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Current debates, development and challenges regarding enforced disappearance as torture

Bernard Duhaime¹, Juan E. Méndez², Pau Perez-Sales³

Torture can be broadly defined as the intentional infliction of severe pain or suffering, by agents of the State, for a specific purpose, such as the extraction of information, a confession, intimidation or punishment or discrimination⁴. Other relevant elements not provided in the legal definition include the suppression of the will of the victim, powerlessness and the moral injury suffered, and the attack on dignity as

an essential human value. Similarly, enforced disappearance (ED) is, also broadly defined, the deprivation of liberty by agents of the State followed by the refusal to acknowledge the fate or whereabouts of the detainee, thus putting the person outside the protection of the law⁵.

ED is a composite human rights violation that involves two kinds of victims: first, the direct victim, who suffered the violence of abduction, the anguish of being held defenceless in an unknown place and who, in most cases, suffered physical or psychological torture, and, on the other hand, the relatives of the disappeared⁶. The level of anguish and suffering inflicted on family members has been repeatedly consid-

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4 In accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions” (article 1.1).

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- 5 Enforced disappearances are defined as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”. See International Convention for the Protection of All Persons from Enforced Disappearance, article 2.
 - 6 Indeed, the ED Convention, provides that the term ‘victim’ means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance”. In this sense, and as victims often recall, there are (a) the rights of the disappeared, including the right to due process, to liberty, security and integrity of the person, to be searched, reparation, etc. (b) the rights of the relatives to truth and justice, to measures of psycho-social assistance and other forms of reparation, etc.

ered by the medical and psychological community to be of sufficient severity to meet the threshold of the definition of torture (Citroni, 2017; Hollander, 2016; Kordon, D., Edelman, L., Lagos, D., & Kersner, 1998; Pérez-Sales, 2000; Robins, 2010; Shaery-Yazdi, 2020; Smid et al., 2020; Zarrugh, 2018).

There are strong arguments to consider that ED is a form of torture. Indeed, EDs always imply, towards the person disappeared, *intentionality, purpose, suffering, powerlessness, absolute deprivation of will and attacks to dignity*. At the same time, some of these elements may be more complex to prove in the case of relatives. One should recall, for example, that the German High Command, while implementing the sadly famous Night and Fog Decree, which instituted a program to enforcedly disappear victims in the occupied territories during World War II, expressly indicated that “[e]fficient and enduring intimidation can only be achieved either by capital punishment or by measures by which the relatives of the criminal and the population do not know the fate of the criminal. This aim is achieved when the criminal is transferred to Germany” (Finucane, 2010).

This paper explores these links (see also Nowack, 2012) and puts forward some proposals and challenges for the future.

Legal background: links between the ED Convention and the crime of torture

Since the Nuremberg Trials and the adoption of UN and OAS General Assembly Resolutions condemning the crime of enforced disappearances, many critical legal standards have been developed through judicial decisions, the adoption of international instruments (including the *Declaration on the Protection of all Persons from Enforced Disappearance* and *International Convention for the Protection of*

All Persons from Enforced Disappearance) and the creation of the entities responsible for supervising their implementation (including the UN Working Group on Enforced or Involuntary Disappearance (WGEID) and the Committee on Enforced Disappearances).

Enforced disappearances have, in certain instances, been recognised as a form of torture. Indeed, article 1(2) of the *Declaration on the Protection of all Persons from Enforced Disappearance* provides that “Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.”

In its General comment on the right to the truth in relation to enforced disappearance, the Working Group on Enforced or Involuntary Disappearance (WGEID) indicated that “It also makes it clear that 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. No legitimate aim, or exceptional circumstances, may be invoked by the State to restrict this right. This absolute character also results from the fact that the enforced disappearance causes «anguish and sorrow» (5th preambular paragraph of the *Declaration*) to the family, suffering that reaches the threshold of torture, as it also results from article 1§2 of the same *Declaration* [...] 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.” (WGEID General Comment on the *Right to Truth*, para 4).

More recently, in its *Report on enforced disappearances in the context of Migration*, the Working Group further emphasised that “enforced disappearance is a crime which entails multiple human rights violations and constitutes in itself a form of torture or inhuman treatment, not only concerning the disappeared person but also to her/his relatives, because of the anxiety and anguish they suffer as a result of the disappearance of their loved one” (para 61).

