONAL PROCESSES

As recognized in article 5 of the Declaration on Human Rights Defenders, everyone has the right, individually and in association with others, to meet or assemble peacefully, to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental and intergovernmental organizations.²²⁴

The right to freedom of association, which is recognized in multiple international instruments,²²⁵ has two dimensions and two facets, as outlined by the Special Rapporteur on the situation of human rights defenders. The individual dimension is the right of every person to form an association with others, while the collective one is the right of every association to carry out its activities. The positive facet is that every person can associate and the negative one is the right not to associate.²²⁶

This right, of course, applies to people who band together to search for victims of enforced disappearance. But the ICPPED also explicitly establishes the right to “form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance”.²²⁷

Women searchers, along with other victims of enforced disappearance, family members, loved ones and communities, tend to gain strength by working together. Every search process is different, and people's experiences of searching can be disparate.²²⁸ But a very common theme that searchers find support among their peers, making the search more effective and significant.²²⁹ However, just as search processes vary on a case-by-case basis, the choice or ability of family members, loved ones, and communities to form associations for searching also depends on their context, circumstances, resources, and environment. In many cases,

[222] Ariel Dulitzky, *Desapariciones forzadas y DESC: riquezas y pobrezas* in Juana María Ibáñez, Rogelio Flores and Jorge Padilla (editors), *Desaparición forzada en el Sistema Interamericano de Derechos Humanos. Balance, impacto y desafíos*, 2020, p. 114.

[223] UN. UN Human Rights Committee. Views adopted by the Committee under Article 5 (4) of the Optional Protocol, concerning communication No. 2750/2016. CCPR/C/126/D/2750/2016, 13 September 2019, para. 9.7.

[224] UN. General Assembly. UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. A/RES/53/144. 8 March 1999, Art. 5.

[225] Universal Declaration of Human Rights, Art. 20 International Covenant on Civil and Political Rights, art. 22. CADH, art. 16.

[226] UN. General Assembly. Report of the Special Rapporteur on the situation of human rights defenders. A/64/226, 4 August 2009, para. 22-23

[227] ICPPED, Art. 24.7.

[228] Briony Jones, Lisa Ott, Mina Rauschenbach and Camilo Sánchez, “Hiding in Plain Sight: Victim Participation in the Search for Disappeared Persons, a Contribution to (Procedural) Justice”, *International Journal of Transitional Justice*, Volume 17, July 2023, p. 238. Iosif Kovras, *Grassroots Activism and the Evolution of Transitional Justice*, 2017.

[229] ICMP, *La participación de las familias de personas desaparecidas para garantizar avances: Recomendaciones para fortalecer los esfuerzos de las instituciones colombianas*, 2021, p. 9.

associations of family members arise organically when searchers encounter each other during their search. In others, a gathering spot is provided by support organizations, such as religious institutions or human rights organizations.²³⁰

Perpetrators, accomplices, and those who benefit from enforced disappearances see the process of building and strengthening organizations as a threat, since it bolsters the search capacities of family members, loved ones, and communities. The constant **and growing demands made by the associations formed by women searchers often expose them to risks, threats and attacks.**

CASE OF GARCÍA AND FAMILY MEMBERS VS GUATEMALA*



In 1984 Edgar Fernando García was forcibly disappeared by Guatemalan police officers. In response, his wife, Nineth Varenca Montenegro, and mother, María Emilia García, helped found the Grupo de Apoyo Mutuo [Mutual Support Group]. In their words, the group aimed to “respond to the drama of enforced disappearance of family and friends endured by thousands of Guatemalans”.

In their pursuit of justice as human rights defenders, the Grupo de Apoyo Mutuo and its members were stigmatized by top-level state authorities and profiled by the Guatemalan security forces, with what the IACHR described at the time as severe hostility. In 2012, the IACtHR ruled that the risks, attacks, and threats suffered by Edgar Fernando García’s relatives resulted from institutions applying the “internal enemy” doctrine. The result: in a four-year period, three members of the organization were abducted or forcibly disappeared, five were abducted and killed, and a bomb was planted in their office.

