



the big victims of enforced disappearances

By Jaime Ernesto Dueñas
Photos Juan Ramírez
Milagro Castro
Alberto Sierra

Despite their great impact on society, enforced disappearances are a recent concept in the legal sphere. This is a viewpoint driving recognition of the defence of those who are left at home awaiting those who do not return.

When someone goes missing in a case of enforced disappearance, the affected family is usually destroyed: its members give up their work and invest their capital in contracting investigators and getting legal processes started; many remain in their homes and leave the missing loved one's belongings intact. Some completely transform their lives, while others die waiting for the absent person.

In the view of Carlos Mauricio López Cárdenas, senior professor at the Faculty of Jurisprudence of the Universidad del Rosario, the victims of an enforced disappearance are not only the missing persons but also their relatives, who carry on waiting for a return that rarely materializes.

Convinced of this fact, López turned the research focus of his PhD thesis at Madrid's Complutense University to the victims and the reparation process: "*Enforced disappearance*



← Carlos Mauricio López, professor at the Faculty of Jurisprudence, explains that the victims of an enforced disappearance are not merely the disappeared; the relatives, who remain awaiting a return that rarely occurs, are also victims.

of persons in international human rights law: a study of its evolution, concept, and reparation of victims”.

As he developed his study, the researcher did not only find differing understandings of the definition of a victim—which in some states refers only to the disappeared person and completely excludes the family circle—but he also tackled existing difficulties, even the definition of the crime itself.

It is considered by many to be the perfect crime—if there is no body, then there is no crime. Enforced disappearances are a mechanism used to eliminate political opponents or critics, and it has three elements: deprivation of liberty, concealment of the person, and the involvement of state officials in the act. International law does not consider cases perpetrated by third parties as enforced disappearances; many of these, the expert points out, are attributed to paramilitary and guerrilla groups.

In fact, studies carried out prior to the International Convention for the Protection of All Persons from Enforced Disappearance (2006)—one of the international instruments for fighting against this crime—pointed to Colombia as an exceptional case, along with Turkey and Cyprus, the reason for the treaty’s inclusion of a clause obliging states to investigate acts of enforced disappearance committed by third parties and bringing those responsible to justice.

State intervention in cases is compulsory: “If you compare these three elements with a kidnapping, the difference is that the latter is carried out by a third party. For this reason it is very hard to remove that third element—the involvement of government officials—from the definition,” underlines López.

A LONG HISTORY, BUT A RECENT CONCEPT

Another of the difficulties involved in exploring enforced disappearances concerns the fact that, despite the world experiencing this phenomenon for decades, it is still a recent issue in the legal sphere.

The three international instruments set up to combat the phenomenon are: the United Nations Declaration on the Protection of All Persons from Enforced Disappearance (1992), the Inter-American Convention on Forced Disappearance of Persons (1994), and the aforementioned 2006 International Convention. None of them have been in existence for more than 40 years. In Colombia in the year 2000, the crime of enforced disappearance had barely existed either, stresses López.

His study, however, does not only deal with the case of Colombia, being a document of a global nature. “Enforced disappearance occurs in some 120 states in the world. It is one of the worst crimes in Colombia, El Salvador, Mexico, the USA, Russia, Turkey, Nepal... So they (my thesis director and others) told me to write with a vision that could be applied to any geographical framework,” says López. And that is what he did.

Among other things, the thesis provides a deep and wide-ranging historical framework that digs into the origins of enforced disappearance. Although this professor underlines the difficulty of pinpointing the exact origin, the doctrine points to a beginning in WWII through a directive called *Nacht und Nebel* (German for Night and Fog) signed by Field Marshall Wilhelm Keitel.

This decreed that saboteurs captured in occupied territories during the conflict should be tried only if a quick trial could be assured, their guilt declared, and their death sentence decreed; otherwise, they should be transported during the night fog to concentration camps. This directive and the ensuing disappearances were declared war crimes by the Nuremberg Trials in which the allies ruled on punishments for atrocities committed by Adolf Hitler’s regime.

In this historical framework, López eagerly situates the movements of families of disappeared people in Latin America, identifying them as a key element for recognising enforced disappearance as a crime. “During the era of Southern Cone dictatorships, families of disappeared persons put the issue on the hemisphere’s agenda. This meant a big change: they touched the heart of the United Nations and the Inter-American System, which finally paid them attention in relation to disappearances.”

The expert also underlined the importance of women participating in these processes; although the majority of disappeared people are men, it is usually women—mothers, wives, sisters, and daughters—who suffer most from psychological, social, economic, and legal damage after a disappearance. But women have also led the moves that put this crime under a worldwide floodlight. They are not the only ones, however, one of the most representative examples being the Mothers and Grandmothers of the Plaza de Mayo in Argentina.



