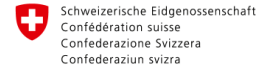




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REGIONAL CONSULTATIONS

REPORT

EUROPE

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Acknowledgements

The Convention against Enforced Disappearances Initiative (CEDI) extends its deepest gratitude to Ms. Martina Caslini, Student of the Advanced Master in Transitional Justice, Human Rights and the Rule of Law at the Geneva Academy of International Humanitarian Law and Human Rights, for her assistance in drafting this report on the online consultation with stakeholders from Europe, and to everyone who contributed to the success of the online regional consultations with stakeholders held in May and June 2024.

Our sincere thanks go to the survivors, victims, families of the disappeared, civil society representatives, international organisation representatives, experts, and national human rights institutions who participated in these consultations, as speakers and from the audience. Their invaluable insights and shared experiences are at the heart of the consultations, providing a unique understanding of the best practices, challenges, and recommendations in the fight against enforced disappearances.

CEDI would also like to thank everyone else who contributed to a successful event: Prof. Grażyna Baranowska and Prof. Olivier de Frouville, members of CEDI's Advisory Board, the Secretariats and Members of the United Nations Committee on Enforced Disappearances and of the Working Groups on Enforced or Involuntary Disappearances, and the International Commission of Jurists and International Federation for Human Rights, for facilitating contacts.

Special thanks to Ms. Tatiana Avanthay, our Communications Consultant, for ensuring that these online events ran smoothly.

CEDI is also grateful to its partners for their support.

1. Introduction

The first ever [World Congress on Enforced Disappearances](#), co-organised by [CEDI](#), the United Nations [Committee on Enforced Disappearances](#) (CED), the [Working Group on Enforced or Involuntary Disappearances](#) (WGEID), and the Office of the [High-Commissioner for Human Rights](#) (OHCHR), will take place on 15 and 16 January 2025 in Geneva, Switzerland. One of its objectives is to put families and CSOs back at the centre of the joint efforts for the ratification and implementation of the Convention.

To facilitate their contribution, CEDI organized a series of online regional consultations with victims, family members, civil society organisations, international organisations and national human rights institutions, in May and June 2024 to:

- Provide a space for stakeholders in the region to share experiences
- Gather their suggestions for the World Congress and the action plan that will be presented.

This report is based on the online regional consultation on Europe held on 14 June 2024, part of a series of exchanges conducted from May to June 2024. The report highlights best practices, challenges, and recommendations shared during these sessions, with the insights gathered aimed at informing the World Congress on Enforced Disappearances, drawing from experiences across multiple countries.

Programme:

- [Introduction to the World Congress on Enforced Disappearances](#) – *Speaker*: Olivier de Frouville, Chair of the United Nations Committee on Enforced Disappearances.
- [Overview of the Convention in the region](#) – *Speaker*: Elena Kountouri Tapiero, Representative of the UN Office for Human Rights in Europe.
- [Panel I](#) – *Facilitator*: Milica Kolakovic-Bojovic, Vice Chair of the UN Committee on Enforced Disappearances.
 - [Regional Federation: The essential Role of Civil Society and Families](#) – *Speaker*: Maria Gabriela Farah Nassif de Moraes, Euro-Mediterranean Federation against Enforced Disappearances (FEMED).
 - [Bosnia and Herzegovina](#) – *Speakers*:
 - Elma Majstorić Ninković, Senior Program Officer, ICMP Bosnia and Herzegovina.
 - Semina Alekić, Chairperson, Regional Coordination of Families of the Missing from the Former Yugoslavia, Bosnia and Herzegovina.
 - [Spain](#): Prof. Aránzazu Borrachero Mendivil, City University of New York, Member of All Stolen Children are Also My Children Organization.
 - [Pushbacks and Mass Proliferation of Enforced Disappearances During Migration Across Europe](#) – *Speaker*: Joseph Cripps, UN Advocacy Coordinator, Border Violence Monitoring Network (BVMN).
- [Panel II](#) – *Facilitator*: Olivier De Frouville, Chair of the United Nations Committee on Enforced Disappearances.
 - [Russia](#) – *Speaker*: Violetta Fitsner, Lawyer, Memorial HRDC.

- North Caucasus – *Speaker*: Elba Bendo, Lawyer, European Human Rights Advocacy Center (EHRA).
- Ukraine – *Speakers*:
 - Yelyzaveta Sokurenko, Human Rights Center – ZMINA.
 - Anastasiia Pantielieieva, Head of Documenting, Media Initiative for Human Rights.
- Turkey – *Speaker*: Mümtaz Murat Kök, Human Rights Foundation of Turkey, speaking on behalf of the Saturday Mothers.
- Cyprus – *Speaker*: Natasa Iakovou, Truth Now.
- Conclusion – *Speaker*: Gabriella Citroni, Vice Chair, United Nations Working Group on Enforced or Involuntary Disappearances.

2. Overview of the situation of the Convention on the Region

Elena Kountouri Tapiero

Representative of the UN Office for Human Rights in Europe

The Convention is the first binding instrument concerning enforced disappearances at the global level. Still, it is one of the least ratified human rights conventions despite significant efforts by various stakeholders. To date, 98 States have signed the Convention, but only 75 of the 193 UN member states have ratified the Convention globally.

Out of these 75 States, 29 have recognised the competence of the Committee Enforced Disappearance to examine individual complaints, and 28 allow the Committee to examine interstate complaints. The Convention for the Protection of All Persons from Enforced Disappearance is often forgotten; a lot of States have made pledges to become parties to the Convention in the context of last year’s initiative to commemorate 75 years of the Universal Declaration of Human Rights.

- Alarming number of victims enforced disappearances due to the war in Ukraine, the overwhelming majority of which are attributable to Russian and Russian-controlled troops.
- It must also be considered that enforced disappearance are happening in a multitude of contexts, including in the framework of migration, detention and deportation processes or as a consequence of smuggling, trafficking and conflicts.
- New technologies, in particular ICT, are frequently used to facilitate or conceal the commission of enforced disappearance, to hinder the work of human rights defenders and relatives of disappeared persons, and to intimidate or harass them (WGEID 2023 thematic study on “New Technologies and Enforced Disappearances”).
- Accurate data on the number of victims of disappearance among missing migrants are not available or are inaccurate owing to a lack of systematic data collection and the failure of authorities to conduct serious, effective and diligent searches and investigations (CED General Comment N1 on Enforced Disappearance in the Context of Migration).
- Addressing enforced disappearance effectively requires a multifaceted approach, including more robust legislative frameworks, enhanced judicial cooperation and

increased knowledge and capacity to monitor and report. The CED provides a solid legal framework to prevent and address enforced disappearance. Furthermore, the commitment of European States to the treaty and its implementation is crucial for effectively fighting against enforced disappearances.

2.1. The CED Convention: Ratification Status in the European Region

The adoption of the International Convention for the Protection of All Persons from Enforced Disappearance (20 December 2006) represented a significant step in the fight against this heinous crime. The Convention is the first legally binding instrument concerning enforced disappearance at the global level. Yet, it is one of the least ratified human rights Conventions despite significant efforts by various stakeholders.

To date, 98 States have signed the Convention, but only 7 of the 193 UN member states have ratified the Convention globally, the most recent being South Africa and Thailand, who ratified it on 14 May 2024, and Côte d'Ivoire who accessed it on 6 June 2024.

Out of these 75 States parties:

- 18 are States of the European Union (EU);
- 2 are States of the Western European and Other Groups (WEOG);
- 6 are States of the Eastern Europe Groups (EEG).

Participant	Signature	Ratification
European Union		
Austria	6 February 2007	7 June 2012
Belgium	6 February 2007	2 June 2011
Bulgaria	24 September 2008	/
Croatia	6 February 2007	31 January 2022
Cyprus	6 February 2007	/
Czechia	19 July 2016	8 February 2017
Denmark	25 September 2007	13 January 2022
Estonia	/	/
Finland	6 February 2007	24 March 2023
France	6 February 2007	23 September 2008
Germany	26 September 2007	24 September 2009
Greece	1 October 2008	9 July 2015
Hungary	/	/
Ireland	29 March 2007	/
Italy	3 July 2007	8 October 2015
Latvia	/	/
Lithuania	6 February 2007	14 August 2013
Luxembourg	6 February 2007	1 April 2022
Malta	6 February 2007	27 March 2015
Netherlands	29 April 2008	23 March 2011
Poland	25 June 2013	/
Portugal	6 Feb 2007	27 Jan 2014

Romania	3 Dec 2008	/
Slovakia	26 September 2007	15 December 2014
Slovenia	26 September 2007	15 December 2021
Spain	27 September 2007	24 September 2009
Sweden	6 February 2007	/
Western European and Other Groups		
Andorra	/	/
Australia	/	/
Canada	/	/
Iceland	1 October 2008	/
Israel	/	/
Liechtenstein	1 Oct 2007	/
Monaco	6 February 2007	/
New Zealand	/	/
Norway	21 December 2007	22 August 2019
San Marino	/	/
Switzerland	19 January 2011	2 December 2016
Turkey	/	/
United Kingdom	/	/
United States of America	/	/
Eastern European Group		
Albania	6 February 2007	8 November 2007
Armenia	10 April 2007	24 January 2011
Azerbaijan	6 February 2007	/
Belarus	/	/
Bosnia and Herzegovina	6 February 2007	30 March 2012
Georgia	/	/
Moldova	/	/
Montenegro	6 February 2007	20 September 2011
North Macedonia	6 February 2007	/
Russia	/	/
Serbia	6 February 2007	18 May 2011
Ukraine	/	14 August 2015 (Accession)

Reference: UN Treaty collection website (UNTC).

Out of these:

- 20 have recognised the competence of the Committee to examine individual complaints (Albania, Austria, Belgium, Bosnia and Herzegovina, Croatia, Czechia, Finland, France, Germany, Lithuania, Luxembourg, Montenegro, Netherlands, Portugal, Serbia, Slovakia, Slovenia, Spain, Switzerland, Ukraine)
- 20 (Albania, Austria, Belgium, Bosnia and Herzegovina, Croatia, Czechia, Finland, France, Germany, Lithuania, Luxembourg, Montenegro, Netherlands, Portugal,

Serbia, Slovakia, Slovenia, Spain, Switzerland, and Ukraine) to allow the Committee to examine interstate complaints.

Even though the ratification rate is still low, no European countries have made pledges to become party to the Convention in the context of UDHR 75.

2.2. *Enforced Disappearances in Europe – Patterns*

According to the 2023 Report of the Working Group on Enforced or Involuntary Disappearances (A/HRC/54/22), during the reporting period of May 2022 to May 2023, there were 1,862 outstanding cases in 5 European countries (Armenia, Azerbaijan, Luxembourg, Russian Federation and Türkiye), including WEOG and EEG.

The Working Group continues to be deeply concerned by numerous reports it has received concerning enforced disappearances of civilians and prisoners of war perpetrated by the Russian armed forces since the beginning of the armed conflict in Ukraine in February 2022, as attested to by the vast number of cases, 1 721 cases to be exact, transmitted under its humanitarian procedure during the reporting period. It is worth noting that there has been no meaningful interaction with the Russian Federation during the reporting period with the WGEID.

There have been reports of Russian forces having detained or abducted Ukrainian civilians and concealed their fate or whereabouts after their withdrawal. In addition, many local officials, journalists, and human rights defenders have reportedly been disappeared or abducted in areas of Ukraine under the control of Russian or Russian-controlled troops.

As of 27 February 2024, the Committee had registered 1,770 requests for urgent action, of which 1,722 were original requests, and the remainder were parallel registrations, 8 of which stemmed from European countries (Armenia, Croatia, Lithuania, Slovakia and Ukraine), including WEOG and EEG, but these are only the cases reported.

Enforced disappearances are happening in a multitude of contexts, including in the framework of migration, detention and deportation processes or as a consequence of smuggling, trafficking and conflicts. The Working Group received alarming allegations related to the enforced disappearance of migrants, refugees, and asylum-seekers, including women, pregnant women and children, and disabled persons seeking protection.

In September, the Working Group launched its 2023 thematic study on “new technologies and enforced disappearances” (A/HRC/54/22/Add.5), which was presented at the 54th session of the Human Rights Council in a side event. New technologies, and in particular ICT, are frequently used to facilitate or conceal the commission of enforced disappearance, to hinder the work of human rights defenders and relatives of disappeared persons, and to intimidate or harass them. The Working Group is especially concerned at the use of Internet shutdowns and targeted connectivity disruptions; spyware programs; targeted and mass surveillance, including gait and facial recognition; cyberattacks and Government-sponsored troll factories; and the specious use of technology-related legislation to suppress dissent and target human rights defenders and relatives of disappeared persons.

In September 2023, the CED also made a general comment (No. 1) on enforced disappearance in the context of migration. Given the often cross-border character of

enforced disappearance in the context of migration, the general comment is aimed at fostering international and regional cooperation on prevention, search and investigation with regard to the disappearance of migrants in compliance with States parties' obligations under the Convention.

Already in a situation of vulnerability and faced with restrictive immigration policies and dehumanising border governance tactics, thousands of migrants die, disappear or go missing each year, leading to humanitarian crises in many regions of the world. However, accurate data on the number of victims of disappearance among missing migrants are not available or are inaccurate owing to a lack of systematic data collection and shared databases, insufficient cooperation among States and lack of political will barriers (linked, *inter alia*, to the situation of vulnerability of migrants and their relatives) to reporting cases of disappearance falling under Articles 2 and 3 of the Convention, and the failure of authorities to conduct serious, effective and diligent searches and investigations. This lack of accurate and disaggregated data hinders the adoption of policies and strategies to prevent the enforced disappearance of migrants and increases the vulnerability of migrants becoming victims of this crime.

2.3. Legal framework of the Convention for the Protection of All Persons from Enforced Disappearance

The Convention for the Protection of All Persons from Enforced Disappearance is often forgotten. For example, it is surprising that it is not on the list of United Nations Treaties mentioned in the GSP+, a special incentive arrangement for Sustainable Development and Good Governance that supports vulnerable developing countries that ratified 27 international conventions on human rights, labour rights, environmental protection and climate change, and good governance.

And yet, enforced disappearances remain a reality every day in the world and concern all regions, be it as places of occurrence of the disappearance, as countries of transit, or as countries of nationality of the disappeared person. In all these cases, such countries have their part of the responsibility to cooperate with the search and investigation and with the support to victims.

The level of ratification of the International Convention for the Protection of All Persons from Enforced Disappearance remains low despite the clear collective position of Member States that enforced disappearances must urgently be prevented and eradicated in all parts of the world.

Addressing enforced disappearances effectively requires a multifaceted approach, including more robust legislative frameworks, enhanced judicial cooperation and increased knowledge and capacity to monitor and report. The CED provides a solid legal framework to prevent and address enforced disappearance, and the commitment of European States to the treaty and its implementation is crucial for effectively fighting against enforced disappearances.

The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) was adopted by General Assembly resolution A/RES/61/177 in

December 2006 and came into force on 23 December 2010. Countries that ratify the Convention agree to be legally bound by it and are called State parties.

In short, the Convention includes terms that:

- Provide that no one shall be subject to enforced disappearance without exception, even in times of war or other public emergency;
- Oblige States parties to criminalise enforced disappearance and make it a punishable offence;
- Provide that enforced disappearance constitutes a crime against humanity when practised in a widespread or systematic manner;
- Oblige States to search for disappeared persons, investigate their disappearance, and provide victims with access to justice and reparation;
- Oblige States to afford one another the greatest measure of mutual legal assistance and cooperation for the search and investigation;
- Prohibit secret detention;
- Oblige State parties to guarantee minimum legal standards around the deprivation of liberty, such as maintaining official registers of persons deprived of liberty with minimum information and authorising them to communicate with their family, counsel, or any other person of their choice.

PANEL I

Facilitator

Milica Kolakovic-Bojovic

Vice-Chair of the UN Committee on Enforced Disappearances

3. Fédération Euro-méditerranéenne contre les Disparitions Forcées (FEMED)

Maria Gabriela Farah Nassif de Moraes

Lessons Learned:

- ***Essential role of civil society and families:*** the active involvement of civil society and families is crucial for effective outcomes.

Key issues are related to:

1. ***Right to Truth:*** Ensuring the truth about the fate of missing persons.
2. ***Justice and accountability:*** recognising and prosecuting state criminal responsibilities.
3. ***Reparation:*** Securing reparations for affected individuals.
4. ***Guarantees of Non-Repetition:*** implementing measures to prevent the recurrence of violations.

Strategic actions:

- **Training civil society members:** Empowering them with necessary skills and knowledge.
- **Experience exchange:** Facilitating the sharing of experiences among families of the disappeared.
- **Information dissemination:** Spreading awareness and knowledge on enforced disappearances.
- **Advocacy efforts:** Engaging with various authorities to influence policy and practice.
- **UPR Reporting:** Submitting reports for the Universal Periodic Review to ensure state accountability.
- **Individual complaints support:** Assisting individuals in lodging complaints.
- **Victim advocacy:** Championing justice and recognition for victims and their families.
- **Authoritative Reporting:** Providing comprehensive reports to the Enforced Disappearance Committee to enhance transparency and complement official state reports.

World Congress on Enforced Disappearances suggested key topics:

1. **Psychological and psychosocial support:** Highlighted in the 2021 “Need for Hope and Answers” report, this is critical for families of the missing. States should provide such support and support civil society organisations in these efforts.
2. **Training for Families’ Associations:** Focusing on international and regional human rights protection mechanisms is vital for empowering associations.
3. **Youth engagement:** Involving young people is essential for ensuring accountability and promoting respect for human rights. Their participation is crucial for the long-term success of transitional justice initiatives.