In the first decision of an international human rights protection body dealing expressly with a case of enforced disappearance (Inter-American Court of Human Rights, *Velasquez Rodríguez v. Honduras*, 1988), the Court emphasised the purpose of stifling activities considered unlawful by means of a radical rupture of the internal juridical order referring to guarantees of liberty and personal security. The link with the prohibition of torture resulted not only from the purpose or end pursued through the removal of the person from any external control but also from the evidence that emerged from multiple testimonies: the main objective was and is to be able to interrogate the disappeared without limits as to the methods or duration of the practice. That is why, in most cases, the final fate of the victim is his or her physical elimination and the concealment of that fate and the whereabouts of his or her remains.

This was the first of different cases in which the Inter-American Court of Human Rights concluded that instances of enforced disappearances also constitute violations of the right to personal integrity and in certain circumstances torture (Velasquez Rodríguez vs. Honduras, para 156, 175, 187; Gelman vs Uruguay, para 94-95; Members of the Chichupac village and Communities of Rabinal vs. Guatemala, para . 158; Terrones Silva et al. vs. Peru, para 172).

More specifically, regarding the effects of enforced disappearances on the abductees, the

Court indicated in the *Omeara Carrascal and others v. Colombia* case, that “the victims of this practice see their personal integrity violated in all its dimensions, and that the submission of detainees to official repressive bodies, state agents or individuals who act with their acquiescence or tolerance, that they practice torture and murder with impunity represents an infringement of the duty to prevent violations of the rights to personal integrity and life, even in the event that the acts of torture or deprivation of the life of the person cannot be proven in the specific case. Furthermore, this Court has held that forced disappearance is a violation of the right to personal integrity because the mere fact of prolonged isolation and coercive solitary confinement represents cruel and inhuman treatment” (para 194).

As for the effects of disappearances on relatives, the Tribunal considered, in the *Chitay Nech v. Guatemala* case, that “the denial of justice and the lack of knowledge of the whereabouts of [the abductee] that persist to date have given the alleged victims a new traumatic impact that has generated feelings of indignation, frustration, and even terror. The Tribunal observes that said experiences have impacted their social relationships, altered their family dynamic and their sense of belonging to an indigenous community, which has continued to cause suffering and fear. For that expressed, this Tribunal considers that the effects, both psychological as well as physical, suffered by the members of the [...] family, understood comprehensively in the complexity of the phenomenon of a forced disappearance, remain while the factors of verified impunity persist, which, at the same time, prevent the closure of the mourning process they have lived for many years.” (paras 225-226) Accordingly, the Court concluded to a violation of the right to the integrity of the relatives. This approach is also consistent with decisions of the Inter-American Court in the *Anzualdo Castro vs. Peru* case (para 113) and the *Trujillo-Oroza vs. Bolivia* case (para 114).

Along the same lines of the Inter-American Court, several international human rights protection bodies, including the United Nations Human Rights Committee (*Sharma vs. Nepal case*, para.7.9; *Maria del Carmen Almeida de Quinteros et al vs. Uruguay*, para. 14; *Mojica v. Dominican Republic*, para 5.7, General comment No. 36, para 58), the African Commission on Human and Peoples' Rights (*Mouvement Burkinabé des Droits de l'Homme et des Peuples vs. Burkina Faso*, para. 44), and the European Court of Human Rights (*Aslakhanova vs. Russia*, para. 133 and 215; *Varnava and Others v. Turkey*, para. 200; *Cyprus v. Turkey*, para. 155; *Tahsin Acar v. Turkey*, para. 238; *Umayevy v. Russia*, paras. 101–103; *Palić v. Bosnia and Herzegovina*, paras. 74–76) have recognised similar impacts on the right to the physical and moral integrity of the abductee and his or her relatives, constituting at least cruel, inhumane or degrading treatment in contexts of enforced disappearances.

More specifically, they have established the relationship between enforced disappearance and torture on the understanding that enforced disappearance facilitates and promotes the use of methods of physical torture of unusual cruelty in the context of interrogations. Furthermore, even if it is difficult to identify evidence of such torture, it is clear that the victim is subjected to forms of deprivation of liberty involving prolonged or indefinite solitary confinement without any contact with family members, lawyers or control officials. This isolation undoubtedly causes uncertainty and anxiety in the victim as to when and how it will end, resulting in mental or psychological pain or suffering of sufficient severity to qualify as torture under the definition contained in the Convention Against Torture.

The severe suffering criteria: medical and psychological evidence in relatives with close bonds

The suffering of the relatives of the disappeared is permanent and trans-generational. Its effects spread in the community and the whole society.