SOLID BASE FOR THE FUTURE

Despite the recent moves in legal development of the concept of enforced disappearances, Professor López is openly enthusiastic when it comes to highlighting advances made in the question over recent decades.

“In nearly all Latin American states, the crime of enforced disappearance did not exist; the first thing that has been achieved is the international legal framework enabling it to be classified. Today what exists, thanks to international normativity, is the human right not to be disappeared by force,” says López.

“Today we also have the Inter-American Court, which judges states for disappearance issues, as well as the European Court and the Human Rights Committee. Sentences exist on the enforced disappearance of persons, compelling states to issue reparations to victims, something we did not have 20 years ago. There is also the International Criminal Court, whose statutes also establish enforced disappearance as a crime.” he continues.

“And we have the additional aspect of universal jurisdiction, thanks to which any state can go after enforced disappearance of persons, as long as it is a crime against humanity.”

This was the concept that allowed the Spanish justice system to request the extradition of the Chilean dictator Augusto

Pinochet; it also permitted victims in Spain to appeal to Argentinian courts to punish those responsible for disappearances that occurred under Franco’s dictatorship, but who today are sheltered by a legal amnesty.

In López’s judgement, there are clear situations in which advances can still be made: reaching a total understanding of the concept of what a victim of enforced disappearance is, one that must universally include families; a deep analysis of the elements that make up disappearances perpetrated by third parties; how to prevent enforced disappearances; and clearly establishing processes of search, identification—not as easy as it appears on television—and the return to families of the remains of the disappeared.

“States are getting moving on these four areas, though not all of them in the same way. But I believe there will be an evolution in this sense in the coming years,” concludes a very convinced professor, assured of the contribution made by his study to the progress of such a difficult area of law. ■

HOW DO VICTIMS GET REPARATIONS?



ENFORCED DISAPPEARANCES IN LATIN AMERICA

Although stats vary depending on calculations and reports from each different organization that compiles them, these are some of the published figures in Latin American media on the most representative cases in the region.

30,973
Disappeared persons
National Database of Missing or Disappeared Persons

MEXICO

BETWEEN 40,000 and 45,000
Disappeared persons
Human Rights Organizations.

GUATEMALA

BETWEEN 5,000 *1 and 10,000 *2
Disappeared persons
between 1980 and 1992

EL SALVADOR

*1. Truth Commission for El Salvador
*2 Groups from civil society.

60,630
Disappeared persons
BETWEEN 1970 and 2015 *1
By 2018 an estimated 100,000 *2

COLOMBIA

*1 National Center for Historical Memory
*2 Interview with Carlos López.

16,000
Disappeared persons
BETWEEN 1980 and 2000 *1.
More than 24,000 *2

PERU

*1 Calculations by civil organizations
*2 Deaths documented by the Truth Commission.

1,193
Disappeared persons
BETWEEN 1973 and 1990

CHILE

Miguel Enríquez Study Center (with information from the Group of Families of the Detained-Disappeared)

30,000
Disappeared persons
General estimate by human rights organizations, the union movement, and political parties.

ARGENTINA

Restitution

Restore things to how they were before the crime was committed.

Compensation

Compensation for damages that can be financially or economically valued.

Rehabilitation

Provide psychosocial, medical, and psychiatric treatment for victims.

According to material damages.

- **Expenses:** fees for investigators and other processes.
- **Loss of earnings:** what is no longer received, for example due to needing to give up work.

For immaterial damages

Damage to life project, disturbance of conditions of existence, psychophysical damage (cases addressed and explicitly defined by legislation).

The return of the disappeared person should be guaranteed, as well as the return to a normal way of life for the family nucleus. Difficult or impossible in the majority of cases.

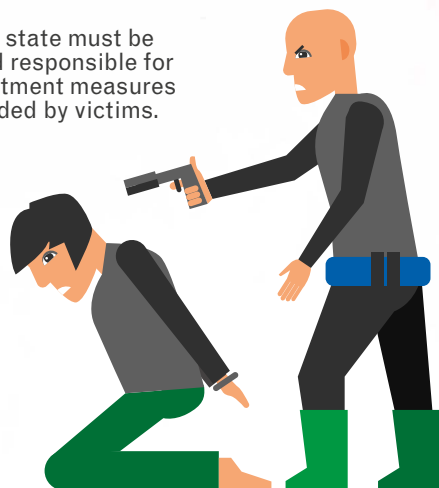


HOW ARE THESE CONCEPTS APPLIED IN CASES OF ENFORCED DISAPPEARANCE?

Satisfaction
Compensation for aspects that cannot be valued economically or financially.

Guarantee of non-repetition
Commitment that the crime will not be repeated.

Difficult to enforce.



Right to know the truth
(knowing the location of the victim or his or her remains) and **right to justice** (identification of the guilty parties and punishment for their crime).

Public apologies.

Raising of monuments or public plaques.