A. Bosnia and Herzegovina

Elma Majstorić Ninković
Senior Program Officer
ICMP Bosnia and Herzegovina

Best practices:

- **Outreach activities** towards families to encourage active engagement of families in the search and identification of victims.
- **Advocacy activities** pertaining to the realisation of the rights of families.
- **Awareness-raising** through memorialisation and commemorations of significant dates. Shared loss can be expressed in common remembrance and joint commemoration; 30 August, International Day of the Disappearances and 10 December, Human Rights Day, are commemorated in all areas.
- **Networking among associations of families** to exchange experiences and implementation of good practices towards the realisation of their rights.
- Families decisively supported ICMP’s **large-scale collection of DNA** reference samples from their members and others.

- **Family member participation:** They committed themselves to disseminating information on the DNA-based process and encouraged families' participation.
- Not least because of the endeavours of the family associations, more than 100.000 family members voluntarily provided reference samples to help identify their missing loved ones.
- Bosnia and Herzegovina was the first country to adopt a *lex specialis*, the 2004 **Law on Missing Persons**, within which the State-level Missing Persons Institute of BIH (MPI) was established.
- **Regional Coordination of Families of Missing Persons from the Former Yugoslavia:** 1) The Regional Coordination has raised public awareness about missing persons issues and improved links between decision-makers and victims' groups. 2) After years of informal cooperation, associations of families of missing persons from the territory of the former Yugoslavia formally registered the Regional Coordination in 2011 as an association of citizens, irrespective of ethnic or national background.
- The active and engaged role of the families of the missing is crucial for the success of the process.

Semina Alekić, Chairperson
Regional Coordination of Families of the Missing from the Former Yugoslavia
Bosnia and Herzegovina

Lessons learned:

- **Importance of collaboration:** Only through joint efforts can significant results be achieved.
- **Enhanced communication:** The establishment of the Missing Persons Institute, with its advisory board including representatives of family associations, has improved communication between institutions and families.
- **Consistency in family needs:** Despite various challenges, the needs of the families of missing persons remain consistent, emphasising the importance of continuous support and memorialisation efforts.

Best Practices:

- **Cooperation with institutions:** Since 1997, ongoing collaboration with both local and international institutions has been fundamental.
- **Digital database:** The creation of a digital database on missing persons has been effective in combating the manipulation of numbers and ensuring accurate records.
- **Regional and global engagement:** Regular regional meetings are held twice a year, and participation in global conferences, with support from the International Committee of the Red Cross (ICRC), has fostered broader cooperation and knowledge sharing.
- **Support for memorialisation:** There is a consistent effort to support memorialisation activities, recognising their importance to the families of the missing persons.

Challenges:

- **Incomplete implementation of the Law on Missing Persons:** Although the law has led to the creation of the Missing Persons Institute and other positive outcomes, its full implementation remains a challenge.
- **Funding issues:** A significant barrier is the lack of funds necessary for various activities and support mechanisms.
- **Complex decision-making:** The process for establishing the fund envisaged by the law is complicated, hindering timely and effective action.
- **Lack of Institutional Support:** Organisations, including national associations like the Serbian and Bosnian organisations, often do not receive the necessary support from institutions.
- **Problematic reparations:** Among the rights to truth, justice, and reparation, the issue of reparations is particularly problematic, requiring more focused efforts.

B. Spain

“Stolen Babies”. The Fight for Legal Recognition, Investigation and Prosecution of Enforced Disappearance Cases

Prof. Aránzazu Borrachero Mendivil
City University of New York

Member of All Stolen Children are Also my Children Organization

The issue of the systematic disappearance of children in Spain remains a significant and ongoing problem. This crime, marked by a persistent thread of impunity, involves multiple facets and contexts, including prisons, clinics, and maternity wards.

The victims of these disappearances span a wide demographic, including:

- Women active in Franco-era political activities;
- Large families;
- The poor;
- Single or separated women;
- Individuals deemed ideologically or morally deviant.

The underlying reasons for these disappearances are varied and deeply rooted in political, ideological, moral, religious, socio-economic, and gender-repressive motives.

Initially, state involvement in these disappearances was explicit and direct. Over time, as Spain transitioned to democracy, the involvement of the State became less overt. However, the crime has persisted, and it has been carried out by individuals and entities that inherited these practices from the previous regime.

Challenges:

- **Lack of due protection:** Victims have not received adequate protection, which has prevented many from coming forward or seeking justice.

- **Dismissive attitude:** There is a pervasive dismissive attitude towards the cases, contributing to the massive dismissal and lack of proper investigation into these disappearances.

Best practices:

1. **Social and academic spheres:**

- Collaborations with other memorialist associations and civil society organisations.
- Public engagement through participation in debates, publications, and art exhibits.
- Guidance and assistance in the search process, providing victim support.

2. **Human rights advocacy:**

- Collaboration with HHR organisations (Amnesty International, Association Pro Human Rights of Spain, etc).
- Dialogue and interaction with UNWGEID, CED.

3. **Judicial efforts:**

- Plaintiffs in Case 4591/2010 in Buenos Aires, Argentina.
- The first criminal lawsuit of a “stolen-baby case in 2024 was filed with CeAcqua (Platform in Support of the Argentine Complaint).

4. **Legislative efforts:**

- Contributions to the Democratic Memory Law of 2022.
- Collaboration on regional laws that have incorporated the issue of “stolen children”.
- Work with European political groups on the Report on Stolen Babies (2017).
- Advocacy for the Draft Law on Stolen Babies (2018, 2020 and May 2024).

Issues:

- **Dismissal of cases:** Between 2011 and 2021, there were 2149 investigation proceedings open, and most cases faced dismissal due to insufficient evidence or the statute of limitation.

Key aspects of the Draft Law on “Stolen Babies”:

- **State responsibility**, mandating it to search and investigate the facts and prosecute those responsible
- **Foundation on UN Principles:** It incorporates the right to truth, justice, reparation and guarantees of non-repetition.
- The law includes the **European Parliament Recommendations** of the Committee on Petitions issued after the 2017 investigation in Spain.
- **No statute of limitations:** The law recognises affected individuals as victims of a crime against humanity, except from the statute of limitations.
- **Protection for all:** The Draft Law on “Stolen Babies” provides coverage for all the crimes in the dictatorship and democracy without an end date.

The Organisation All Stolen Children are Also My Children is asking for entities to implement the law, such as:

- Special Prosecutor’s Office.

- Judicial Police Special Investigation Unit.
- State Commission for the Right to Identity.

Furthermore, it is advocating for:

- A national database and DNA testing;
- Victim participation once the law is approved.

Requests for the World Congress on Enforced Disappearances:

We respectfully request the Congress to undertake the following actions concerning the Draft Law on the Search for Disappeared Persons:

1. **Evaluation and feedback:**
 - Conduct a thorough evaluation of the Draft Law to assess its alignment with the Guiding Principles on the Search for Disappeared Persons.
 - Provide detailed feedback on how the Draft Law incorporates these Guiding Principles.
2. **Alignment with Guiding Principles:** Urge the Spanish State to ensure full alignment of the Draft Law with the Guiding Principles for the Search for Disappeared Persons.
3. **Regular updates:** Request regular updates from the Spanish State on the progress of the parliamentary proceedings related to the Draft Law.
4. **Expedite proceedings:**
 - Encourage the Spanish legislative and executive branches to expedite the proceedings of the Draft Law.
 - Advocate for the preservation of the original spirit of the Draft Law without any distortions.
5. **Classification of child abduction:** Urge the Spanish State to classify child abduction as an international crime that is not subject to any statute of limitations.

4. Pushbacks and mass proliferation of enforced disappearances during migration across Europe

Joseph Cripps

UN Advocacy Coordinator Border Violence Monitoring Network (BVMN)

The UN Special Rapporteur has highlighted the widespread and brutal use of pushbacks, with 25% involving torture or inhumane treatment. Evidence indicates frequent deprivation of liberty, often leading to enforced disappearances, compounded by the destruction of communication means such as mobile phones.

Pushbacks force migrants, including asylum seekers, back across borders without assessing their human rights protection needs. These measures are pervasive, reflecting deep-seated prejudice against migrants. BVMN has documented over 25,000 pushbacks across 14 European countries, detailed in the “Black Book of Pushbacks”.

Pushbacks frequently involve severe brutality:

- 75% of pushbacks recorded last year involved torture or inhumane treatment.
- Border zones have become areas where extreme cruelty is enacted with impunity.

States have used various tactics to conceal the fate of migrants:

- Destruction of mobile phones in over 95% of documented pushback cases.
- Use of unofficial and secret detention sites, such as abandoned buildings and shipping containers.
- Lack of registration and communication leads to enforced disappearances.

Detention conditions during pushbacks are inhumane:

- Overcrowded cells, severe abuse, lack of food and water, and filthy toilets.
- States actively conceal the whereabouts of detainees from families, lawyers, and NGOs.
- Reports indicate denial of access to information by national preventive mechanisms.

PANEL II

Facilitator

Olivier De Frouville

Chair of the United Nations Committee on Enforced Disappearances

A. Russia

Violetta Fitsner

Lawyer

Memorial HRDC

Memorial HRDC, founded in June 2022 by supporters of the dissolved Memorial Human Rights Centre, focuses on enforced disappearances in the North Caucasus, a practice originating during the Russian-Chechen wars. Collaborating with EHRAC, Memorial HRDC monitors, documents, and provides legal assistance in these cases despite significant challenges. During the first (1994-1996) and second (1999-2009) Russian-Chechen wars, Memorial documented thousands of disappearances. Enforced disappearances have recently spread to other regions in Russia, with thousands of cases documented, but real numbers are expected to be higher due to fear of reporting.

Challenges:

- ***Crime classification:*** Russia's Criminal Code does not recognise enforced disappearances, treating them as common crimes like kidnapping or murder. This limits the statute of limitations to 10-15 years, ignoring the continuous nature of the crime.
- ***Jurisdictional issues:*** Civilian prosecutors lack authority over military forces involved in disappearances, leading to cases being bounced between civilian and military prosecutors without progress.
- ***Investigation suspension:*** Authorities frequently suspend and reopen investigations, delaying progress and access to case files for lawyers and families.
- ***Lack of compensation:*** Russian law fails to provide effective compensation mechanisms for victims' families due to ineffective investigations and unprosecuted perpetrators.

Current efforts:

- **Monitoring and legal assistance:** Memorial continues to monitor cases and provide legal assistance despite increased repression and intimidation of families in the region.
- **International advocacy:** Memorial collaborates with international bodies like the UN, sharing reports and seeking justice for victims through mechanisms like the ECtHR and WGEID.
- **Public awareness:** Memorial engages in public coverage, writes reports, and conducts surveys to understand the impact of disappearances on families and to push for reforms.

Recommendations:

1. **Encourage civil society work:** Support continued efforts at national and international levels to obtain information on disappeared persons and ensure effective investigations and compensation.
2. **Advocate for ratification and reform:** Push for the ratification of the Convention on Enforced Disappearances in non-party states and advocate for legal reforms in line with the Convention's standards.
3. **Establish a support platform:** Create a permanent platform for victims' families and NGOs to exchange experiences, receive psychological and legal support, and enhance professional training for lawyers handling enforced disappearance cases.

B. North Caucasus

Elba Bendo

Lawyer at the European Human Rights Advocacy Center (EHRA)

EHRAC was set up in 2003 to litigate cases of human rights violations perpetrated by Russian forces in the North Caucasus, specifically before the European Court of Human Rights. It currently also works with partners in Armenia, Azerbaijan, Georgia, and Ukraine to bring cases of serious human rights violations before the European Court and international mechanisms.

While Russia is not a State party to the Convention, it remains one of the major perpetrators of enforced disappearances in the region. Enforced disappearances were a hallmark of the human rights violations perpetrated by Russian forces between 1999 and 2006 in the Chechen Republic and the broader North Caucasus region, and they continue to be practised widely to this day by Russian-installed regional authorities in the North Caucasus and by Russian State forces in Ukraine.

Enforced disappearances in this context, as in many contexts globally, have been used as a tool of war to terrorise and subjugate distinct peoples that form the North Caucasus in an effort to control territory and to uphold impunity for human rights violations perpetrated by State authorities. In the early 2000s, Amnesty International wrote to the governments of the States of the European Union, expressing concern that, unless

concerted and sustained action was taken to address the widespread impunity for the grave human rights violations suffered by Chechens, their future in Russia would be that of a subjugated and conquered people.

As for legal efforts, approximately 340 judgments at the European Court of Human Rights (ECtHR) involving 650 individuals have been made against Russia for enforced disappearances, with EHRAC and Memorial representing relatives in 74 cases. The ECtHR found Russian investigations deficient, marked by delays, suspensions, and lack of access to case files for families. In 2012, the *Aslakhanova and Others vs. Russia* case highlighted systemic issues and called for a high-level body to address disappearances, but implementation remains lacking. Russia's progress in executing these cases has been under supervision since 2011, with 18 decisions and multiple resolutions highlighting the lack of progress. Only 2 of 650 victims have been found.

EHRAC commissioned a forensic report in 2019, recommending a humanitarian body to search for missing persons. This was adopted by the Committee of Ministers in June 2020, shortly before Russia ceased to be a party to the European Convention.

Increasingly, relatives are turning to UN mechanisms due to domestic legal obstacles. Submissions have been made to the Committee against Torture, the Human Rights Committee, and during the Universal Periodic Review.

Key Priorities for Addressing Enforced Disappearances:

1. ***Inclusion of North Caucasus disappearances in current narratives:*** Recognise the testing ground nature of the North Caucasus for enforced disappearances and ensure these victims are included in discussions about current violations, such as those in Ukraine.
2. ***Convergence of regional and international efforts:*** Foster cooperation between the Council of Europe and UN Human Rights mechanisms. Efforts should build on past work and align with international law and best practices. Efforts have been made towards convergence. In December 2020, the Secretariat of the Committee of Ministers recommended that the Committee call on the State to consider ratifying the International Convention and recognising the competence of the Committee on Enforced Disappearances. It also noted that authorities should cooperate closely with the working group on individual cases as well as on a country visit, given that some of the cases in the Khashiyev group also appear to be under consideration by the working group. Unfortunately, the Committee did not include these recommendations in its future decisions, nor was this issue further pursued. Most recently, in 2022, PACE passed a resolution calling on the Council of Europe Member States to take steps to reinforce the existing international legal framework surrounding enforced disappearances and better implement the practices recommended in international mechanisms on enforced disappearances.
3. ***Advocacy for ratifying the Convention and enhancing cooperation with the UN mechanisms:*** Advocate for the ratification of the International Convention on Enforced Disappearances and enhance cooperation with the UN Working Group on Enforced or Involuntary Disappearances.
4. ***Support for victims' families and documentation efforts:***

- Put families at the centre of the global effort to eradicate enforced disappearances.
- Address the immense suffering of relatives, ensure memorisation efforts, reparation programs, proper DNA collection, and establish a comprehensive database of disappeared persons.
- Promote reparations programs to meet the psychosocial needs of families, particularly women, older people, children, and rural and racialised communities.
- Support civil society efforts to document and maintain critical information on disappearances.

C. Ukraine

Yelyzaveta Sokurenko
Human Rights Center - ZMINA

ZMINA has been actively engaged in human rights work for 11 years. Since the onset of Russia's full-scale invasion of Ukraine, ZMINA has focused on documenting and analysing international crimes, specifically in occupied Ukrainian territories. This documentation is gathered through in-depth interviews with survivors and their families, as well as open-source information.

Issues:

- **Systematic persecution:** ZMINA's research indicates a systematic policy by the Russian Federation aimed at intimidating civilians and establishing control through arbitrary detention, torture, and enforced disappearances. Socially and politically active individuals such as activists, volunteers, journalists, local officials, educators, religious and cultural figures, and their relatives are primary targets. Over time, Russian forces have broadened their criteria for perceived disloyalty, resulting in a larger number of civilians being targeted.
- **Reporting limitations:** The practice of enforced disappearances continues in occupied areas, with new cases documented monthly. Due to restricted access to Russian-controlled territories, the exact number of civilians detained is unknown.
- **Lack of official channels:** There are no effective channels or mechanisms for families to obtain reliable information about the whereabouts, reasons for detention, or health status of their loved ones. Appeals for information or legal recourse within Russia are largely ineffective. In many documented cases, the relatives of the victims of enforced disappearances turned to all the mechanisms of finding their relatives that were available to them – to "law enforcement agencies" in the temporarily occupied territories, to ministries and departments in the Russian Federation (in particular, they submitted requests to the Ministry of Defense of the Russian Federation, to the Ombudsman of the Russian Federation, personally came to the reception at the so-called police departments and pre-trial detention centres located in the premises of police departments in cities that were temporarily occupied), but could not get official confirmation about the fate of the person, his or her place of

detention and State of health. This caused and continues to cause severe moral suffering for relatives.