The IACtHR found that Guatemala had in practice restricted the right to freedom of association and, therefore, was responsible for violating that right. The court stressed how the attacks on the Grupo de Apoyo Mutuo had intimidated and instilled fear in Nineth Varenca Montenegro and María Emilia García.

* IACtHR Case of García and Relatives Vs. Guatemala. Merits, Reparations and Costs. Judgment of 29 November 2012. Series C No. 258.

Cases like Garcia and Family Members v. Guatemala show how a state’s failure to honour its obligations can affect the right to freedom of association of those searching for victims of enforced disappearance. In this case, as in all cases that involve exercising freedom of association to defend human rights, states must “provide the necessary means for human rights defenders to freely carry out their activities; protect them from threats to prevent attacks on their life and wellbeing; refrain from hindering their work; and seriously and effectively investigate violations committed against them, combating impunity”.²³¹ Again, these duties also apply to people who join forces to search for victims of enforced disappearance.

For associations of women searchers, the WGEID specifies that states are obligated to take “measures to prevent and combat retaliation, intimidation and threats, as well as social stigmatization of women for their activism in response to enforced disappearances”²³² and facilitate their activities, since associations are often the only means by which the women can

[230] Lisa Ott and Natacha Hertig, *Family Associations of Disappeared and Missing Persons: Lessons from Latin America and Beyond*, 2020, p. 7-8.

[231] Eduardo Ferrer-Mac-Gregor and Juan Jesús Góngora Maas, *Desaparición forzada de personas y derecho a la verdad en el Sistema Interamericano de Derechos Humanos*, 2019, p. 103-104.

[232] UN, WGEID. General comment on women affected by enforced disappearances. A/HCR/WGED/98/2, 14 February 2013, para. 36.

exercise their rights.²³³ This becomes even more relevant in light of WGEID's observation that when women searchers "decide to organize and question the state regarding the enforced disappearance of their relatives, they do not always have access to traditional avenues of political action".²³⁴

Another form that organizational work takes is protest, in exercise of the human rights to freedom of expression and peaceful assembly. In this regard, the WGEID has recognized that **when women decide to organize and question the state regarding the enforced disappearance of their relatives, they often resort to public protests because they do not always have access to traditional avenues of political action.**²³⁵ Upon exercising their right to protest, some women searchers have been repressed by security forces with unlawful use of force and actions to break up sit-ins they have organized to demand their rights. This situation shows, on the one hand, the need to give women access to public institutions so they can share their perspective and, on the other hand, the need to guarantee their right to protest²³⁶ in accordance with applicable standards of international human rights law.

States thus have a variety of obligations related to the right to freedom of association of women searchers. First, they must take steps that allow women to freely form associations and groups to search for forcibly disappeared persons. Second, they must ensure that those women can carry out their organizational activities without obstacles, pressures and institutional violence. Third, they must protect women searchers and their associations from pressure and violence from third parties. Fourth, they must provide women searchers and their associations with the necessary means to carry out their activities. Fifth, they must guarantee the right to protest, and facilitate women's access to institutional channels.

5.7 IMPUNITY

One of the main challenges related to enforced disappearance is ongoing impunity, both from the enforced disappearance itself and from violations of the rights of family members and loved ones, particularly women searchers. The CED has stated that impunity is a structural element that perpetuates and conceals enforced disappearances, endangering and distressing victims. It also contributes to revictimization and makes initiatives to eradicate and prevent disappearances less effective.²³⁷ Moreover, impunity can make people afraid to exercise rights like trade union rights²³⁸ and the right to defend human rights.²³⁹ Regarding a woman who was forcibly disappeared, the CEDAW has asserted that impunity for these crimes against women helps entrench a culture of acceptance of the most extreme forms of gender-based violence against women, which in turn perpetuates these acts.²⁴⁰

Impunity is a violation of states' obligation to investigate human rights violations and take proper measures against perpetrators, as well as to guarantee that victims receive effective remedies and comprehensive reparation for harm.²⁴¹ Impunity is also counter to the right of victims and

[233] UN, WGEID. General comment on women affected by enforced disappearances, A/HCR/WGED/98/2, 14 February 2013, para. 35.