While suffering linked to torture is usually associated with physical pain, psychological torture cause enormous levels of suffering. Furthermore, in studies comparing the psychological or psychiatric consequences in victims of torture and relatives of the disappeared, more significant long-term impacts are observed in relatives both in terms of depression, symptoms of re-experiencing and avoidance and breakdown of fundamental beliefs about the world (Arnosó, 2010; Hollander, 2016; Lenferink et al., 2019; Pedersen et al., 2010; Phillips, 2011).

Table 1 summarises the multifaceted and complex ways in which ED produces individual, community and social suffering.

Short term

The psychological literature usually mentions the impossibility of dealing with the mourning process as a permanent wound for the relatives (table 2).

The individual and collective testimonials and first-voice accounts of the suffering of the relatives are endless. They show that the anguish at the beginning and, as time passes, the complex post-traumatic and grieving pain of the relatives victims also amounts, in most cases, to ill treatment or torture.

Recent developments and challenges

More recent legal substantive developments that may also interest the reader relate to enforced disappearances that occur in the context of migrations (Duhaime and Thibault, 2018; Nicolmann, 2021). Indeed, in

Table 1. Multifaceted and complex ways in which ED produces individual, community and social suffering

	Short-term impact	Long-term impact
Circumstances	<ul style="list-style-type: none"> • Direct trauma – Witnessing • Vicarious trauma - Imagining the disappearance 	<ul style="list-style-type: none"> • Post-Traumatic Stress Disorder (PTSD) • Complex PTSD
Threat - Fear	<ul style="list-style-type: none"> • -Demobilisation -Paralysing effect not only within the relatives but also the neighbourhood, community and society as a whole) (“He who does nothing, fears nothing”). • Privatisation of harm - Silence - Resignation and Skepticism • Political demobilisation - Rejection and disillusionment with ideologies of change or social struggles. 	<ul style="list-style-type: none"> • Social anomia • Submission
Denial of information	<ul style="list-style-type: none"> • Uncertainty • Despair • Lack of control - Helplessness 	<ul style="list-style-type: none"> • The pain and the refusal to use the word “mourning”, associated with the idea of accepting the hypothetical death. • Difficulty dealing with the grief of absence - Depression • Exhumations: lack of support, fear of not finding, the pain of remembering, facing stigma, scepticism regarding the possibility of justice...).
Identity and Dignity	<ul style="list-style-type: none"> • Questioning of social and political values • Humiliation and brokenness • Blame • Stigma and Shame 	<ul style="list-style-type: none"> • Inability to resume life, especially young mothers and adolescent children. Guilt for wanting an everyday life or for ending the search. • Permanent guilt for (a) events during the disappearance, (b) elements of the relationship at the time of disappearance, (c) survivor’s fault • Absence of moral reparation: theory of the two demons and other forms of blaming the victim.
Rupture of the Life Project	<ul style="list-style-type: none"> • Family collapse - Confrontations or accusations. Polarisation. • Emigration or exile (political or economic) • Loneliness and gaps in family dynamics • Economic breakdown • Suffering associated with traditional cultural dynamics (e.g. regarding the cultural role of <i>widows</i> or <i>half-widows</i>, obligations or duties towards in-laws and the possibility of losing offspring’s, the ownership of land or property). • Taking on new roles 	<ul style="list-style-type: none"> • Ambivalence between hope and despair • Ambivalence between rebuilding life and feeling betrayal • Ambivalence between talking about what happened or keeping quiet to protect - Covenants of Silence • Difficulties in seeking truth or justice • Trans-generational damage due to re-traumatisation, grief, silence or alteration of family dynamics (minimum detected up to 3rd generation).
Breakdown of life in relationship	<ul style="list-style-type: none"> • Community conflicts. Ambivalent self-protective stance of some communities 	<ul style="list-style-type: none"> • Rupture of the social fabric (“They turned their backs on us”)

Table 2. Mourning processes as a permanent wound.