Based on the data we managed to get from the victims and their family members, the Russian side is detaining civilians in several ways:

- **Mostly without any legal status**, which is often accompanied by a lack of notification to the family about the fact of being held in places of detention. A civilian can be held for months without any charges being brought. Besides, neither person can notify about himself/herself and his/her stay in places of detention, nor can relatives find out about the person's whereabouts; this is usually accompanied by a lack of information, even among the detainees themselves, about his or her legal status.
- As "**participants**" of the check for involvement in "countering a special military operation". This is not a term regulated by the norms of criminal procedural legislation, but despite the fact that the person has no legal status and, as a result — the State has no legal grounds for keeping a person in places of deprivation of liberty — some of the detained civilians are in this status.
- As suspects, accused, and defendants on charges of committing international terrorism, espionage or extremism in the territories that Russia defines as part of its own on the basis of "referendums".
- As **prisoners of war** (while ignoring the norms of the Geneva Conventions on the treatment of prisoners of war). Despite the completely civilian nature of the actions of individual detainees, the Russian side defines them as prisoners of war and demands that the Ukrainian side exchange them only for Russian prisoners of war.

Recommendations:

1. Continue the process of locating civilian detainees, identifying the places where they are detained and organising the monitoring of these places, including through cooperation with relevant international organisations and civil society;
2. Condemn the systematic practice of enforced disappearances by the armed forces controlled by the Russian Federation against the civilian population in the occupied territories of Ukraine;
3. Call on the Russian Federation to ensure unimpeded access of the International Committee of the Red Cross and other international organisations to Ukrainian civilians in captivity;
4. Call ICRC to publish or to share in open sources protocols describing each case or general statistic about the facts of preventing access to the places of detention on Russian territory;
5. Intensify efforts for the unconditional and immediate release by the Russian Federation of all civilians who have become victims of enforced disappearances and arbitrary detentions;
6. Promote the accountability of perpetrators of human rights violations, international crimes of enforced disappearances and related crimes.

Anastasiia Pantelieieva
Head of Documenting
Media Initiative for Human Rights

Recommendations:

1. For the State of Ukraine, verifying existing data in existing State databases.
2. For the Office of the Prosecutor of the International Criminal Court, initiating an investigation into the crime against humanity of persecution against civilians and issuing arrest warrants for all individuals responsible for enforced disappearances.
3. For all States, proceedings should be started on the basis of the principle of universal jurisdiction.
4. For all States, utilising existing embassies in Russia to seek the places of detention, monitor their facilities, facilitate negotiations for their release
5. For the International Committee of the Red Cross, the United Nations human rights missions and other international organisations working on civilians during armed conflicts:
 - Making everything possible to establish a list of civilian detainees and their locations;
 - To access complaints on detention facilities on international standards, document any violation in the treatment of civilian detainees;
 - To persist in seeking access to the facilities where civilian detainees are held;
 - To facilitate communication between civilian detainees and their families and the outside world;
 - To monitor trials of Ukrainian civilian detainees in the territory of the Russian Federation.

D. Turkey

Mümtaz Murat Kök
Human Rights Foundation of Turkey
Speaking on behalf of the Saturday Mothers

Challenges:

- **Impunity:** in the Turkish Criminal Code, there is no crime of enforced disappearances. Furthermore, testimonies of families are not considered reliable evidence. In addition, there is the risk of the statute of limitations.
- **Denial:** Turkey has not signed nor ratified the Convention on the Protection of All Persons from Enforced Disappearance. Some politicians construct denial on this.
- **Threats to the Saturday Mothers:** The Saturday Mothers were, among other things, detained and subjected to torture and ill-treatment. They were subjected to specific forms of torture, such as being taken to police stations where many of their relatives disappeared. They were also themselves disappeared.

E. Cyprus

Natasa Iakovou

Truth Now

This part outlines the current issues surrounding the right to truth, the necessary societal conditions for effective remembrance and accountability, and proposed initiatives to strengthen truth efforts.

Issues:

- ***Lack of Awareness of the Right to Truth:*** There is inadequate awareness regarding the right to truth, its implications, and its beneficiaries. This right extends not only to direct victims and their families but also to society at large, which bears the collective trauma as indirect victims.

Recommendations:

- ***Need for societal remembrance:*** Guarantees of non-recurrence require a society that actively remembers past atrocities and injustices. This collective memory is crucial for healing and preventing the recurrence of human rights violations.
- ***Establishing a clear mandate for truth commission:*** A successful truth commission must have a clear and strong mandate. This ensures that its objectives, powers, and scope are well-defined and effective.
- ***Political advocacy:*** It is essential to exert pressure on members of Parliament to ratify relevant conventions that uphold human rights and the right to truth. Legislative support is vital for the institutionalisation of these rights.
- ***Cultivating a culture of truth:*** Promoting a culture of truthfulness is necessary for societal healing and accountability. This involves widespread education and advocacy about the importance of truth in addressing past injustices.
- ***Support for artistic initiatives:*** Supporting artistic initiatives, such as theatrical monologues about women affected by traumatic events, can effectively raise awareness and foster empathy within society.

The idea of upgrading the Committee for Missing Persons into a **truth commission** has received support from the President of the Republic of Cyprus. This aligns with the State's obligation to comply with the European Court of Human Rights decisions.

It is recommended to invite the following key stakeholders to participate in the initiatives and discussions in order to provide valid support:

- The Commissioner of the Council of Europe;
- The Organization for Security and Cooperation in Europe (OSCE);
- The Department for Execution of Judgments;
- The Committee on Legal Affairs and Human Rights.

5. Conclusion

Gabriella Citroni

Vice Chair

United Nations Working Group on Enforced or Involuntary Disappearances

This report highlights the urgent need for increased lobbying and advocacy efforts for the ratification of the Convention on Enforced Disappearances, addresses misconceptions about the prevalence of enforced disappearances in Europe, and emphasises the importance of placing families at the centre of related initiatives.

Key findings and recommendations:

1. ***Increased Investment in lobbying and advocacy***: There is a pressing need to significantly boost lobbying and advocacy efforts for the ratification of the Convention on Enforced Disappearances. Joint and concerted efforts are required to achieve meaningful progress.
2. ***Addressing misconceptions***: There is a pervasive stereotype that enforced disappearances are not a European issue. This is incorrect; enforced disappearances (ED) affect Europe as well. Notably, the highest number of registered cases comes from Ukraine, underscoring the relevance of this issue within Europe.
3. ***Importance of acknowledging the past***: The consultation provided an opportunity to learn, strengthen networks, and emphasise the importance of acknowledging the past. Recognising past injustices is crucial for moving forward and ensuring that such violations do not recur.
4. ***Reframing needs as rights***: truth, justice, reparation, memory, and psychological support are often viewed as needs. However, these are rights as recognised by the Convention. It is essential to shift the perspective from needs to rights to ensure comprehensive support for victims and their families.
5. ***Global commitment and common challenges***: with 75 State Parties today, 29 States have granted the Committee competence to address enforced disappearances. Common problems identified include:
 - Lack of legislation;
 - Denial of enforced disappearances;
 - Specific issues such as stolen children and migration-related disappearances
6. ***Family-centric approach***: moving forward, families must be at the core of designing, conducting, and following up on the Congress. Their involvement is crucial to ensure that their voices and experiences shape the outcomes and actions.
7. ***Addressing challenges and ensuring safety***: while involving families, it is important to be aware of the reprisals they face. This necessitates addressing challenges and ensuring their safety and support throughout the process.
8. ***State involvement and support***: The absence of State support remains a significant barrier. Concrete efforts are needed to engage States and secure their involvement in supporting victims and their families.

9. ***Investment in regional and transnational agreements:*** there is a need to invest in regional and transnational agreements. Involving key institutions such as the Council of Europe, Committee of Ministers, High Commissioner, and the Organization for Security and Cooperation in Europe is vital for the success of these efforts.

Enhanced advocacy and lobbying efforts for the ratification of the Convention on Enforced Disappearances are crucial. Addressing misconceptions, reframing needs as rights, and ensuring a family-centric approach are key to achieving justice and reparation for victims. Investing in regional and transnational agreements and involving critical institutions will strengthen these efforts and support the rights and safety of victims and their families.

ANNEXES

List of annexes:

- European Human Rights Advocacy Centre, “Submissions to the World Congress on Enforced Disappearances on the situation of human rights in the Russian Federation”.
- Saturday Mothers, “Written Input to the World Congress against Enforced Disappearances – On the Situation in Turkey”.



Submissions to the World Congress on Enforced Disappearances on the situation of human rights in the Russian Federation

8 July 2024

Introduction

1. These submissions are communicated by the European Human Rights Advocacy Centre [‘EHRAC’]¹ to inform the issues that will be address at the World Congress on Enforced Disappearances [World Congress] on the human rights situation in the Russian Federation. They address the State’s failure to make any progress in effectively investigating and resolving enforced disappearances perpetrated between 1999 – 2009 by Russian security forces in the Chechen Republic and surrounding North Caucasus region and the ongoing implication for the relatives of disappeared victims as well as the situation of impunity for enforced disappearances by state authorities as currently perpetrated in the Chechen Republic and Ukraine.
2. The authors provide an overview of the practice of enforced disappearances during this period; litigation of these violations before the European Court of Human Rights [‘ECtHR’]; oversight of the implementation of the Court’s judgments by the Committee of Ministers of the Council of Europe [‘CoM’] and the consequences of the expulsion of the State from the Council of Europe on the CoM’s ability to effectively oversee implementation of judgments; and the ongoing nature of the violations and their impact on relatives of disappeared victims, Chechen civil society and the climate of impunity which their lack of resolution upholds.
3. It is submitted that the ongoing nature of these violations including their continued impact on relatives and the climate of impunity that upholds the continued practice of enforced disappearances by Russian authorities coupled with the expulsion of the Russian Federation

¹ EHRAC was set up in 2003 by a team of human rights lawyers and experts with experience of taking cases to the European Court of Human Rights. Working in support of civil society organisations, we bring strategic cases of human rights violations before international fora, raise awareness of violations and means of redress for victims, and build the capacity of individuals and organisations through mentoring, training and advocacy. EHRAC along with our partner Human Rights Centre Memorial, has represented relatives in 75 cases before the ECtHR involving hundreds of disappeared victims.

from the CoE urgently requires greater oversight of this group of cases by the UN human rights oversight mechanisms and greater collaboration between the CoE and the UN. The authors respectfully set out below the following list of recommendations for the World Congress:

Recommendation 1: The organisers facilitate collaboration between civil society groups and other mechanisms working on addressing enforced disappearances by the Russian Federation to ensure that sessions and actions plans reflect the use of enforced disappearances in the North Caucasus and other regions where they have been practiced by Russian state forces.

Recommendation 2: Representatives from the Department for Execution of Judgments, Committee of Ministers, Parliamentary Assembly of the Council of Europe and the Human Rights Commissioner are invited to attend the relevant sessions of the World Congress.

Recommendation 3: A session is organised during the World Congress that outlines opportunities for convergence between the work of the UN WGED, UN CED and the CoM, PACE and Human Rights Commissioner. The session should consider effort to increase ratification of the Convention by Council of Europe member states; implementation of international best practices in the region; and, collaboration on resolution of enforced disappearance cases under consideration by the CoE.

Recommendation 4: A session is organised at the World Congress with ‘like-minded’ states, CoE mechanisms and key civil society groups aimed at discussing the use of universal jurisdiction for enforced disappearances with the aim of developing a plan of action to increase and improve the use of universal jurisdiction by CoE states.

Recommendation 5: A session is organised at the World Congress that considers the moral and financial support the international community including individual states can provide to support families including the creation of family association, DNA collection and a disappeared persons database. The session would ideally be attended by key civil society groups, CoM representatives, the ICMP and the ICRC.

Recommendation 6: A session is organised at the World Congress on the issue of enforced disappearances amounting to torture against the relatives of disappeared persons and attended by key stakeholders including the UN CAT and the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment.

Litigation before the European Court of Human Rights (2000 – 2021)

4. Enforced disappearances were a hallmark of the human rights violations perpetrated by Russian forces between 1999 – 2009 in the Chechen Republic and broader North Caucasus region and continue to be practised widely to this day. Estimates indicate that somewhere

between 5,000 – 7,700 people were disappeared by the Russian Federation in the region between 1999 and 2009.²

5. The ECtHR has to date passed down judgment in approximately 340 cases in relation to nearly 650 individuals whom it has found to have been forcibly disappeared in the Region mostly during the seven-year period – known as the *Khashiyev and Akayeva* group of cases [*‘the Khashiyev group’*].³ EHRAC, along with our partner, Memorial Human Rights Defence Center, have represented the relatives of 96 disappeared victims in 74 applications before the European Court.
6. The ECtHR has held that by virtue of these enforced disappearances, the Russian Federation committed violations of the right to life, prohibition of torture, the right to liberty and security and the right to an effective remedy as enshrined in Articles 2, 3, 5 and 13 of the European Convention on Human Rights [*‘the ECHR’*].⁴
7. It has repeatedly concluded that the Russian Federation has failed to undertake even the most basic of investigative steps⁵ in the vast majority of disappearances including: the opening of investigations, the questioning of obvious witnesses and suspects,⁶ the sharing of information with investigators by security forces, the conducting of autopsies or forensic medical tests, and even the establishment of necessary facilities for investigation within the Region – such as a laboratory within the Chechen Republic that is capable of identifying human remains.⁷ Instead, the investigations have been riddled with perpetual delays and

² Council of Europe Committee of Ministers, Decision on the H46-21 *Khashiyev and Akayeva group v. Russian Federation* (Application No. 57942/00), (Adopted by the Committee of Ministers on 16 September 2021 at the 1411th meeting of the Ministers’ Deputies).

³ Department for the Execution of Judgments of the Council of Europe, “Khashiyev and Akayeva Group v. Russian Federation (No. 57942/00): The list of missing persons Overview of individual measures” H/Exec(2021)15 (1 August 2021) available at: [http://hudoc.exec.coe.int/eng?i=HEXEC\(2021\)15-RUS-GROUP-KHASHIYEV-AKAYEVA-ENG](http://hudoc.exec.coe.int/eng?i=HEXEC(2021)15-RUS-GROUP-KHASHIYEV-AKAYEVA-ENG) [accessed on: 30 September 2021]. As of August 2021, there were 301 unresolved judgments forming part of the *Khashiyev* Group under supervision by the Committee of Ministers of the Council of Europe. The final judgment rendered in this repetitive group of cases was *Tsuroyev and others v Russia*, No. 8372/07, judgments of 8 June 2021.

⁴ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.

⁵ See *inter alia* *Aslakhanova v Russia*, Application No. 2944/06, judgment of 18 December 2012; *Khatsiyeva and others v Russia*, Application No. 5198/02, judgment of 7 July 2008; see also *Murdalovy v Russia*, No. 51933/08, judgment of 31 July 2020 [The Court has already found that a criminal investigation does not constitute an effective remedy in respect of disappearances occurring in Chechnya between 1999 and 2006 in particular, and that such a situation constitutes a systemic problem under the Convention (see paragraph 51 above). In the case at hand, as in many similar cases reviewed by the Court, the investigation has been pending for many years without bringing about any significant developments as to the identities of the perpetrators or the fate of Mr Murdalov. While the obligation to investigate effectively is one of means and not of results, the Court notes that the criminal proceedings have been plagued by a combination of defects similar to those enumerated in the *Aslakhanova and Others* judgment (cited above, para 123-25). The investigation was suspended on several occasions; those suspensions were followed by periods of inactivity, which further diminished the prospects of solving the crime (see paragraphs 20 and 23 above).]; The Court has in a number of recent judgments noted similarities in investigative failures akin to those identified in *Alsakhanova v Russia*, see e.g. also *Murdalovy v Russia*, No. 51933/08, judgment of 31 July 2020; see also *Timerbulatova and others v Russia*, No. 44116/10, judgment of 21 January 2020.

⁶ *Aziyevy v Russia* Application No. 77626/01, judgment of 20 March 2008; See also *Baysayeva v Russia* Application No.74237/01 judgment of 5 April 2007 [Lack of questioning of key suspects even extends to instances where the authorities were in possession of video footage showing the individuals responsible for the disappeared person’s arrest yet failed to question them].

⁷ Committee on Legal Affairs and Human Rights, *Human rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?*, 21 January 2013, Reference 14083, para 61: [*‘according to information received in November 2014 and confirmed in January 2016, no laboratory in the Chechen Republic is capable of identifying bodies that are decomposed.’*].

recurrent suspensions, as well as ill-treatment of family members including repeated failures to provide families with access to case files.⁸

8. Despite the obligation on the Russian Federation to uncover the fate of the disappeared in each and every one of these cases, there is no tangible evidence that, in the close to two decades that have elapsed since the ECtHR's first case of enforced disappearances from the region, the Russian Federation has taken any meaningful steps to remedy the ongoing violations perpetrated against the disappeared persons and their families.

The judgment in *Aslakhanova and others v Russia*: systemic investigative failures and the need for the creation of a search body (2012)

9. The nature of the ongoing violations and failure to investigate have been found to be so systemic that, in 2012, in the landmark case of *Aslakhanova and others v Russia*, the ECtHR provided detailed guidance to the Russian Federation on the general and individual measures it had to take to address the investigative failures in the region.⁹
10. *Aslakhanova* concerned the disappearance of eight men in the Grozny District, Chechen Republic between March 2002 and July 2004. Noting the close to 120 judgments it had adopted and the additional 100 cases that remained to be heard by the Court raising similar and often inter-connected violations, it found that the situation of the case before it had to be “characterised as resulting from systemic problems at the national level, for which there is no effective domestic remedy”.¹⁰ It also found that the systemic nature of the violations require “prompt implementation of comprehensive and complex measures”¹¹ aimed principally at ending the suffering of the relatives of the disappeared persons.¹²
11. In identifying the urgent measures that needed to be taken to address the systemic failure to investigate disappearances, the ECtHR reviewed detailed information provided by the parties on the effectiveness of the criminal investigations including government submissions on the work of the investigative committee and the collaboration with military and other bodies; existing legal framework and practice to address the continuing violations arising from non-investigation into the abductions; the role of victims in proceedings; and all working groups and other mechanisms the government had put in place to search for the disappeared persons.¹³ Based on this assessment, it concluded that measures to redress the systemic failure to investigate fell into two principal categories:
 1. The urgent need to end the suffering of the victim's families by determining the fate of their loved ones; and,

⁸ *Aslakhanova v Russia*, Application No. 2944/06 and others, judgment of 18 December 2012; see also *Timerbulatova and others v Russia*, No. 44116/10, judgment of 21 January 2020 among others.