[234] UN, WGEID. General comment on women affected by enforced disappearances, A/HCR/WGED/98/2, 14 February 2013, para. 35.

[235] UN, WGEID. General comment on women affected by enforced disappearances, A/HCR/WGED/98/2, 14 February 2013, para. 35.

[236] UN, WGEID. General comment on women affected by enforced disappearances, A/HCR/WGED/98/2, 14 February 2013, para. 35.

[237] UN, CED, Report of the Committee against Enforced Disappearance on its visit to Mexico under Article 33 of the Convention. CED/ C/R.9, para. 27.

[238] IACtHR. *Isaza Uribe et al. v. Colombia*, Judgment of 20 November 2018, para. 145.

[239] IACtHR. *Garcia and Family Members v. Guatemala*, judgment of 29 November 2012, para 121.

[240] UN, CEDAW, Views of the Committee under article 7, paragraph 3, of the Optional Protocol in respect of communication No. 153/2020, 22 November 2022, CEDAW/C/83/D/153/2020, para. 7.3.

[241] UN. Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, E/CN.4/2005/102/Add.1, 8 February 2005, Principle 1.

society in general to know the truth about enforced disappearances.²⁴² Impunity can also have racist and gender biases, as in the case of the Mayan people during the internal armed conflict in Guatemala, where the biases reached “such a magnitude that they necessarily lead us to conclude that the remains of a racist and discriminatory culture continue to permeate ample sectors and spheres of the Guatemalan society, reflecting itself in a special manner on the justice administration system”.²⁴³

CASE OF GELMAN VS URUGUAY*



Against the backdrop of the Uruguayan coup d'état and Operation Condor, on 24 August 1976 María Claudia García Iruretagoyena Casinelli, who was 19 years old and pregnant, was arrested together with her husband, Marcelo Ariel Gelman Schubaroff, in Buenos Aires, Argentina, by Uruguayan and Argentine military commandos and taken to a clandestine detention and torture centre. Marcelo was tortured and executed; María Claudia was smuggled to Montevideo, Uruguay, where she gave birth to a girl who was abducted and illegally handed over to a Uruguayan policeman and his wife. They registered her as their own daughter and named her María Macarena Tauriño Vivian. María Claudia has been missing ever since.

The IACtHR ruled that Macarena's physical and mental wellbeing was violated by both the enforced disappearance of her mother and the circumstances of her father's death, in addition to the violation of her right to know the truth about her identity, the lack of effective investigations, and the general impunity of the case, which has made her feel frustration, impotence, and distress. It also held that the Law on the Expiration of the Punitive Claims of the State, which granted amnesty for crimes committed during the military regime, contravenes the ACHR because it keeps those responsible for serious human rights violations from being identified and punished.

* IACtHR Case of Gelman v. Uruguay. Merits and Reparations. Judgment of 24 February 2011. Series C No. 221.

Apart from flawed state investigations of enforced disappearance, women searchers also experience impunity in the threats and attacks they receive, which are often gender-based and constitute violence against women. **States therefore must both investigate, prosecute and punish enforced disappearances and ensure that the threats and attacks the women searchers face are punished.** These actions must be guided by a gender-based and intersectional approach that recognizes and helps overcome women's structural and historical barriers to accessing justice, especially the barriers for Black and Afro-descendant women, Indigenous women, women with disabilities, and women with diverse sexual orientations and gender identities.

The right to the truth is closely tied to the right to access to information, since in order to guarantee the former, states must guarantee victims' access to information about the circumstances of human rights violations.²⁴⁴ **States must regularly provide information on the progress of investigations, as well as full access to case files, through officials highly trained to avoid gender-based discrimination and violence.**²⁴⁵ Additionally, they must take into account the differentiated needs for access to information and justice for Indigenous Peoples and migrants, including the need to **provide information in their language, facilitate their participation in the processes by ensuring that the steps required for doing so are not**

[242] UN. Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, E/CN.4/2005/102/Add.1, 8 February 2005, Principles 2 and 4.