⁹ *Aslakhanova and others v Russia*, Application No. 2944/06, judgment of 18 December 2012 para 221; The ECtHR's findings in *Aslakhanova* have been re-affirmed in numerous recent judgments see e.g. *Murdalovy v Russia*, No. 51933/08, judgment of 31 July 2020 para 54 [The Court has already found that a criminal investigation does not constitute an effective remedy in respect of disappearances occurring in Chechnya between 1999 and 2009 in particular, and that such a situation constitutes a systemic problem under the Convention (see paragraph 51 above).]

¹⁰ *Aslakhanova and others v Russia*, Application No. 2944/06, judgment of 18 December 2012 para 217.

¹¹ *Aslakhanova and others v Russia*, Application No. 2944/06, judgment of 18 December 2012 para 217.

¹² *Aslakhanova and others v Russia*, Application No. 2944/06, judgment of 18 December 2012 para 221.

¹³ *Aslakhanova and others v Russia*, Application No. 2944/06, judgment of 18 December 2012 para 159-209.

2. The need to address the ineffectiveness of the investigations.
12. With regard to the first category of measures, the ECtHR noted that this was the “most pressing group of measures” because it concerned the ongoing agony and suffering of the relatives of the victims who remain in daily uncertainty about what happened to their loved ones.¹⁴ It found that it was “apparent from the cases at hand and from the bulk of the Court’s previous judgments on the subject that the criminal investigations are particularly ineffective in this regard, resulting in a sense of acute helplessness and confusion on the part of the victims”.¹⁵
13. As a result, it noted the urgent need for the creation of “a single, sufficiently high-level body in charge of solving disappearances in the region with the exclusive aim of determining the fate of the victims. The Court noted that this body would enjoy unrestricted access to all relevant information and would work on the basis of trust and partnership with the relatives of the disappeared”.¹⁶
14. The Court’s finding in this regard was monumental because it was the first time the ECtHR identified the need for a humanitarian framework that decoupled location and identification of the missing from criminal prosecution and prioritises the return of the remains of loved ones to their family for reburial.
15. The priorities set by the ECtHR in *Aslakhanova* – to end the suffering of relatives by determining the fate of the disappeared victims – reflects the priorities some of EHRAC and Memorial’s applicants shared with EHRAC in interviews held in 2016 and 2022. In 2016, interviews with relatives of disappeared persons demonstrated a clear pattern: their main and most urgent priority was to know what happened to their loved ones and have them or their remains returned for burial. In 2021, EHRAC began a second round of assessment of the wishes of applicants to make sure our advocacy was still reflective of their priorities. Once again interviews confirmed that the overarching priority for our applicants is to know what happened to their loved ones and have them returned to their families.
16. In 2019, EHRAC commissioned a report from two specialist forensic scientists, Professor R.L. Gowland and Professor T.J.U. Thompson [Annex I], who have expertise and experience establishing the fate of disappeared persons globally as well as providing research and training in the latest scientific techniques for those undertaking such operations around the world [‘the Gowland/Thompson Expert Forensic Report’]. The Report establishes unequivocally that there is no scientific impediment to determining the fate of the victims who were disappeared between 1999 – 2009.
17. The Gowland/Thompson Expert Forensic Report also noted that the central element of a humanitarian search mechanism is the involvement of an impartial agency with expertise in search and victim engagement. Thus, in addition to the need to establish a single search body there must also be involvement from an impartial agency such as the International Committee of the Red Cross. This agency always has oversight of the process in order to establish a relationship of trust with the affected families. Such independence and

¹⁴ *Aslakhanova and others v Russia*, Application No. 2944/06, judgment of 18 December 2012 para 223.

¹⁵ *Aslakhanova and others v Russia*, Application No. 2944/06, judgment of 18 December 2012 para 224.

¹⁶ *Aslakhanova and others v Russia*, Application No. 2944/06, judgment of 18 December 2012 para 225.

impartiality is one reason why the framework is recognised to be particularly effective in building open communication and trust in countries where individuals and communities are ordinarily reluctant to provide information to government agencies due to lack of trust and fear of retribution, as is the case in the North Caucasus region.

The Committee of Ministers of the Council of Europe and the issue of the establishment of a search body (2011 – 2015)

18. In accordance with Article 46 of the ECHR, the Russian Federation’s progress in executing the *Khashiyev* group of judgments has been under supervision by the Committee of Ministers of the Council of Europe [‘CoM’] since 2011. Within this process, the Russian Federation has been required to submit action plans detailing any progress made in the investigations, general measures implemented and plans for future implementation. Non-governmental organisations have also been offered the opportunity to submit information about the progress of implementation.
19. The CoM has issued multiple decisions and resolutions which includes general and specific recommendations to the Russian Federation on how it should progress toward execution of the judgments. In total, the CoM has rendered 18 decisions since 2011.¹⁷
20. On 16 September 2021, the CoM concluded that there remain 650 unresolved disappearances in this group of cases, most perpetrated between 1999 – 2009.¹⁸ In its 3 December 2020 review, the CoM noted that only two victims had been found and, by the Russian Federation’s own account, the last identification of a missing person occurred in 2015 and was not attributable to the efforts of the Russian authorities.¹⁹
21. In 2020, EHRAC submitted the Gowland/Thompson Expert Forensic Report to the CoM calling on it to prioritise the establishment of a search body in line with international practice. In June 2022, the CoM called on the Russian Federation to “urgently create an ad hoc humanitarian body to search for missing persons using modern scientific knowledge in a procedure complementary to investigations, taking inspiration from the work and mandates of bodies responsible for the search of missing persons in other member States”.²⁰
22. On 16 September 2022, the State ceased to be a party to the European Convention however, under the Convention, the State has a binding legal obligation to implement judgments and decisions from the Court. Despite this clear obligation, the State has completely ceased to engage with the Court’s implementation mechanisms including by failing to provide action

¹⁷ *Khashiyev and Akayeva v Russia*, 57942/00 Case Documents, <https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%5B%22004-9%22%5D,%22EXECDocumentTypeCollection%22:%5B%22CEC%22%5D,%22EXECTitle%22:%5B%22khashiyev%22%5D%7D> [accessed on 16 July 2021].

¹⁸ Council of Europe Committee of Ministers, Decision on the H46-21 *Khashiyev and Akayeva* group v. Russian Federation (Application No. 57942/00), (Adopted by the Committee of Ministers on 16 September 2021 at the 1411th meeting of the Ministers’ Deputies).

¹⁹ Council of Europe Committee of Ministers, Decision on the H46-21 *Khashiyev and Akayeva* group v. Russian Federation (Application No. 57942/00), (Adopted by the Committee of Ministers on 3 December 2020 at the 1390th meeting of the Ministers’ Deputies).

²⁰ Committee of Ministers of the Council of Europe, 1436th meeting, 8-10 June 2022 (DH), H46-24 *Khashiyev and Akayeva* group v. Russian Federation (Application No. 57942/00) available at: <https://hudoc.exec.coe.int/eng#%7B%22execidentifier%22:%5B%22004-9%22%5D%7D>

plans outlining the steps it has taken and intends to take to implement the *Khashiyev* group of judgments.

23. In April 2023, the state criminalised the provision of assistance on execution of judgments of international bodies to which the state is not a party – this would include the European Convention on Human Rights.²¹
24. These actions have sparked fear among the relatives of disappeared victims and their representatives that the State considers these cases fully resolved and will not take any further steps to remedy the violations. It has also made whatever limited avenues for advocacy that remained available at the domestic and regional level wholly untenable.

The United Nations human rights mechanisms and the 1999 – 2009 disappearances perpetrated by the Russian Federation in the North Caucasus

25. For many years, UN human rights mechanisms have expressed concern over the State party's failure to investigate human rights violations including enforced disappearances in the North Caucasus and called on the State to provide progress reports on the state of these investigations.²²
26. The UN Human Rights Committee first asked about the measures the State was undertaking to prevent disappearances of Chechen civilians and to identify the disappeared victims in 2003 in its list of issues in relation to the State party's fifth periodic review.²³ In 2009, the Committee called on the authorities to establish "an independent body to investigate such reports of serious human rights violations in Chechnya and other parts of the North Caucasus committed by State agents".²⁴
27. Following this period, the Committee continued to call on the State party to investigate disappearances and other human rights violations expressing concern at the ongoing impunity for human rights violations in the region.²⁵ Similarly, in 2018, the UN Committee against Torture ['UN CAT'] noted a failure to effectively investigate past and ongoing human rights violations including enforced disappearances.²⁶ In 2020, the UN CAT reiterated its concern about the failure to investigate and asked the State party to provide updated information about the progress of investigations notably it also asked the State party "about the status of the investigation of cases of enforced disappearance in the region and whether family members of disappeared persons are informed of the progress of investigations and on the identification of their remains".²⁷

²¹ Russian Federation, Criminal Code, Article 284.3.

²² UN Human Rights Committee, Concluding observations on the seventh periodic report of the Russian Federation, CCPR/C/RUS/CO/7, 28 April 2015, para 7.

²³ UN Human Rights Committee, List of Issues in Relation to the Fifth Periodic Report of the Russian Federation CCPR/C/RUS/2003/5, March 23 2003, para 13.

²⁴ UN Human Rights Committee, List of Issues in Relation to the Sixth Periodic Report of the Russian Federation, CCPR/C/RUS/Q/6, 27 April 2009, para 15.

²⁵ UN Human Rights Committee, List of Issues in Relation to the Seventh Periodic Report of the Russian Federation, CCPR/C/RUS/Q/7, 25 July 2014, para 11.

²⁶ Committee against Torture, Concluding Observations on the Sixth Periodic Report of the Russian Federation, August 28, 2018, CAT/C/RUS/CO/6 para 46 (2018).

²⁷ Committee against Torture, Concluding Observations on the Sixth Periodic Report of the Russian Federation, August 28, 2018, CAT/C/RUS/CO/6 para 46 (2018).

28. EHRAC and Memorial along with other representatives of families of disappeared persons have continued to ask UN human rights mechanisms to maintain pressure on the State party to establish the fate of the disappeared victims. They have specifically asked that the disappearances from this seven-year period be treated separately from the ongoing violations in the region and that the State party be called on to report on the progress it has made to investigate the disappearances from 1999 – 2009. Most recently, the UN CAT asked the State party to comment on allegations that it has failed to make any progress in investigating human rights violations including enforced disappearances in the North Caucasus and provide specific information on its failure to investigate enforced disappearances perpetrated by its security forces between 1999 – 2009.²⁸
29. Many of the family members of the disappeared persons have also filed individual cases before the UN Working Group on Enforced or Involuntary Disappearances [‘WGEID’]. In 2018, EHRAC and our partner, Memorial, as representatives of these applicants, filed a General Allegation to WGEID regarding the Russian Federation’s systemic failure to investigate enforced disappearances and calling on WGEID to promote collaboration among UN and regional mechanisms in order to achieve humanitarian resolution. In 18 January 2019, WGEID issued a further country visit request to which there has been no response by the Russian Federation.²⁹
30. In its advocacy before the WGEID and UN CAT, EHRAC has consistently maintained that UN human rights mechanisms review of the progress in these cases must reflect the wishes of the relatives of the disappeared persons and build upon the binding legal judgments of the ECtHR and the compliance monitoring of the CoM in these cases.

The ongoing nature of the crime of enforced disappearances and the impact on the relatives of disappeared victims

31. The families of the disappeared in the Region have suffered immensely as a result of the disappearance of their loved ones and, consequently, are themselves victims of the crime of enforced disappearance.³⁰ The Human Rights Committee³¹, ECtHR³², Inter-American

²⁸ UN Committee against Torture, List of issues prior to submission of the seventh periodic report of the Russian Federation, CAT/C/RUS/QPR/7, 21 June 2021.

²⁹ WGEID has requested a country visit from the Russian Federation on 4 June 2008, 20 July 2009, 18 August 2011, 8 November 2012, 2 September 2013, 18 November 2016 and, most recently, 18 January 2019. United National Office of the High Commissioner, View Country visits of Special Procedures of the Human Rights Council since 1998 (webpage) available at: <https://spinternet.ohchr.org/ViewMandatesVisit.aspx?visitType=all&lang=En> [accessed on 25 January 2021].

³⁰ UN General Assembly, Declaration on the Protection of All Persons from Enforced Disappearances, 12 February 1993, A/RES/47/133 art 1(2); UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, Aart. 24(1); UN Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *General Comment 3, Implementation of Article 14 by State Parties* 13 December 2012 CAT/C/GC/3 para 3: [“*Victims are persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. [...] The term “victim” also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.*”.]

³¹ *Case of Maria del Carmen Almedia de Quinteros v Uruguay*, Views of July 21, 1983, Inter-American Court of Human Rights, Communication No 107/1981 (17 September 1981) para 14.

³² *Kurt v Turkey* 15/1997/799/1002, judgment of 25 May 1998, paras 130-134

Commission and Court of Human Rights³³ and WGEID³⁴ have all recognised that the suffering caused to the relatives by the disappearance of their loved ones and the continued anguish that comes with not knowing the fate of their loved ones is a form of torture or cruel, degrading and inhuman treatment.

32. In addition to the uncertainty that comes with not knowing the fate of their loved ones the relatives of the disappeared in these cases have also been subjected to almost two decades of indifference and ill-treatment by State party authorities. The State party's conduct over the years has amounted to a blatant violation of the family members' right to truth and, in particular, to know the fate of the disappeared.³⁵ The ECtHR has found that the extent of the family member's suffering has been exacerbated where the applicant has been denied or delayed victim status, denied access to case files or information about the investigation, or directly subjected to threats or other degrading treatment by State authorities.³⁶
33. As a consequence of these ongoing violations the families of disappeared persons have faced severe and disproportionate psychological, social, economic and legal challenges.³⁷ A 2009 study by the International Committee of the Red Cross [‘the ICRC’] revealed that 72% of families interviewed faced economic difficulties related to losing their primary breadwinner, spending money on efforts to locate their loved one and disruption in employment caused by psychological disturbances related to the disappearance – from which 30 – 45% of family members reported suffering³⁸ – or the lack of available work in their community.³⁹
34. Women who have lost their husbands or sons have experienced the worst effects of the ongoing violations because of deeply rooted gendered norms, roles and stereotypes.⁴⁰ While gender-disaggregated data that can help reveal the impact the violations have had on this group of victims is limited, reports indicate that, because women whose husbands have been disappeared have lost the main breadwinner in the home, they are more likely to

³³ Annual Report of the Inter-American Commission on Human Rights, 1977, OEA/Ser.L/V/II.43 doc 21 cor 1 of April 20, 1978; *Case of La Cantuta v Peru*, Inter-American Court of Human Rights Series C No 162 (29 November 2006).

³⁴ UN Working Group on Enforced and Involuntary Disappearances, Reports of the Working Group, 3 December 1983, E/CN.4/1984/21 para 172; UN Working Group on Enforced and Involuntary Disappearances, *General Comment on article 19 of the Declaration on the Protection of All Persons from Enforced Disappearances*, E/CN.4/1998/43 p 4.

³⁵ UN Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *General Comment 3, Implementation of Article 14 by State Parties*, 13 December 2012 CAT/C/GC/3 para 16: [“Satisfaction should include [...] the search for the whereabouts of the disappeared [...] and for the bodies of those killed, and assistance in the recovery, identification, and reburial of victims’ bodies in accordance with the expressed or presumed wish of the victims or affected families”]; UN Working Group on Enforced and Involuntary Disappearances, *General Comment on the right to the truth in relation to enforced disappearances*, A/HRC/16/48, January 26, 2011 p 4: [“the right of the relatives to know the truth of the fate and whereabouts of the disappeared persons is an absolute right, not subject to any limitation or derogation. [...] This absolute character also results from the fact that the enforced disappearance causes “anguish and sorrow” [...] to the family, a suffering that reaches the threshold of torture, In this regard, the State cannot restrict the right to know the truth about the fate and the whereabouts of the disappeared as such restriction only adds to, and prolongs, the continuous torture inflicted upon the relatives.”].

³⁶ *Khamila Isayeva v Russia*, Application no. 6846/02, judgment of 15 November 2007 para 132 and 144.

³⁷ International Committee of the Red Cross, *Families of Missing Persons: Responding to their Needs*, 27 September 2010 available at: <https://www.icrc.org/en/doc/resources/documents/report/russia-publications-300810.htm> [accessed 13 January 2021].

³⁸ International Committee of the Red Cross, *Families of Missing Persons: Responding to their Needs*, 27 September 2010 p 5 available at: <https://www.icrc.org/en/doc/resources/documents/report/russia-publications-300810.htm> [accessed 13 January 2021].

³⁹ International Committee of the Red Cross, *Families of Missing Persons: Responding to their Needs*, 27 September 2010 p 6 available at: <https://www.icrc.org/en/doc/resources/documents/report/russia-publications-300810.htm> [accessed 13 January 2021].

⁴⁰ Report of the special rapporteur

experience poverty, precarious employment, and housing insecurity following the disappearance.⁴¹ Some women relatives have been forced to move in with their husbands' families potentially facing higher risks of domestic violence.⁴² In turn, the climate of impunity and deep distrust that arises from the unresolved nature of the violations means that women relatives of the disappeared are far less likely to report violence and access state protection.⁴³ The WGEID has recognised the disproportionate impact disappearances have on women relatives, noting:

As the family structure is disrupted, women are negatively affected economically, socially and psychologically. The emotional upheaval is thus exacerbated by material deprivation, made more acute by the costs incurred should they decide to undertake a search for their loved ones. Furthermore, they do not know when—if ever—their loved one is going to return, which makes it difficult for them to adapt to the new situation. In some cases, national legislation may make it impossible to draw a pension or receive other means of support in the absence of a death certificate. Therefore, economic and social marginalization is frequently the result of an enforced disappearance.⁴⁴

The relationship between the unresolved disappearances in the *Khashiyev* group and the climate of impunity for human rights violations in the North Caucasus and Ukraine

35. Enforced disappearances in this context, as in many contexts globally, have been used widely for two primary reasons: to terrorise and subjugate the distinct peoples that make up the North Caucasus and to uphold impunity for human rights violations perpetrated by state authorities.
36. The State's motive of spreading fear among these groups can be discerned by the disproportionate use of enforced disappearances in the North Caucasus and widespread practices of arbitrary detentions and inspections of ethnic Chechens by law enforcement authorities across Russia during the war and in the years that follow.⁴⁵ Over the years enforced disappearances shifted from being just a tool of war used by security forces to a practice regularly used by police to spread fear and suppress opposition.
37. On 30 October 2000 Amnesty International wrote to the governments of the participating states of the European Union expressing concern that, unless concerted and sustained action was taken to address the widespread impunity for the grave human rights violations

⁴¹ International Committee of the Red Cross, *Families of Missing Persons: Responding to their Needs*, 27 September 2010 p 7 available at: <https://www.icrc.org/en/doc/resources/documents/report/russia-publications-300810.htm> [accessed 13 January 2021].

⁴² See generally UN Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk*, 26 January 2006, E/CN.4/2006/61/Add.2 p 14-15.

⁴³ See generally UN Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk*, 26 January 2006, E/CN.4/2006/61/Add.2 p 14-15.

⁴⁴ UN Working Group on Enforced and Involuntary Disappearances, *General comment on women affected by enforced disappearances* 14 February 2013 A/HRC/WGEID/98/2.

⁴⁵ United Nations Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/62/CO/7, (2 June 2003) para 13; see also AI *Russian Federation: Chechen Republic - Open letter to the participants of the EU-Russia summit* citing - Alexander Oboidikhin to *The Moscow Times*, article entitled "Cops are counting arrested Chechens" by Oksana Yablokova, 2 September 2000; see also For the Motherland (AI Index: EUR 46/46/99) detailing police abuses during the time of the Moscow Mayor Yury Luzhkov.

suffered by Chechens, ‘their future in Russia is that of a subjugated, conquered people’.⁴⁶ The widespread and systematic attack on the Chechen community in the 1990s and early 2000s and the ongoing impunity for the violations perpetrated during this time continue to have serious implications for the equal enjoyment of rights by ethnic Chechens in the North Caucasus region and Russia more broadly.⁴⁷

38. The impunity upheld by the failure to fully resolve the thousands of disappearances perpetrated by Russian forces in the North Caucasus has resulted in the widespread practice of enforced disappearances in Chechnya and surrounding regions including the 2017 and 2018 anti-LGBT raids which saw law enforcement rounding up dozens of men on suspicion of being gay, torturing and humiliating the victims before forcibly disappearing some of them.⁴⁸
39. In November 2018, 16 participating states of the Organization for Security and Co-Operation in Europe invoked the organization’s “Moscow Mechanism” and appointed a rapporteur to look into allegations of abuses in Chechnya, including the 2017 anti-gay purge. In his December 2018 report, the rapporteur concluded that Chechen authorities were responsible for very serious human rights violations including torture, enforced disappearances and extrajudicial executions, and found “several waves of violations of human rights and abuses of persons based on their sexual orientation and gender identity...”. The Rapporteur concluded that “no evidence could be found about cases where law enforcement officers were brought to justice because of the human rights violations or violations of the law committed by them. Accordingly, *there is a climate of impunity which is detrimental to any accountability for human rights violations*. On the contrary, those from civil society or the media who investigate human rights violations become targets of repression,” [Emphasis added].⁴⁹
40. Enforced disappearances have also become a systemic practice used by Russian forces across Ukraine. The systemic practice of enforced disappearances by Russian forces in Crimea was recognized by the ECtHR in *Ukraine v Russia (re Crimea)* with the Court finding that there was sufficient *prima facie* evidence of the alleged administrative practice of enforced disappearances on the peninsula.⁵⁰ It is now well-documented that enforced disappearances in Crimea have been targeted at ethnic communities, particularly Crimean Tatars. PACE, the European Parliament, and the UN Committee on Elimination of Racial Discrimination have all noted the targeting of Crimean Tatars as victims of enforced disappearances in Crimea immediately prior to and following the annexation by the Russian

⁴⁶ AI Russian Federation: *Chechen Republic - Open letter to the participants of the EU-Russia summit EUR 46/44/00 (30 October 2000)* at page 5.

⁴⁷ Fourth Opinion on the Russian Federation (2018), the Framework Convention for the Protection of National Minorities Advisory Committee, p 14.

⁴⁸ HRW, Russia: New Anti-Gay Crackdown in Chechnya, Police Detain, Torture Men in Grozny, May 8, 2019.

⁴⁹ OSCE Rapporteur’s Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation by Professor Dr. Wolfgang Benedek, December 21, 2018, available at https://www.osce.org/files/Moscow%20Mechanism%20Document_ENG.pdf.

⁵⁰ *Ukraine v. Russia (re Crimea)*, 16 December 2020, paras 401-404.

Federation.⁵¹ The UN Office of the High Commissioner for Human Rights [‘OHCHR’] has also documented the targeting of enforced disappearances against persons linked to the Mejlis or other Crimean Tatar institutions.⁵²

41. The use of enforced disappearances against Crimean Tatars and other ethnic communities in Crimea has been aimed at spreading fear among these communities and suppressing opposition to the occupation.⁵³ This is evidenced by the fact that victims of enforced disappearances are most often those expressing support for Ukrainian territorial integrity, participating in the Euromaidan protests, opposing the Crimean status referendum or being generally perceived as ‘pro-Ukrainian’, as well as journalists and former and active Ukrainian servicemen.⁵⁴ The fear-spreading aim of enforced disappearances as perpetrated in Crimea is further evidenced by findings by the OHCHR that victims of enforced disappearances have been subjected to torture and other ill-treatment with the aim of identifying and testifying against others who hold similar political positions or as retaliation for the victim’s political affiliation or position.⁵⁵
42. The UN CAT has recognised the link between impunity and the risk of human rights violations against marginalised groups and has called on state to “ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals”.⁵⁶ The CoM *Guidelines on*

⁵¹ PACE, Resolution 2387 (2021), Human rights violations committed against Crimean Tatars in Crimea, available at: <https://pace.coe.int/en/files/29360/html> paras 4 and 13.3.1; European Parliament, Resolution of 12 May 2016 on the Crimean Tatars, available at https://www.europarl.europa.eu/doceo/document/TA-8-2016-05-12_EN.html#sdoc1, para B; UN Committee on Elimination of Racial Discrimination, Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FRUS%2FCO%2F23-24&Lang=en para 19.

⁵² OHCHR, HRMMU, Enforced disappearances in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation, Briefing Paper, 31 March 2021, available at <https://ukraine.un.org/sites/default/files/2021-03/BN%20Enforced%20dis%20Crimea%20ENG.pdf>, p 4 and 6; [OCHRR Briefing Paper 2021] see also HRMMU, Update on the human rights situation in Ukraine, 1 August – 31 October 2022, available at https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf; OHCHR, Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, 13 September 2017 to 30 June 2018, available at https://www.ohchr.org/sites/default/files/Documents/Countries/UA/CrimeaThematicReport10Sept2018_EN.pdf, para 32; OHCHR, Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, 1 August 2021 to 31 January 2022, available at <https://www.ohchr.org/sites/default/files/2022-03/33rdReportUkraine-en.pdf>, para 94; UNGA, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, Report of the Secretary-General, 25 July 2022, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/437/31/PDF/N2243731.pdf?OpenElement>, para 15.

⁵³ See ICJ, Case concerning application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all Forms of Racial Discrimination (Ukraine v. Russian Federation), Memorial of Ukraine, available at <https://www.icj-cij.org/public/files/case-related/166/166-20180612-WRI-01-00-EN.pdf>, para 392.

⁵⁴ OSCE/ODIHR and HCNM, Human Rights Assessment Mission in Ukraine: Human Rights and Minority Rights Situation, Report, 12 May 2014, available at <https://www.osce.org/files/f/documents/d/3/118476.pdf>, para 6; HRW, Rights in Retreat: Abuses in Crimea, 17 November 2014, available at <https://www.hrw.org/report/2014/11/17/rights-retreat/abuses-crimea>; Amnesty International, One Year On: Violations of the Rights to Freedom of Expression, Assembly and Association in Crimea, Report, 2015, available at <https://www.amnesty.org/en/documents/eur50/1129/2015/en/>, p 8; OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), 25 September 2017, available at https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session36/Documents/A_HRC_36_CRP.3_E.docx para 101; see also OHCHR Briefing Paper 2021, *supra* note 8, p 5.

⁵⁵ OHCHR Briefing Paper 2021, *Ibid*, p 1, 6.

⁵⁶ UN Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *General Comment 2, Implementation of Article 2 by State Parties*, 24 January 2008 CAT/C/GC/2 para 22: [*“States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and*

Eradicating Impunity For Serious Human Rights Violations emphasize that “the full and speedy execution of the judgments of the Court is a key factor in combating impunity” and also explicitly state that “[c]ombating impunity requires that there be an effective investigation in cases of serious human rights violations. This duty has an absolute character.”⁵⁷

Conclusion Observations and Recommendations

43. The work undertaken on addressing enforced disappearances by Russian authorities at the regional and international level to date raises three key priorities which we consider important to be addressed at the World Congress.
44. First, given that the North Caucasus have been a testing ground for the disappearances practiced today and to ensure that due attention remains on the state’s reliance of this particularly heinous crime as a tool of war used to control ethnic populations within Russia and on this group of victims who continue to suffer immensely to this day, it is imperative that disappearances perpetrated in the North Caucasus form part of the narrative surrounding current human rights violations perpetrated by Russian authorities. UN human rights mechanisms and states must continue to maintain pressure on the state to resolve these disappearances regardless of the proliferation of human rights violations in other regions and its increasingly hostile position vis-à-vis human rights mechanisms.

Recommendation 1: The organisers facilitate collaboration between civil society groups and other mechanisms working on addressing enforced disappearances by the Russian Federation to ensure that sessions and actions plans reflect the use of enforced disappearances in the North Caucasus and other regions where they have been practiced by Russian state forces.

45. Second, there is a need for convergence between the work of the Council of Europe and that of UN human rights mechanisms on this group of cases and on the normative framework of enforced disappearances more broadly. In the two decades since the first European Court judgment was rendered there have been significant efforts by the CoM, PACE and other regional mechanisms aimed at resolving this group of cases.
46. On the other hand, the legal findings in these cases and implementation efforts have not always benefited from the developments at the international level. The Court’s approach to enforced disappearances has at times departed from international law and best practice particularly as it relates to issues such as presumption of death of the disappeared persons, the continuous nature of the violations, and the rights of relatives of disappeared victims.
47. Efforts have been made toward convergence. In December 2020, the Secretariat of the Committee of Ministers recommended that the Committee of Ministers call on the Russian Federation to consider ratifying the International Convention for the Protection of all Persons from Enforced Disappearance [‘International Convention’] and recognising the

protection, including but not limited to those outlined above.”; UN Working Group on Enforced and Involuntary Disappearances, *Report of the Working Group on Enforced or Involuntary Disappearances*, 23 January 1985 E/Cn.4/1985/15.

⁵⁷ Eradicating impunity for serious human rights violations: Guidelines adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers’ Deputies, available at <https://rm.coe.int/1680695d6e>

competence of the Committee on Enforced Disappearances. It also noted that authorities should cooperate closely with the UN WGEID on individual Cases as well as a country visit given that some of the cases in the *Khashiyev* group also appear to be under consideration by the UNWGEID.⁵⁸ Unfortunately, the Committee did not include these recommendations in its future decisions nor further pursue the issue.

48. In 2019, the PACE Committee on Legal Affairs and Human Rights, published a report titled *Ending enforced disappearances on the territory of the Council of Europe* [*CoE Report*].⁵⁹ The Report notes that enforced disappearances today are a frequent criminal practice in Europe. It outlines its support for the International Convention which it finds “codifies the fundamental principles of action against enforced disappearances”. The Committee also states that it considers that the work of the CED, UN WGEID, ICMP, ICRC, the ECtHR and regional mechanisms on missing persons creates a “well-developed institutional and normative framework” on enforced disappearances and steps should be taken by all member states to better implement the practices recommended by the above institutions.
49. In 2022, PACE passed a resolution⁶⁰ informed by the *CoE Report* calling on the Council of Europe member states to take steps to reinforce the existing international legal framework surrounding enforced disappearances and better implement the practices recommended in international mechanisms on enforced disappearances. It called on states to ratify the International Convention and to implement the “preventative and repressive measures” provided for in Convention in national legislation and practice. It also calls on states to make “the greatest possible use of the universal jurisdiction authorised *inter alia* by the CED’ to address accountability for enforced disappearances.

Recommendation 2: Representatives from the Department for Execution of Judgments, Committee of Ministers, Parliamentary Assembly of the Council of Europe and the Human Rights Commissioner are invited to attend the relevant sessions of the World Congress.

Recommendation 3: A session is organised during the World Congress that outlines opportunities for convergence between the work of the UN WGED, UN CED and the CoM, PACE and Human Rights Commissioner. The session should consider effort to increase ratification of the Convention by Council of Europe member states; implementation of international best practices in the region; and, collaboration on resolution of enforced disappearance cases under consideration by the CoE.

Recommendation 4: A session is organised at the World Congress with ‘like-minded’ states, CoE mechanisms and key civil society groups aimed at discussing the use of universal jurisdiction for enforced disappearances with the aim of

⁵⁸ Secretariat of the Committee of Ministers, Meeting Notes for the 1390th meeting, 1-3 December 2020 (DH), available at: [CM/Notes/1390/H46-21 \(coe.int\)](https://www.coe.int/cm/Notes/1390/H46-21)

⁵⁹ PACE, *Ending enforced disappearances on the territory of the Council of Europe*, Doc. 14816, Reference 4437 of 12 April 2019 available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=29562&lang=en>

⁶⁰ Parliamentary Assembly of the Council of Europe, Enforced Disappearances on the Territory of the Council of Europe, Resolution 2425 (2022), available at: [Res. 2425 - Resolution - Adopted text \(coe.int\)](https://www.coe.int/resolutions/Res_2425_-_Resolution_-_Adopted_text)

developing a plan of action to increase and improve the use of universal jurisdiction by CoE states.

50. Finally, the suffering of relatives in this context remains great. Not only has there been no progress in determining the fate of disappeared victims but, in the more than 20 years since these disappearances commenced, there have been virtually no memorialisation efforts; DNA collection has been negligible and, where undertaken, it has fallen significantly short of international best practice; any attempt at family associations has been crippled by state oppression; there remain far too few civil society organisations supporting victims domestically; there have been no reparation programmes put in place to address psycho-social needs including the needs of women, older people, children and rural and Chechens as a racialised community within the State; only 650 cases of disappearances are known to the Court and our understanding is that only a fraction of these are known to UN mechanisms. While civil society organisations are undertaking some documentation efforts, there exists no concerted singular space where the disappearances are recorded and with some family members having to flee the region and many others aging there is a real risk that critical information is going to be lost.
51. Despite these immense challenges and at great personal risk, relatives remain active in their pursuit for truth and justice and it is vital that that the issue of what the international community can do to support this group of victims is given due consideration.

Recommendation 5: A session is organised at the World Congress that considers the moral and financial support the international community including individual states can provide to support families including the creation of family association, DNA collection and a disappeared persons database. The session would ideally be attended by key civil society groups, CoM representatives, the ICMP and the ICRC.

Recommendation 6: A session is organised at the World Congress on the issue of enforced disappearances amounting to torture against the relatives of disappeared persons and attended by key stakeholders including the UN CAT and the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment.

ANNEX I – FORENSIC EXPERT REPORT

Briefing Note: The recovery and examination on human remains from mass grave contexts in Europe

Professor RL Gowland and Professor TJU Thompson

1. Introduction

This document discusses the key issues associated with the location, recovery and analysis of human remains from grave sites within Europe, with an emphasis on the situation in the North Caucasus region. It includes a brief critique of current action plans relating to the missing in Chechnya. The aim of the document is to provide objective scientific advice to facilitate informed decision making – it is not an action plan in and of itself.