[243] IACtHR. Case of Tiu Tojín v. Guatemala, Judgment of 26 November 2008, para. 92.

[244] IACtHR. Case of Chitay Nech et al. v. Guatemala, Judgment of 25 May 2010, para. 206.

[245] IACtHR. Case of González et al. ("Cotton Field") v Mexico, Judgment of November 16, 2009, para. 455ii).

excessive, and combat discriminatory practices by justice operators.²⁴⁶

States thus have various obligations to combat impunity in enforced disappearances and human rights violations against family members and loved ones. First, they must conduct prompt, effective, impartial and independent investigations with a gender-sensitive and differentiated perspective. Second, they must eliminate all de jure or de facto obstacles hindering proper investigations and allocate sufficient material and human resources to those investigations. Third, they must establish mechanisms for coordination between different state bodies and institutions, and even international and transnational bodies when the case so requires.²⁴⁷ Fourth, they must identify malfeasance among public officials and penalize them for them.²⁴⁸ Fifth, they must ensure full reparation for the harm caused by both enforced disappearance and human rights violations suffered by those searching for forcibly disappeared people, in coordination with victims and taking into account the specific features of the obligation to make reparation for violence against women, in this case the violence that can occur during searches.²⁴⁹



[246] IACtHR. Case of Tiu Tojín v. Guatemala, Judgment of 26 November 2008, para. 100.

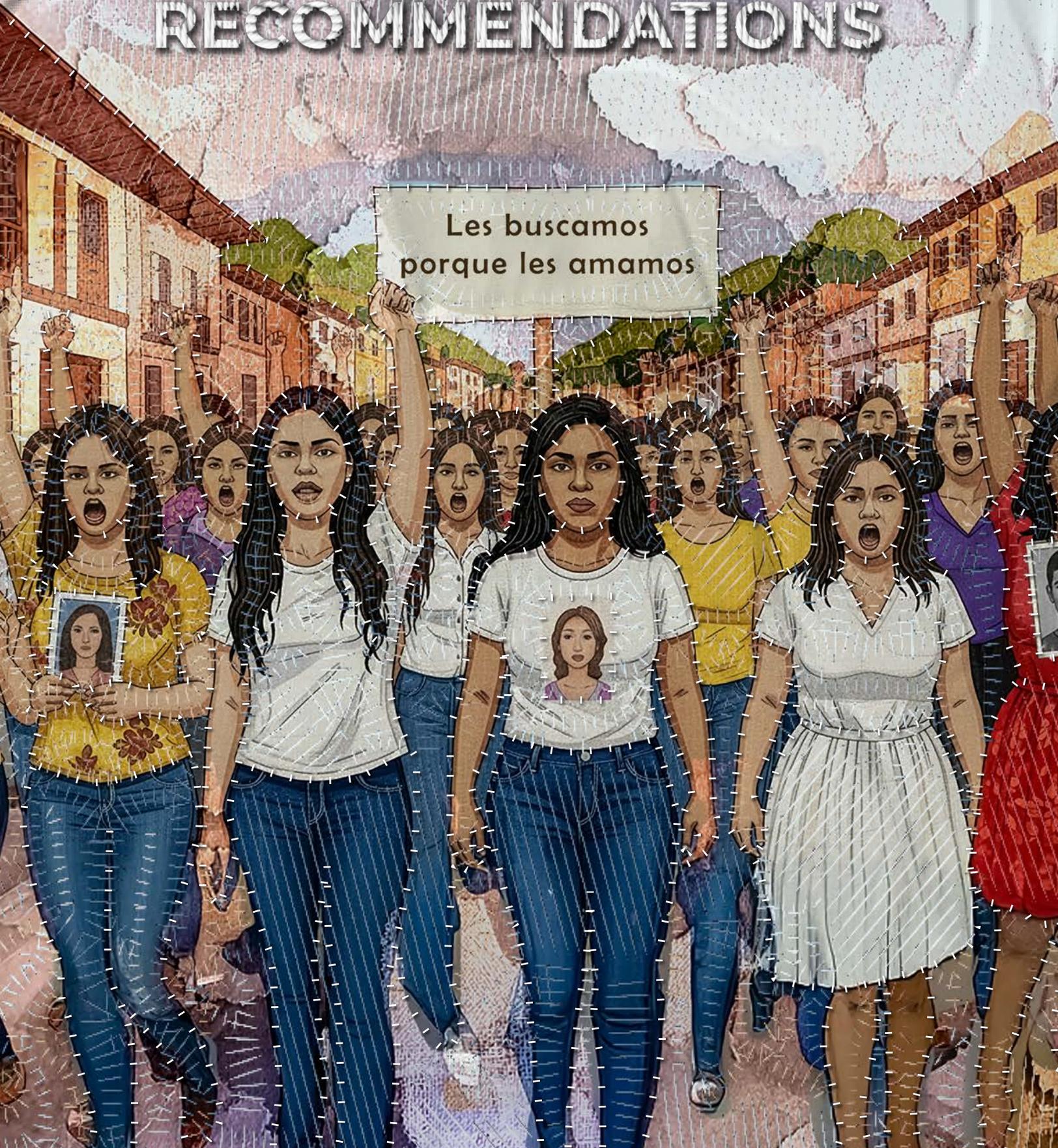
[247] I/A Court H.R. Case of González et al. (“Cotton Field”) v Mexico, Judgment of November 16, 2009, para. 455