2. Author Biographies

Prof. Rebecca Gowland teaches and researches Human Bioarchaeology in the Department of Archaeology, Durham University. She has a PhD from Durham University and has published four books and over 50 peer-reviewed journal Articles and book chapters on skeletal analysis and human identification. She has developed new techniques for estimating age-at-death and sex in adult and non-adult skeletons and has devised new approaches for establishing abuse and trauma in vulnerable demographics. During the last ten years she has developed and delivered a Chartered Society of Forensic Sciences approved course on body location, excavation and analysis to forensic practitioners from National Police forces in the UK and international agencies. She has collaborated with the International Committee of the Red Cross to produce online forensic training provision.

Prof Tim Thompson is Professor of Applied Biological Anthropology and Associate Dean (Learning & Teaching) in the School of Health & Life Sciences at Teesside University. He has a PhD from the Department of Forensic Pathology, University of Sheffield on the effect of burning on identification from skeletal remains. He has published four books and over 70 peer-reviewed journal Articles and book chapters on forensic anthropology, human identification, and changes to bone over time. He is a Fellow of the Chartered Society of Forensic Sciences and the Royal Anthropological Institute, and Honorary Fellow of the Faculty of Forensic & Legal Medicine and is a Senior Fellow of the Higher Education Academy. He is Editor-in-Chief of the Journal of Forensic & Legal Medicine, and prior to this was Editor-in-Chief of the journal Science & Justice for three years. He has practiced forensic anthropology in the UK and Europe.

3. Summary

Many countries have sought to identify missing combatants from historic conflicts in Europe and elsewhere (e.g. from World Wars I and II, the Korean War, the Balkans War). There are international standards and methods for locating grave sites, and for exhuming and analysing the bodies. The forensic expertise required is highly specialised and falls beyond the scope of standard criminal investigations. A specialist, independent, forensic team is required, and purpose-built laboratories are necessary for processing the human remains and associated effects. The forensic team should work alongside local groups with the aim of training and capacity building within the region concerned.

Combatants and civilians who die during conflict are often buried in unmarked graves. Following death and burial the soft tissues of the body decompose quickly but the skeleton and teeth can survive for hundreds and even thousands of years. Analysis of the skeleton can establish the sex of the individual, an approximate age-at-death, height and pathological conditions (e.g. dental disease, or evidence for surgical procedures). These characteristics contribute towards establishing the identity of the deceased if relevant ante-mortem records are available. The manner-of-death can also be determined (e.g. gunshot injuries) in some cases. DNA can be extracted from bones and teeth even hundreds of years after death and analysed to establish an individual's identity when matched to samples obtained from close relatives. DNA analysis is one of a suite of methods and should be used in conjunction with other anthropological methods.

In areas of recent conflict, where tensions continue and governmental structures are weak, the humanitarian model advocated by the International Committee of the Red Cross (ICRC) has proven to be an effective way of proceeding. This model prioritises the identification and return of the missing to their families rather than the pursuit of criminal prosecutions. The decoupling of human identification from criminal procedures increases the likelihood of co-operation, information sharing and reconciliation. Experience from other countries (e.g. Cyprus) demonstrates that a timely intervention is advantageous to avoid the loss of witness testimony (through loss of memory or death of those with knowledge) and archives. A quick resolution is also important for family members, for whom the unknown fate of their relatives is a source of severe trauma.

4. A Model for Humanitarian Intervention

- [The location, recovery, analysis and repatriation of human remains does not require a criminal judicial framework](#)
- [A humanitarian model has proven successful in other countries, resulting in cooperation between stakeholders and the identification and return of the missing to their loved ones](#)

Families have a right to know the whereabouts and fate of their loved ones and the deceased have a right to the restoration of their identity after death (Crettol et al. 2017). The humanitarian framework advocated by the ICRC seeks to prioritise the location and identification of the missing within regions of conflict over and above the pursuit of criminal convictions. This model explicitly recognises the chronic anguish and emotional pain experienced by family members because of the unknown fate of their relatives and the impediment it poses to reconciliation (ICRC 2014). The humanitarian approach has proven particularly effective in countries of recent conflict in which people are reluctant to provide information that might lead to the location of grave-sites or identification of the deceased due to a lack of trust in government organisations and fear of retribution.

Despite the lack of criminal proceedings, the forensic work is conducted to the same high standard. The identification process remains the same, as does the support for the families. The same forensic experts and facilities are required, and the funding requirements remains the same. All of this is important since final identification may still have legal requirements.

The separation between identifying the missing and criminal proceedings has worked successfully in Cyprus with the work undertaken by the Committee on Missing Persons (CMP), an organisation largely funded by the European Union. In Cyprus, remains are located, excavated, identified and returned to families with no attempt to attribute blame, or to pursue retribution. As well as prioritising the immediate needs of the families, this approach encourages greater transparency between stakeholders. Because the fear of criminal action or reprisal is removed, it promotes information sharing and co-operation. Within the current mandate of the CMP, the choice has been made that those who provide information are immune from prosecution and are guaranteed anonymity and confidentiality. The exhumations are, therefore, humanitarian in nature rather than political. Evidence of manner-of-death can still be recorded from the skeletons during the identification process. It is only since de-politicisation that the CMP has made significant progress. In Georgia, Russian, Georgian, Abkhazi, and South Ossetian representatives have adopted a similar model, working alongside the ICRC to identify those missing during the conflict in August 2008 and in the 1990s.

The socio-political circumstances and priorities of each country will differ, and some may wish to pursue both humanitarian and retributive approaches in tandem. It is important that all stakeholders discuss and agree their terms of reference and mandate. Clear procedures should be established prior to the commencement of any investigations. It is essential to ensure the proper management of information if both humanitarian and judicial objectives are pursued, because there will be inter-dependencies in terms of evidence gathering. A clear separation between the humanitarian mandate and justice systems is desirable (Crettol et al., 2017, 603)

5. Comments on current actions to locate, exhume and identify the missing in Chechnya

- It is highly likely that human remains are recoverable from Chechnya in a condition that would allow identification.
- Current action plans lack clarity and detail regarding the methods, expertise and activities of those engaged in searching for the missing.
- It is essential that an independent, international team is given oversight and control of the investigations to ensure that international protocols and standards are met.
- An independent team is also important to build trust between affected families and government authorities.

It is currently estimated that between 3000 to 5000 Chechen individuals are 'missing' because of historic conflicts between 1999 and 2006. Interviews with affected Chechen families have repeatedly emphasised that their key priority is to know the fate of their relatives and to have the remains of the missing returned for reburial. Not knowing is a form of psychological torture. Progress towards investigating the fate of the missing in a post-conflict region is an important step in re-establishing human rights and the rule of law (Crettol et al. 2017).

Action plans eg. (DH-DD(2015)23, DH-DD(2015)257, DH-DD(2018)798) provided by Russia do not clearly articulate a systematic programme of activities for the proactive location, identification and return of historical cases of missing individuals. The action plans are difficult to decipher in terms of precise activities, but the procedures alluded to do not follow

established international protocols for locating, excavating and identifying individuals from burial contexts. It is unclear as to whether exhumations are currently taking place, and if so, the procedures being used to establish the identity of the deceased.

The action plan argues that neither outside expertise nor independent, impartial oversight is necessary with respect to these investigations. It states that:

“the competent state authorities developed a coordinated position concluding that there was no need to establish a new specialized centralized body responsible for the search for missing persons in the territory of the North Caucasus Federal District.”

The ICRC and organisations such as EAAF (Argentine Forensic Anthropology Team) recommend that humanitarian action requires oversight by impartial, outside, independent experts, working alongside victim groups. It is not advisable to proceed with a Russian team as outlined in the action plan, because affected families will find it difficult to trust their findings. It is important that local Chechen staff as well as Russian staff are employed as part of the team, to help build trust through communication with affected families and also to help navigate the cultural and religious sensitivities involved in the exhumation and identification processes.

The current mechanism that Russia has employed for investigating information relating to the missing falls within existing criminal investigation structures:

“The most experienced officers of the criminal investigation departments of the internal affairs bodies are involved in operational and search activities in connection with the messages on the crimes concerned. The aforesaid authorities start search activities immediately upon receipt of the information on disappearance or kidnapping, irrespective of the fact of the criminal case initiation”

This is not advisable since human identification from historic conflicts requires a specialist team with specific expertise which falls outside of normal law enforcement activities. This is exemplified by the work of the Centre for Missing Persons (CMP) in Cyprus, and also organisations such as the Argentine Forensic Anthropology Team (EAAF), the Peruvian Forensic Anthropology Team (EPAF), The Inforce Foundation and Physicians for Human Rights, which have been involved in investigations of this nature since the 1980s (see section 6 for a full discussion of the expertise required).

Russia states that there is a loss of documentation regarding the location and identities of the missing given the time that has elapsed and changes in personnel in the intervening years. This is not an insurmountable obstacle. The location of mass graves is discoverable using even partial archives, local intelligence, witness testimony, and archaeological techniques (section 7.1). Document DH-DD(2018)798 indicates that some form of search is being undertaken (with no apparent success), but it lacks detail. The successful identification of grave sites has been achieved in numerous post-conflict situations. These searches are improved if investigations are conducted promptly, as the passage of time leads to less reliable witness testimony/local intelligence through the loss of memory or the death of those with relevant knowledge. The latter is now proving an impediment to the work of the CMP in Cyprus. However, even in the absence of such information grave sites can still be found using a suite of techniques.

The action plan alludes to co-operation with NGOs when interviewing affected families:

“Close cooperation and information exchange by the criminal investigation subdivisions with the relatives of missing persons as well as with the citizens and representatives of non-governmental organizations has been organized and is being continued, which allows performing humanitarian functions in the course of relevant work.”

No specifics are provided regarding which NGOs are involved, nor how their work is being coordinated across organisations, and with local authorities. Intelligence gathering appears to have been ad hoc and potentially exposes affected families to distressing interviews without discernible benefits (see section 7.3, ante-mortem data).

A database has been created: “a centralized automated missing persons database and informational-search system “Opoznanie”. The contents and functionality of this database should be checked against international standards and advice should be provided by an independent organisation such as EAAF who have specialists in database construction of this kind.

The actions plans emphasise the use of DNA analysis for establishing the identity of those bodies that have been recovered. Genetic analysis should be used as part of a suite of techniques for identification, alongside anthropological analysis. Genetic samples should not be analysed within Russian laboratories and instead should be sent to an external accredited laboratory which has experience in analysing genetic samples from contexts such as these. Families of the deceased may be understandably reluctant to supply comparative DNA samples to Russian authorities given current political tensions and a lack of trust in the process.

The action plan argues that the families of some of the missing ‘*prohibit*’ exhumation due to ‘*Islamic canon*’. There are several problems with this statement. Firstly, it implies that the identities of those buried are in fact known given that it refers to the wishes of the families. Secondly, a detailed discussion of Islamic law and humanitarian forensic exhumation by Al-Dawoody (2017, p.777) states that “*exhuming dead bodies for the purposes of transfer to the place of origin, and/or establishing the identity of the buried person such as in the case of dead migrants, is permissible under Islamic law*”⁶¹. The exhumation of bodies of Muslims killed and buried during conflict for the purposes of identification is underway in various regions of the world, including the Balkans and Iraq.

The action plans state that laboratory resources and finances are already in place to undertake the necessary investigations. It is imperative that these laboratory facilities are inspected by an independent expert team to check that they are fit for purpose, including whether they meet current ISO17025 standards, but also to scrutinise that investigative procedures conform to international standards. The action plan also implies that multiple laboratories across several geographical locations (some of which are located outside Chechnya) are involved in the analysis. Instead a dedicated and custom designed laboratory facility should be resourced for the analysis only of those ‘missing’.

One aim of this humanitarian venture should be capacity-building in Chechnya through the training and establishment of local expertise. This has been a key feature of the work of the ICRC in Georgia, which may serve as a useful regional comparator. The current lack of trust between families and local and Russian government is an obstacle to progress; it is therefore important that this work is overseen by a neutral and impartial organisation.

Overall, we see no scientific impediment to the location and identification of those killed and still missing in Chechnya. Success has already been achieved in similar contexts across the world. It is a matter of political will, cooperation, resources and effective management. Progress towards identifying the missing in post-conflict regions is an important step in re-establishing human rights, the rule of law and societal integration.

6. Forensic Science and Identifying the Missing in Post-Conflict Regions.

- Forensic expertise is already present throughout Europe to support investigations of human remains from burial contexts arising from conflict
- A combination of forensic archaeology, anthropology, odontology and genetics are used to establish individual identity in such contexts
- Standards and accreditation schemes are present but vary from country-to-country

There are four key forensic disciplines that can support the identification of individuals exhumed from graves or recovered from other deposition sites (e.g. bodies left exposed) associated with historic conflicts:

- forensic archaeology (search and recovery of remains)
- forensic anthropology (skeletal analysis)
- forensic odontology (analysis of the teeth)
- forensic genetics (analysis of DNA).

These four disciplines are well established in Europe and elsewhere. Experts tend to work within their own countries since legal frameworks differ, and diverse educational and training pathways exist. The European Network of Forensic Science Institutes (ENFSI) was founded with the purpose of improving the mutual exchange of knowledge and information between countries. High quality peer-reviewed academic journals exist to support these four disciplines. Professional and academic societies exist for these disciplines, including some pan-European ones such as the International Academy of Legal Medicine.

7. The Location, Recovery and Analysis of Human Skeletal Remains

- There are established methods for locating clandestine graves/deposition sites.
- Excavation is destructive; archaeological approaches are therefore required to fully document the grave-site and ensure full recovery of the remains.
- Methods for establishing the identity of human remains from historic conflicts are well established and reliable, even in cases where multiple bodies are placed within a single burial context.

7.1. Locating graves

The first stage in locating potential grave sites is to undertake an intelligence gathering exercise. State authorities are likely to have records and information relating to the identity of many of the deceased and the location of bodies buried, either singly or in mass graves. If such records are not available or forthcoming, there is usually local knowledge/witness testimony regarding the location of grave sites. These data need to be gathered systematically and witnesses should be guaranteed anonymity and immunity from prosecution.

It is important that a specialist team examine the locations of potential grave sites. If intelligence gathering leads to general rather than specific locations, there are a series of techniques to help refine the search as follows:

Desk-top survey: This takes into account topography, vegetation, soil type, and access. For example, research on the victims of the Spanish Civil war graves have highlighted a pattern whereby victims are buried between 1 to 10km from the place they were detained and almost always within 100 metres of a principal road (Salado Puerto and Tuller 2017).

Aerial survey: This provides a clear perspective on changes in vegetation / area that may indicate the presence of a mass grave. The use of drones is recommended and the exploration of satellite images/Google Earth has also been used to identify grave sites (for example with the Satellite Sentinel Project). The use of infra-red and ultraviolet imaging of the ground surface has proven useful in the identification of grave sites (Abate et al. 2019).

Field walking survey: This traditional survey method is useful for establishing possible grave sites through observing changes in vegetation/topography. Health and safety should be considered here; for example, in the Balkans there was a suspicion that incendiary devices were present within and in the vicinity of mass graves. Field walking as a survey method for identifying the location of mass graves has been employed in a variety of countries (e.g. Chile and the Balkans).

Cadaver dogs: Trained dogs can identify mass graves even after many years have elapsed.

Geophysical Survey: This refers to a variety of non-destructive techniques used to survey an area with the aim of detecting sub-surface anomalies consistent with a grave. Methods include ground penetrating radar, magnetometry, and resistivity. For best results a combination of different techniques are recommended (Pringle et al. 2012, Abate et al., 2019).

7.2. Recovering human remains

Excavation is destructive and it is therefore crucial to proceed using established archaeological techniques (Anderson et al. 2002, Hunter et al. 2013). Detailed recording is essential to ensure that the evidential integrity of the site is preserved, and that stratigraphic and spatial relationships/associations can be reconstructed using site archives. Excavation must be conducted by trained archaeologists working alongside forensic experts. A forensic anthropologist should also be on-site, as well as experts who wish to retrieve any environmental and trace evidence.

Health and safety on site and in the field is also a key concern. As well as basic concerns regarding working in proximity to heavy machinery, this includes ensuring that staff are protected from hostile onlookers.

The edges of the mass grave should be demarcated and a site plan created using a GPS to plot the graves in relation to other features on the landscape. Excavation should proceed initially with the aid of a highly trained mechanical digger operator working alongside an archaeologist. Once signs of bodies or personal effects start to appear, excavations proceed using hand-held tools (e.g. mattocks, spades, trowels).

The bodies should be uncovered and photographed in situ. Personal effects associated with particular bodies should be labelled accordingly so that they can later be re-associated in the laboratory. Each body should be given a unique number and during excavation it is essential that care is taken to ensure that there is no commingling (mixing) of body parts. In mass graves, limbs can become entangled and the bodies are likely to have undergone severe decomposition and potential disturbance (e.g. from animals/tree roots whilst buried, or through later episodes of body deposition). It is therefore essential to precisely record the body position within the grave and that excavation is conducted alongside a trained forensic anthropologist.

Recording should be detailed throughout the excavation and individual bodies 'mapped' three-dimensionally using GPS. Three-dimensional scanning and photogrammetry are now being used during excavation to help record the position of bones/limbs and associated personal effects/artefacts three-dimensionally. These contribute towards understanding the sequence and circumstances of deposition.

In situ recording needs to be very detailed. Even the position of the bones within a skeleton can reveal something about the mode of deposition. For example, in a body that was tightly wrapped at burial, the clavicles (collar bones) will decompose in a more vertical orientation than in a body that was not (Duday 2006). Careful excavation can therefore reveal lots of 'invisible' information about the burials.

Due to the detailed level of recording, the excavation of mass graves can result in a substantial amount of data. Standardised body proformas are often completed electronically in the field during excavation. Excavators should wear protective clothing to reduce the contamination of samples for genetic analysis with their own DNA.

There are published guidelines for excavating mass graves and these protocols should be used as a starting point (e.g.: Cox et al. 2008). Excavation can be a slow process, especially if the weather or physical environment is challenging. Furthermore, the excavation and analysis of human remains from mass violence contexts can generate a significant amount of material and evidence. Arrangements and facilities for the storage, curation and analysis of this material needs to be fully considered and resourced for the duration.

7.3. Identification of the deceased

The identification of the deceased is a complex multidisciplinary process. Individual identity can be established from a range of biological material (Gowland and Thompson 2013). The soft tissues have often decomposed in historic mass grave contexts, and so we focus on the hard tissues (skeleton and teeth) here.

Ante-Mortem Data: Interviews, testimonies and tissue samples from families are required. There needs to be an organised and sustained effort to gather information in a standardised format. EAAF recommend that such information gathering occurs directly between a member of the forensic team, in conjunction with a local liaison officer, and families concerned. This is because there is often a breakdown of trust between bereaved families and government officials. These interactions also help establish a dialogue as well as trust between scientists and family members. This information needs to be inputted into a database system that allows matches to be secured between ante-mortem and post-mortem records. The location and security of the database needs to be addressed due to the sensitive nature of the information contained.

Post-mortem Analysis: Analysis of human remains from mass grave contexts require laboratories with significant space and environmental controls to store and analyse bodies and their associated personal effects (Wessling 2018). Depending on the burial environment, it may be possible that features such as hair colour can still be observed, and clothing and jewellery may be associated with the body. In instances of significant decomposition, osteological methods of establishing a basic biological profile are often necessary (e.g.: Mitchell and Brickley 2018). It is not acceptable practice to rely on genetic evidence alone. In cases where bodies have been burned or dumped in water etc, it may still be possible to collect useful information from the remains (Thompson 2015; Thompson et al. 2017)

Sex: This can be determined using morphological features of the pelvis and, secondarily, the skull. Metrical methods which examine sexual dimorphism in other bones (such as the humerus and femur) are also useful but are not reliable when used alone (Buikstra and Ubelaker 1994). Sex can also be established from the individual's DNA, or quickly and reliably from the analysis of sexually dimorphic peptides in tooth enamel (Stewart et al. 2017).

Age-at-death: This can be estimated using a variety of features of the skeleton and following established methods. For individuals who have not yet reached skeletal maturity (e.g. adolescent/young adult males), dental development and fusion of the various bones of the

skeleton provide a useful guide for age. Once skeletal maturity has been achieved, morphological changes to the pubic symphyseal face and auricular surface (both located in the pelvis) as well as the sternal rib ends provide a guide to age at death (Buikstra and Ubelaker 1994, Samworth and Gowland 2007).

Stature: Height can be reconstructed through specific measurements of all those bones which contribute to height (Raxter et al. 2006, 2007). If the body is incomplete, height can be estimated through the measurement of the lower limb bones and the use of appropriate, population specific, regression equations.

Pathology: Evidence of ante-mortem trauma (e.g. fractured bones that have healed), or pathological conditions (e.g. joint disease) can provide information for establishing individual identity (Ortner 2003). Evidence of traumatic injury implicated as the cause of death, or indicative of torture prior to death, can be recorded from the skeleton during the identification process or omitted, depending on the remit of the work. Local legal frameworks will determine who can confirm the cause of death (e.g. forensic pathologist). Criminal investigations need to adhere to principles of chain of evidence.

Dentition: Dental recording can be a very useful means of identifying an individual, particularly in instances of obvious dental intervention such as fillings or dental implants. Ante-mortem dental records, however, are not likely to be available for all individuals.

Genetic: There have been many scientific developments in DNA analysis in recent years and viable samples can be retrieved from skeletal remains and processed by specialist labs. This is a common and ongoing practice in post-conflict forensic investigations. For example, for identifying individuals from the Balkans war, from the troubles in Northern Ireland, and in Argentina. The Defence POW/MIA Accounting Agency in the USA routinely identifies fallen soldiers from historic wars, including World War II, the Korean War, and the Vietnam War using anthropological and DNA analysis. While the passage of time and decomposition has some detrimental effects, this can usually be mitigated through the use of new genetic techniques. The petrous portion of the temporal bone (part of the inner skull close to the ear), or the ear ossicles (bones in the inner ear) are a useful reservoir for uncontaminated DNA from deceased individuals (Pinhasi et al. 2015; Sirak et al 2019). It is important to note that the success of DNA analysis depends on the presence of appropriate ante-mortem or familial comparison samples. Without these, DNA identification can be challenging, as was the case in Libya where the DNA profiling struggled to resolve identification issues of deceased individuals following the 2011 revolution.

Establishing Identity and Reconciliation: Co-ordination of the scientific evidence, including ante- and post-mortem data should be overseen by an expert coordinator, with identity established through the integration of all evidence. Forensic scientists do not confer identity – an appropriately mandated Identification Committee will have this role. The composition of these committees depends upon the remit of the investigation, and the legal framework within the particular country of work.

Confirming identity is always more challenging in mass grave scenarios, where multiple bodies are commingled (Fowler and Thompson 2015). DNA analysis is still possible; success depends upon accurate and careful archaeological excavation, coupled with meticulous analysis of the remains in the laboratory. Within Europe, archaeological and forensic experts have considerable success in resolving both historic and recent mass graves.

Repatriation to the families and reburial: A multilingual family liaison officer, together with the scientists responsible for conducting the analysis should meet with the identified individuals' relatives to talk through the evidence and to ensure that the family are satisfied. The family should have the opportunity to view the remains and an appropriately attired

'viewing room' should be set-up to allow this process to occur within a comfortable environment that respects the privacy and emotional nature of the situation. This room can be part of the established forensic identification facility.

8. Capacity Building and Logistical Considerations

- Forensic practice is complex and time-consuming and requires appropriate funding
- Processing of the deceased from burial contexts needs to be undertaken in appropriate laboratory space, close to the graves
- The international community has a duty to train and support local forensic teams

Forensic expertise for investigating clandestine graves is highly specialised and historically the teams involved in such activities are comprised of non-local nationals. This has led to strong criticisms of paternalism and neo-colonialism. More recent approaches have focused on using international forensic experts to support local practitioners, through mentoring, training and peer-review networks (Thompson et al 2018). Local capacity building to develop teams who can investigate their own histories and legal contexts is important. For example, the International Committee of the Red Cross (ICRC) employ Forensic Advisors who work around the world to support local experts and trainees as they develop forensic strategies, processes and facilities.

Effective forensic science requires high-quality material and staffing resources. Designs for appropriate facilities are available, including the pre-fabricated laboratories used by the Centre for Missing Persons in Cyprus. Consideration needs to be given as to whether ISO17025 accreditation is necessary in these contexts. Facilities for processing the human remains and associated personal effects should be located close to the area where the graves are. The facilities should allow for anthropological analysis and work should be overseen by an impartial team of forensic experts alongside appropriate legal experts.

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Written Input to the World Congress against Enforced Disappearances – On the Situation in Turkey

1. Status of Turkey vis-a-vis the Convention

Turkey has still not signed and ratified the International Convention for the Protection of All Persons from Enforced Disappearance despite the fact that it has been consistently recommended to Turkey during the Universal Periodic Review cycles. However, Turkey merely “notes” these recommendations.¹

Furthermore, according to the annual report² of the UN Working Group on Enforced or Involuntary Disappearances, the government has not yet responded to the General Allegation transmitted in 2022.³

2. Enforced disappearances in Turkey and the legislative loophole

There is still no official data published by the government on the widespread and systematic practice of enforced disappearances after the military coup of 12 September 1980 and in the State of Emergency (SoE) region.⁴ The truth about enforced disappearances can only be discovered by working through investigation and prosecution files which are accessed as a result of the persistent efforts of human rights organizations, applications made to these organizations and collaborative efforts with bar

¹ Responding on 4 October 2016 to Ankara MP Şenal Sarihan's parliamentary question dated 13 June 2016 on the issue, the then Minister of Foreign Affairs Mevlüt Çavuşoğlu replied that “our evaluations on becoming a party to the convention are ongoing.” See Şenal Sarihan (13 June 2016), *Birleşmiş Milletler Herkesin Zorla Kaybetmelere Karşı Korunması Hakkındaki Sözleşme'ye ilişkin soru önergesi* [Parliamentary question on the United Nations Convention for the Protection of All Persons from Enforced Disappearances.]. <https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/f72877c0-2c7c-037b-e050-007f01005610>; After this response, at least four parliamentary questions on the same subject between 2017 and 2020 have been left unanswered. See Sezgin Tanrıkulu (22 May 2017), *Zorla kaybetme ve gözetiminde kayıp vakalarıyla ilgili resmî kayıtlara ve bu konudaki BM sözleşmesinin imzalanıp imzalanmayacağına ilişkin soru önergesi* [Parliamentary question on official records on enforced disappearances and disappearances in custody and whether the UN convention on this issue will be signed]. <https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/f72877c0-6e0c-037b-e050-007f01005610>; Sezgin Tanrıkulu (20 November 2017), *Zorla kaybetme ve gözetiminde kayıp vakalarıyla ilgili resmî kayıtlara ve bu konudaki BM sözleşmesinin imzalanıp imzalanmayacağına ilişkin soru önergesi* [Parliamentary question on official records on enforced disappearances and disappearances in custody and whether the UN convention on this issue will be signed]. <https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/f72877c0-b654-037b-e050-007f01005610>; Bedia Özgökçe Ertan (28 February 2018), *1993'te İHD Elazığ üyesi iki kişinin gözetimine alındıktan sonra kaybolmasına ve zorla kaybetmelere karşı BM sözleşmesinin ne zaman imzalanacağına ilişkin soru önergesi* [Parliamentary question on the disappearance of two members of İHD Elazığ branch in 1993 after being detained and when the UN convention against enforced disappearances will be signed]. <https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/f72877c0-a054-037b-e050-007f01005610>; Semra Güzel (1 June 2020), *Zorla kaybetme vakalarıyla ilgili resmî kayıtlara ve bu konudaki BM sözleşmesinin imzalanıp imzalanmayacağına ilişkin soru önergesi* [Parliamentary question on official records on enforced disappearances and whether the UN convention on this issue will be signed]. <https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/f72877c1-661e-037b-e050-007f01005610>.

² Working Group on Enforced or Involuntary Disappearances (8 August 2023), *2023: Report of the Working Group on Enforced or Involuntary Disappearances* (A/HRC/54/22). <https://www.ohchr.org/en/documents/reports/ahrc5422-enforced-or-involuntary-disappearance-report-working-group-enforced-or>.

³ Working Group on Enforced or Involuntary Disappearances (May 2022), *General Allegation*. <https://www.ohchr.org/sites/default/files/documents/issues/disappearances/allegations/2022-11-18/General-allegation-Turkiye-127.pdf>.

⁴ Based on Law No. 2935 on the State of Emergency dated 25 October 1983 and first declared in 1987, the State of Emergency was extended by the Parliament and applied for 15 years. The State of Emergency was first declared in Bingöl, Diyarbakır, Elazığ, Hakkari, Mardin, Siirt, Tunceli, Mardin, Mardin, Siirt, Tunceli and Van on the grounds of “increasing terrorist incidents” and was later extended to 13 provinces, including Adıyaman, Bitlis, Muş, Batman and Şırnak.

associations.⁵ As a result of this effort, Hafıza Merkezi⁶ has obtained data on legal proceedings revealing that at least 363 people have been forcibly disappeared in Turkey.⁷

The most recent government communication⁸ to the UN Committee against Torture reveals a persistent denial⁹ of the reality of enforced disappearances as “a continuing crime or human right violation.”¹⁰ One of the structural problems that the government fails to mention in such communications or take steps to solve is that enforced disappearance is not regulated as a separate crime in line with the recommendations of the UN Working Group on Enforced or Involuntary Disappearances.¹¹ For this reason, the legal processes themselves reveal that impunity has become the rule in cases of enforced disappearances. In the aftermath of the 1980 military coup and in the 1990s, the manner in which most of the incidents reported in the SoE region occurred fits the definition¹² of enforced disappearances. However, the crime of enforced disappearance was not defined in the (abrogated) Turkish Penal Code (TPC) no. 765 in force at the time. In the new TPC no. 5237, which was adopted in 2004 and entered into force in 2005, the concept of “international crime” was introduced into criminal law. Under the heading of “international crime,” only “genocide,” “crimes against humanity,” “trafficking of migrants” and “human trafficking” are regulated. Since “crime against humanity” has significant differences from the Rome Statute and customary laws, the provisions in the TPC that could correspond to the crime of enforced disappearance are the crimes of “deprivation of personal liberty” and “intentional killing.” The fact that enforced disappearance is not defined as a separate crime in accordance with the international definition of enforced disappearance, but is associated with crimes that may be most closely related to it, causes the specific characteristics of the act of enforced

⁵ HRFT (March 2016), *Alternative Report To the United Nations Committee Against Torture For Its Consideration of the 4th Periodic Report of Turkey*, para.41;

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FCSS%2FTUR%2F23459&. The Human Rights Foundation of Turkey (HRFT) has been providing treatment and rehabilitation services to torture survivors and their relatives and has been working to prevent torture since 1990. In addition to its pioneering role in the preparation of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), which was completed in 1999 and submitted to the relevant UN bodies, the HRFT is also one of the four non-governmental organizations that contributed to the preparation of the 2022 edition of the Istanbul Protocol.

⁶ Hakikat Adalet ve Hafıza Merkezi (Hafıza Merkezi) is an NGO based in Istanbul. It aims to end impunity for and to uncover the truth about gross violations of human rights. Enforced disappearances took place in the 1990s in south-eastern Turkey has been one of the main focus areas of its work.

⁷ The figure hereby shared only concerns those cases of which information regarding legal proceedings could be obtained. The number of people who were forcibly disappeared in Turkey is higher but not all of these cases are prosecuted.

⁸ *Fifth periodic report submitted by Turkey under article 19 of the Convention pursuant to the simplified reporting procedure* [CAT/C/TUR/5] (4 April 2022), para.28. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CAT/C/TUR/OPR/5&Lang=E>.

⁹ For example, recently, Istanbul Governor Davut Gül concretized the denial we drew the Committee's attention to regarding the reality of enforced disappearances with the following statements: “None of the people the Saturday Mothers claim to be missing have disappeared in the last 20-25 years. They disappeared before 2000. These are not today's problems. These are problems left over from the old Turkey times. They are not people who said ‘my child went missing 3-5 years ago’ or ‘my child went missing last week.’ They are people who went missing in the 90s.” See Gazete Duvar (25 January 2024), *İstanbul Valisi Gül: Yerlikaya'nın Cumartesi Anneleri'ne yaklaşımı daha insancıl* [Istanbul Governor Gül: Yerlikaya's approach to the Saturday Mothers is more humane]. <https://www.gazeteduvar.com.tr/istanbul-valisi-davut-gul-ali-yerlikayanin-cumartesi-annelerine-yaklasimi-daha-insancil-haber-1664486>; A different manifestation of the aforementioned denial can be seen in Minister Soylu's response to the parliamentary question submitted by Istanbul MP Sezgin Tanrikulu on 24 June 2021 to be answered by then Minister of Interior Süleyman Soylu. See Sezgin Tanrikulu (24 June 2021), *1980 yılından bu yana zorla kaybetme ve gözaltında kaybolma suçlarının mağduru olan kişilere ve açılan davalara ilişkin soru önergesi* [Parliamentary question regarding the number lawsuits filed against victims of enforced disappearances and disappearances in custody since 1980].

<https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/f72877c1-c907-037b-e050-007f01005610>.
¹⁰ Working Group on Enforced or Involuntary Disappearances (2010), *Report of the Working Group on Enforced or Involuntary Disappearances* (A/HRC/16/48), para.6. <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F16%2F48&Language=E>.

¹¹ Working Group on Enforced or Involuntary Disappearances (2010), *Report of the Working Group on Enforced or Involuntary Disappearances: Best practices on enforced disappearances in domestic criminal legislation* (A/HRC/16/48/Add.3). <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F16%2F48%2FAdd.3&Language=E>.

¹² *International Convention for the Protection of All Persons from Enforced Disappearance*, Article 2. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>.

disappearance not to be taken into account. In cases where enforced disappearances are prosecuted, this leads to impunity, as can be seen in the cases that have been time-barred.

3. *The policy of impunity with regards to enforced disappearances*

An analysis of 363 cases of enforced disappearances shows that for only 84 forcibly disappeared persons criminal proceedings have been initiated in relation to these cases. In other words, the vast majority of investigations into enforced disappearances have not proceeded to the prosecution stage.

An examination of the cases of enforced disappearances that did not materialize into lawsuits reveals that prosecutors passed the 20-year statute of limitations with inaction. After 20 years without any action, the investigation files are now being closed with decisions of non-prosecution due to the statute of limitations. As of January 2018, the Constitutional Court (CC) started issuing categorical inadmissibility decisions citing prescription periods for applications filed at the end of the appeal processes.¹³

Following some political developments in 2007, a series of indictments were prepared between 2009 and 2014 and 11 different cases were initiated for 78 forcibly disappeared persons shortly before the statute of limitations expired.¹⁴ Two of these cases were subsequently merged. Since enforced disappearance is not criminalized in criminal legislation in Turkey, the state officials tried in these cases were charged with the offense of “intentional killing.”