[248] I/A Court H.R. Case of Gómez Palomino v Peru, Judgment of November 22, 2005, para. 100.

[249] ICPPED, arts. 24.4 and 24.5.

CONCLUSIONS AND RECOMMENDATIONS

Les buscamos
porque les amamos



6. CONCLUSIONS AND RECOMMENDATIONS

Women and their organizations have been the driving force behind efforts to discover the truth about enforced disappearances in the Americas. They have been the ones to activate search mechanisms, alert the authorities and strive by all possible means to determine the fate or whereabouts of their loved ones. But their search efforts have often been hindered instead of valued.

While the primary obligation to search for forcibly disappeared persons belongs to states, it is families, loved ones and communities who bear the consequences of enforced disappearance. Amnesty International argues that the right to search for persons subjected to enforced disappearance can take two different forms: (i) participating in searches carried out by state authorities, and (ii) searching on one's own initiative. In both cases, searchers must receive state protection from the risks, threats and attacks they experience along the way, and both the risks and protection measures must be analysed and defined from a gender-based and intersectional perspective. Additionally, searching is a way of protecting human rights. This means women searchers are human rights defenders who fight for the rights of forcibly disappeared persons—whether their loved ones or others subjected to enforced disappearance—and who also seek justice for the human rights violations they themselves suffer—whether as victims of enforced disappearance or in the course of their search.

In this report, Amnesty International has highlighted violations such as the stigmatization women suffer throughout the process, at the hands of anyone from the authorities to the families and communities themselves. This stigmatization can seriously harm their mental health and deepen the suffering caused by the enforced disappearance of their loved ones. Amnesty International has also stressed the great danger women are exposed to when searching and defending human rights, often in the form of physical violence, threats, attacks, murders, forced displacement and sexual violence. The enforced disappearance of a loved one and the ensuing search also significantly affect economic, social and cultural rights because they can push women into poverty or deepen existing poverty, as well as harm their physical and mental health. In addition, women searchers endure attacks on their organizational processes, violations of their rights to freedom of expression and peaceful assembly, and criminalization by state authorities. Finally, the cycle of violence becomes cemented by impunity with regards to the enforced disappearances that women searchers report and the violence they themselves experience when searching.

These human rights violations all seem to be designed to discourage people from searching for those subjected to enforced disappearance, and from ascertaining the facts and determining the truth. But women searchers embody the resilience of the Americas and have managed to continue their work despite constant attacks against them. International human rights law supports their search.