By 2015, courts began to acquit defendants on the grounds that there is insufficient evidence to convict them of the charges or started dismissing the cases on the grounds that the statute of limitations had expired. Acquittals have been upheld by both appeals courts and the Court of Cassation. In only one case was the lower court's decision of acquittal overturned on appeal. However, in the retrial, the lower court again issued a verdict of acquittal. The fact that cases of enforced disappearances are consistently concluded with acquittals shows that the problem of impunity persists.

In an individual application filed after the finalization of the judgments on enforced disappearances, the CC ruled that the procedural aspect of the right to life had been violated.¹⁵ On 28 April 1995, in the case of the enforced disappearance of Nezir Tekçi, who was detained by soldiers in Yukarı Ölçek hamlet of Yüksekova district of Hakkari and was never heard from again, a retrial started after the CC's judgment. At the first hearing of the case on 17 July 2023, the lawyers of the Tekçi family stated that the case had been dragged towards the statute of limitations and therefore the deficiencies identified by the CC should be rectified immediately and demanded the arrest of the defendants. The Court rejected the requests for the arrest of the defendants and ruled that the defendants be tried under judicial control measures. The Court accepted the defendants' request to be excused from the hearings. The trial continues.¹⁶

¹³ The last time the Constitutional Court published its judgment on its official database was on 10 October 2019 in the *Senay Melik* application. Since then, the Constitutional Court has been issuing summary judgments and serving them only to the applicants. The fact that the Constitutional Court decisions on enforced disappearances are not published as such, not only hinders the monitoring activities of civil society in particular, but also makes it impossible for the public to obtain information about enforced disappearances in a transparent manner.

¹⁴ Before the political developments in 2007, only four cases had been filed regarding six forcibly disappeared persons.

¹⁵ Constitutional Court Plenary (1 December 2022) *Asya Göres and others* (Application no. 2018/15851). <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/15851>.

¹⁶ Faili Belli. “Yüksekova (Nezir Tekçi) Davası [Yüksekova (Nezir Tekçi) Case].” <https://www.failibelli.org/dava/nezir-tekci-davasi>.

Currently, only two of the 10 cases are ongoing. However, one of these two cases was dismissed due to the expiration of the 30-year statute of limitations.¹⁷ Considering that the most severe period of enforced disappearances was between 1992 and 1996, there is a risk that “decisions of dismissal due to statute of limitations” will be issued one after another in the coming days.¹⁸

4. *Attacks and obstruction on the vigils of Saturday Mothers/People*

Saturday Mothers/People are a group of individuals who have been gathering every Saturday since 27 May 1995 for a peaceful protest at noon for approximately half an hour in Istanbul’s Galatasaray Square on Istiklal Street in Istanbul’s Beyoğlu district. The gatherings take place in the form of a vigil with mothers and relatives of the forcibly disappeared as well as human rights defenders holding pictures of the forcibly disappeared ones. At the vigil, they silently sit, commemorate persons forcibly disappeared that week by reading out a statement to the press, demand the right to the truth about the whereabouts of the missing ones, and seek accountability.

The vigils started subsequently after the detention of Hasan Ocak, on 21 March 1995, and the discovery of his body in the Altınşehir Cemetery for the Unnamed in Istanbul 58 days after his initial detention.¹⁹ Their vigils originally started with 20 people, later supported by politicians, human rights defenders, and members of the general public, and took place every Saturday at the same time and place for 170 weeks in the organization of the Istanbul branch of Human Rights Association (*İnsan Hakları Derneği – İHD*). On 15 August 1998, the vigil was banned and Saturday Mothers/People were violently dispersed. Even though they were detained every Saturday, Saturday Mothers/People continued to go to Galatasaray Square until 13 March 1999. After gathering for 200 weeks in a row, Saturday Mothers/People halted their vigil after being violently dispersed by the police, which created a high level of trauma for the families. Until 31 January 2009, they only went to Galatasaray Square during the week for enforced disappearances.

After many years had passed without any effective investigation into the killings and enforced disappearances, investigations gained momentum after 2008 in a handful of cases as a result of the legal and judicial developments. The public officials who had potentially been responsible for these crimes were prosecuted in the so-called “Ergenekon Trial”²⁰ and played an important role in accelerating investigations. As explained above, following these investigations 11 lawsuits were filed.

¹⁷ This person is Ayten Öztürk, who was forcibly disappeared in Dersim, and there is also a violation decision of the Constitutional Court on the grounds of lack of effective investigation: Constitutional Court (21 April 2016). *Hıdır Öztürk and Dilif Öztürk* (Application no. 2013/7832). <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/7832?Dil=tr>. Also see Faili Belli. “JITEM, Musa Anter ve Ayten Öztürk Davası İzleme Raporu – 21 Eylül 2022 (Karar Duruşması) [JITEM, Musa Anter and Ayten Öztürk Trial Monitoring Report - 21 September 2022 (Sentencing Hearing)]” <https://www.failibelli.org/jitem-musa-anter-ve-ayten-ozturk-davasi-izleme-raporu-21-eylul-2022-karar-durusmasi>.

¹⁸ HRFT (March 2016), *Alternative Report To the United Nations Committee Against Torture For Its Consideration of the 4th Periodic Report of Turkey*, para.45.

¹⁹ The Case of *O. v. Turkey*, Application No. 28497/95, 15.07.2004, <https://hudoc.echr.coe.int/eng?i=001-66471>.

²⁰ In 2007, the Istanbul Public Prosecutor’s Office initiated a criminal investigation against alleged members of a criminal organization known as “Ergenekon”, all of whom were suspected of engaging in activities aimed to overthrow the elected government by force and violence. In 2008, in a number of indictments, criminal proceedings were brought before the Istanbul Assize Court against several individuals including generals and army officers for planning a *coup d’état* with the aim of overthrowing the democratic constitutional order. Meanwhile, the case file did not only contain several allegations concerning Ergenekon, suggesting that the organization had attempted to overthrow the government, planned to assassinate the leaders of civil society and religious communities, Kurdish intellectuals and opinion leaders, but also included various documents and information related to other illegal organizations that were said to have organized within the state institutions and engaged in criminal activities. The file spoke of a criminal organization rooted in the network of relations between politicians, the police, and the mafia, which had first come to light in the Susurluk accident, and also referred to an organization called “JITEM” (the Gendarmerie Intelligence and Anti-Terror Unit), which was alleged to have operated in the region under emergency rule. After these information/statements were reported in the press, the relatives of the disappeared filed complaints with the prosecutor’s offices through their lawyers and succeeded in bringing new momentum into many investigations.

This gave rise to expectations that those responsible for the crimes would be held to account at that time. In light of these developments, the Saturday Mothers/People resumed their vigils in 2009.

Their vigils were held peacefully in Galatasaray Square until it was subject to a ban on 25 August 2018, at the 700th-week gathering, by the Beyoğlu district governorship. Even though Saturday Mothers/People gathered at the same place and time for years, the Beyoğlu district governorship issued a ban on the ground that Galatasaray Square was not part of the lawful gathering places identified pursuant to Law No. 2911 on Meetings and Demonstrations and that the authorities had not been notified 48 hours prior to the vigil. The then Interior Minister Süleyman Soylu defended the ban stating that the group had been “exploiting motherhood and putting terrorism under the cover of motherhood.”²¹ Subsequently, the police violently dispersed the participants by using tear gas and excessive force amounting to torture and other forms of ill-treatment. Several participants of the vigil, including the Saturday Mothers/People themselves, were detained. After the 700th-week gathering, the vigils at Galatasaray Square were banned indefinitely, Galatasaray Square was barred with metal barricades, and police buses and police have since been placed inside the barricades 24/7 to prevent any group from holding peaceful demonstrations there. Following this indefinite ban, the Saturday Mothers/People began to gather in front of the Istanbul branch of İHD which is located in Beyoğlu at a backstreet approximately 700 meters away from Galatasaray Square. However, their gathering at a backstreet followed by the reading of a statement to the press also began to be subjected to a ban by the Beyoğlu district governorship, and the participants were violently dispersed by police using excessive force amounting to torture and other forms of ill-treatment.²² Due to the COVID-19 outbreak, as of March 2020, the Saturday Mothers/People began to hold their vigils online.

On 16 November 2022, the CC in its *Maside Ocak Kışlakçı* judgment held that the right to freedom of peaceful assembly of the applicant who is a member of Saturday Mothers/People, had been violated by the ban by the Beyoğlu district governorship and the police intervention constituted a “violation of the right to hold meetings and demonstrations” guaranteed by Article 34 of the Constitution.²³ The CC further decided to send the judgment to the Beyoğlu district governor’s office “for the prevention of new violations.” Later on 29 March 2023, the CC delivered an identical decision in *Gülseren Yoleri*’s individual application, another participant in the vigil and chair of the Istanbul branch of İHD.²⁴ In both judgments, with respect to the violation of freedom of assembly and association, the CC stated that in the ban decision, the authorities had failed to demonstrate how they reached the conclusion that the applicants’ non-notification had threatened public order or harmed the rights and freedoms of others.²⁵ The CC also noted that the Saturday Mothers/People’s vigils had been organized at the same place and time for almost 24 years, thus authorities cannot claim that they did not have prior knowledge. Further, the CC emphasized the state’s positive obligations to ensure the effective use of the right to freedom of assembly and association and noted that, without considering the peaceful nature of the gathering, the authorities automatically issued a prohibition instead of taking measures to ensure that the vigil could be held. The CC concluded that the intervention was unnecessary and

²¹ For further information please visit, <https://www.amnesty.org.tr/icerik/cumartesianneleri>

²² On 19 October 2022, in *Ali Ocak ve Saime Sebla Arcan Tatlav*’s individual application (both members of Saturday Mothers/People and participants to the gathering in front of the Istanbul branch of İHD on 22 September 2018), the CC found violation of prohibition of ill-treatment in case of applicant Saime Sebla Arcan Tatlav, both in substantive and procedural aspects. See *Ali Ocak and Saime Sebla Arcan Tatlav* application, Application No. 2019/18583, 19/10/2022, available at <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/18583> (Only in Turkish). The judgment was published on 20 January 2023 in the Official Gazette.

²³ *Maside Ocak Kışlakçı* application, Application No. 2019/21721, 16/11/2022, available at <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/21721> (Available in Turkish). The judgment was published on 23 February 2023 in the Official Gazette.

²⁴ *Gülseren Yoleri* application, Application No. 2020/7092, 29/3/2023, available at <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2020/7092> (Available in Turkish).

²⁵ On 01 February 2023, the CC held that Aydın Aydoğan who was injured during the 700th gathering had been ill-treated by police forces. See *Aydın Aydoğan (2)* application, Application No. 2019/22587, 1/2/2023, available at <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/22587> (Only in Turkish).

disproportional and emphasized that the peaceful gatherings of the Saturday Mothers/People “must be respected.”

Following the CC’s *Maside Ocak Kışlakçı* and *Gülseren Yoleri* judgments, starting from 8 April 2023, the Saturday Mothers/People decided to gather at Galatasaray Square.²⁶ Between 8 April 2023 and 4 November 2023 (i.e. 30 weeks between the 941st and 971st vigils), the Saturday Mothers/People and human rights defenders who tried to access Galatasaray Square to hold the vigil were met with police violence. Over these weeks, the Saturday Mothers/People and human rights defenders were repeatedly subjected to torture and other forms of ill-treatment by police officers and arbitrarily detained.²⁷ For instance, despite the very much established peaceful nature of the vigils, Saturday Mothers/People were subjected to reverse handcuffing for 18 weeks as they were detained. In the course of these arbitrary detentions, they were subjected to psychological torture as well. Police officers ripped off the carnations they carried, tore the photographs of their loved ones and attempted to parade Saturday Mothers/People through hospitals where they were taken for forensic examinations, while they were handcuffed. For each week they were arbitrarily detained, a criminal investigation has been launched by the prosecutor’s office.

The authorities changed their attitude towards the vigils beginning with the 971st vigil held on 4 November 2023. On that week, Saturday Mothers/People were once again arbitrarily detained by the police and were kept inside the so-called “security circle” for 25 minutes. However, they were not arrested and were indeed able to (albeit limitedly) lay carnations on Galatasaray Square. However, this change in attitude and the practice observed from the 971st vigil onwards do not mean that Saturday Mothers/People are able to fully exercise their right to freedom of assembly and association in a manner that implements the Constitutional Court judgements and is compliant with the international standards. There is an arbitrary restriction imposed on Saturday Mothers/People and they are allowed to read their press statements only with 10 people. Furthermore, the authorities refuse to remove the barriers closing off the Galatasaray Square and around the clock police presence at the square continues.

5. *Judicial harassment of Saturday Mothers/People*

Since 2020, three separate lawsuits have been filed against Saturday Mothers/People merely on the grounds of their peaceful vigils.

On 12 October 2020, the Terrorism Investigation Bureau of the Office of Istanbul Chief Public Prosecutor indicted 46 people in connection with the 700th-week vigil. The prosecution charged Saturday Mothers/People with “attending illegal marches or demonstrations unarmed and refusing to disperse despite having been warned.” The lawsuit²⁸ filed against Saturday Mothers/People in relation to the 700th vigil continues despite CC’s judgments precisely on the said vigil. The trial of Saturday Mothers/People at the Istanbul 21st Criminal Court of First Instance has been going on since 25 March 2021. The next hearing of the trial will be held on 13 September 2024.

²⁶ Between the 700th-week and 8 April 2023, on two different occasions, first on 25 July 2020 (that marks the 800th-week of the vigil) and then on 25 June 2022 (that marks the 900th-week of the vigil), the Saturday Mothers/People were able to gather at Galatasaray Square but were not allowed to read out a statement to the press, were dispersed by the police using excessive force and detained by police officers.

²⁷ 1492nd meeting (March 2024) (DH) - Rule 9.2 - Communication from NGOs (Joint submission by the Human Rights Foundation of Turkey, Truth Justice Memory Center and 15 NGOs), 24.11.2023, in the case of *OYA ATAMAN v. Turkey* (Application No. 74552/01), available at [https://hudoc.exec.coe.int/?i=DH-DD\(2023\)1504E](https://hudoc.exec.coe.int/?i=DH-DD(2023)1504E). Also see Mary Lawlor (26 February 2024), *Türkiye: continued judicial harassment against members of Saturday Mothers/People and violent police interference in their vigils (joint communication)*. <https://srdefenders.org/turkiye-continued-judicial-harassment-against-members-of-saturday-mothers-people-and-violent-police-interference-in-their-vigils-joint-communication>

²⁸ Docket no. 2020/559

On 14 December 2022, the Terrorism Investigation Bureau of the Office of Küçükçekmece Chief Public Prosecutor filed against Saturday Mothers/People who wanted to make a press statement at the Altınşehir Cemetery of the Unnamed on the occasion of the International Day of the Victims of Enforced Disappearances but were detained without being allowed to disperse. The prosecution charged Saturday Mothers/People with “attending illegal marches or demonstrations unarmed and refusing to disperse despite having been warned.” Saturday Mothers/People were acquitted of the charges against them.²⁹

On 23 August 2023, the Office of Istanbul Chief Public Prosecutor indicted 20 Saturday Mothers/People in connection with the 950th vigil. The prosecution charged Saturday Mothers/People with “attending illegal marches or demonstrations unarmed and refusing to disperse despite having been warned.” The indictment filed against the Saturday Mothers/People was prepared by the same prosecutor who carried out the investigation launched in relation to the 941st vigil held on 8 April 2023 and decided not to prosecute 15 people who had attended that vigil on the grounds that the legal elements of the offense stipulated in Article 32/1 of the Law no. 2911 did not occur. In the indictment, the prosecutor fails to explain the conditions that are different from the 941st vigil which may justify a lawsuit to be filed. The prosecutor solely relied on the footage evaluation report prepared by the Beyoğlu district police in a misleading manner. Furthermore, even though it is clearly stated in the record of apprehension that two people who were taken into custody, were apprehended on a different spot for “clapping in protest”, the prosecutor failed to specify even this detail in the indictment and argued that the Saturday Mothers/People “refused to disperse despite having been provided the opportunity to do so.”³⁰ Despite its deficiencies and procedural errors, the indictment was accepted by the Istanbul 39th Criminal Court of First Instance and the trial of the Saturday Mothers/People still continues.³¹

While the judicial harassment of Saturday Mothers/People continues, those who had subjected Saturday Mothers/People to torture and other forms of ill-treatment are protected by an armor of impunity. The lawyers of Saturday Mothers/People filed 31 criminal complaints against police chiefs and police officers who had detained them. The prosecutors who initiated investigations following the criminal complaints sent 26 of the investigation files to the Istanbul Governor's Office and requested administrative authorization. Governor Davut Gül denied authorization in 25 of these requests. In only one of the appeals against Governor Gül's decision did the Regional Administrative Court decide to lift the decision to authorize an investigation.

²⁹ Docket no. 2022/840

³⁰The observation report by human rights organizations on the 950th vigil clearly demonstrates that no such opportunity was provided. See para.8 of the report available at https://www.amnesty.org.tr/public/uploads/files/Rapor/950_2023_06_10_CumartesiAnneleri950HaftaGo%CC%88zlemRaporu-1.pdf (only in Turkish)

³¹ The first hearing of the trial (Docket no. 2023/589) was held on 27 February 2024 and will be resumed on 4 October 2024.