Amnesty International recommends that states in the region:

- 1. Recognize** the right to search for forcibly disappeared persons without discrimination, in both dimensions: participating in searches conducted by state authorities and searching on one's own initiative. In both cases, states must protect and safeguard searchers from any risks, threats and attacks that arise in the process. To this end, they must ensure effective cooperation between the different state bodies and institutions, and

even international and transnational bodies when the case so requires. **And they must take these measures without neglecting their own obligation to search for forcibly disappeared people.**

2. **Recognize** the important work of women searchers as human rights defenders and guarantee their rights, including them in protection mechanisms if they so desire. This includes the work of Black and Afro-descendant women, Indigenous women, disabled women, and women of diverse sexual orientations and gender identities. To follow this recommendation, states should **incorporate** a gender-based and intersectional perspective into any measure related to searching for forcibly disappeared persons and protecting women searchers. They must also act to eliminate discriminatory barriers based on gender, sexual orientation, race, ethnicity, disability, or other characteristics.
3. **Refrain from** stigmatizing forcibly disappeared persons and those searching for them, including through discourse that blames victims and minimizes their pain. To this end, states must take specific measures to investigate possible gender-based and discriminatory reasons for enforced disappearances. States should also **combat** existing stereotypes through training for public officials and society in general and by using search protocols and guidelines with differential approaches.
- 4 **Refrain from** any type of attack or retaliation against women searchers through state agents, and take legal, political, administrative and cultural steps to prevent any type of attack by either authorities or third parties and safeguard the rights of women searchers. Additionally, **bring to justice** those allegedly responsible for violating their rights.
- 5 **Ensure** that forcibly displaced families who wish to search for someone subjected to enforced disappearance are able to participate in search processes and that they are given a lasting solution to their situation that is designed in coordination with them.
- 6 **Prevent** gender-based violence and other hate crimes, and initiate criminal proceedings, bring offenders to trial and issue appropriate criminal sentences. Staff handling these cases should be trained in gender-based and differential approaches.
7. **Take concrete measures** against impunity for acts of enforced disappearance and violence against women, and other threats and attacks women face as they search. These measures include an immediate, effective, independent and impartial investigations with a gender and differential perspective, removing all de jure or de facto obstacles and allocating sufficient material and human resources. In addition, states must **provide** comprehensive reparations to victims of enforced disappearances and those who suffer human rights violations while searching, including compensation for past, present and future economic losses and access to rehabilitation mechanisms. In doing so, **they must take into account the special features of the obligation to make reparations for violence against women, in this case that which occurs during searches.**
8. **Adopt** measures to ensure women searchers have continued access to resources to maintain a decent standard of living and implement protection and social assistance mechanisms that include financial support to guarantee the right to search. In this regard, states must, among other measures: **ensure** the highest possible level of physical and mental health for women searchers; **establish** a specific health access plan for victims of enforced disappearances, in coordination with the victims, civil society organizations and groups; and **train** all medical personnel on victims of enforced disappearances, ensuring that they avoid acts that could stigmatize or revictimize them.
9. **Ensure** that women can freely form associations and groups to search for forcibly disappeared persons without obstacles, pressure and violence from authorities or other parties; provide the means for them to carry out their activities; and ensure that they can defend human rights freely, including by exercising their right to protest.
10. **Ensure** that family members and loved ones have access to information, regularly update them on the progress of investigations, and give them access to records in accordance with applicable standards. In addition, **ensure** that this information is in the person's language and facilitate their participation in the processes without discrimination.

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SEARCHING WITHOUT FEAR

INTERNATIONAL STANDARDS FOR PROTECTING WOMEN SEARCHERS IN THE AMERICAS

Enforced disappearance drives families, loved ones, and communities to search for their loved ones. In this report, Amnesty International draws on international human rights law to make the case that searching for forcibly disappeared persons is a right. Given that most searchers in the Americas are women, the report also details states' international obligations to protect against the unique risks, threats, and attacks that, as women, they face.

States must search for those subjected to enforced disappearance and safeguard their rights. Searching is also a human right that states must protect. And women searchers are human rights defenders deserving of state protection. This report recognizes these women's work and advocates for states in the Americas to take more and better measures to create an environment that enables women to search without discrimination.



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