Circumstances	Psychological processes
<ul style="list-style-type: none"> • Sudden, abrupt death. No preparation. • Truth. The person is not deceased but does <i>not exist</i>. It is not possible to know the truth, if it is known, it is difficult to prove it and if it is proved, it is difficult to make it public or denounce it. • While in some cases there may be graves and exhumations are a possibility, in others the bodies were made to disappear in the sea, rivers, incinerated etc (<i>double disappearance</i>). • Absence of rites. • Impact of rumours and fake news • Community members that believe it helps the person to encourage relatives always to maintain hope. 	<ul style="list-style-type: none"> • Limits to the expression of grief <ul style="list-style-type: none"> • Humiliation, Anger, Embarrassment. Stigma • Protecting other family members – Pacts of silence. • Danger of Reprisals in public expressions of mourning • Risk of being considered as an enemy (terrorist...) • Postponement by prioritising political activism and political struggle • Economic survival • Connection to the missing person <ul style="list-style-type: none"> • Life pending - Feelings of ambivalence or betrayal. The absent as a myth. • Disbelief - Denial of the possibility of death • Depression - Thoughts of reunion / suicide / death • Symbolic communication with the disappeared - Dreams - Premonitions

2017 the WGEID adopted an important *Report on Enforced or Involuntary Disappearances in the context of Migration* addressing the issues of migrations caused by ED, the disappearances of migrants for political reasons, during detention and deportations, or due to the actions of non-State actors, as well as factors which facilitate the disappearances of migrants. With regards to ED's relation to torture more specifically, the WGEID indicated that enforced disappearances should be considered as among the risks of torture to which States should consider their decisions on whether to remove a person in contexts of deportations and expulsions in conformity with the principle of *non-refoulement* (para 61). The report highlights important challenges in the field, for which solutions need to be further explored, including the measures that States need to adopt to assist relatives seeking, across borders, truth and justice regarding their loved one(s) disappeared abroad. Similarly, it invites the reader to assess in what circumstances "systematic situations of impunity regarding the abduction and detention of migrants by private actors, including

smugglers or traffickers, could be considered [...] as a form of acquiescence and, as such, constitute enforced disappearance" (para 42).

In addition, the UN Committee on ED and the Working Group have issued a series of recommendations dealing with specific standards, including the *Guiding principles for the search for disappeared persons* and the *Report on standards and public policies for an effective investigation of enforced disappearances*, two issues which are essential to ensure the rights of victims to truth and to justice, and to eradicate impunity. With regards to ED's relation to torture more specifically, the Committee has indicated that "Respect for the dignity of victims should be a guiding principle at every stage of the search for the disappeared person" (principle 1). Similarly, the WGEID reiterated that "[e]nforced disappearance can cause deep anguish, suffering and harm to victims and their relatives. Not knowing the whereabouts of a family member can amount to torture". (para 60). Both the WGEID and the CED should now address to operationalise the interrelation of the search and the criminal investigations. On this matter, the WGEID recommended that States "*Estab-*

lish clear mechanisms to ensure coordination, cooperation and exchange of information between all State agencies involved in the investigations, in particular those responsible for the criminal investigation and prosecution and for the search for disappeared persons, in order to guarantee that progress and results are achieved on all sides; Cooperate with other States, both during the search for disappeared persons and during criminal investigations, including by producing any relevant evidence in their possession, establishing cooperation frameworks focused on offering comprehensive assistance to the victims, surrendering or extraditing alleged perpetrators and ensuring their investigation and trial” (para 98 (m) and 98 (n)).

The recent commemoration of the 9/11 attacks have also reminded the international community of the importance of ensuring human rights in all contexts, even while fighting terrorism (UN Special Procedures Joint Study, 2010). The WGEID’s 2021 *Report on Enforced Disappearances in the Context of Transnational Transfers*, addresses instances and trends of enforced disappearances in such contexts, the types of human rights violations that then occur, and the impunity that results from such instances. More specifically, it recalled ‘that such practices can also facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment under certain circumstances’ (para 59). This development will require further coordination with other Special Procedures, including the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Special Rapporteur on the Human Rights of Migrants and the Working Group on Arbitrary

Detention, so that States be held accountable for human rights violations occurring in this context and so that these practices never become normalised.

Finally, at the regional level, promising standards are being developed by the Working Group on Death Penalty, Extra-Judicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa, created by the African Commission on Human and Peoples Rights, which should also address how enforced disappearances relate to torture, cruel, inhumane and degrading treatment. The African Commission should adopt guidelines swiftly and ensure their implementation and proper supervision within the region.

All of these elements are avenues to a contemporary interpretation and implementation that expand and deepen global protection against ED, and address broader challenges dealing with the conceptualisation of ED in specific contexts, with the operationalisation of prevention, search and investigation, and reparations, some of which are addressed in specific papers contained in the present volume.

In the psychosocial field there also new developments and challenges. Among them moving from the description of clinical elements to standards of good practice. Particularly relevant in this regard is the *International Consensus on Principles and Standards on Psychosocial Work in Forensic Search and Investigation Processes for Cases of Enforced Disappearances* (ECAP & GAC, 2009, 2017). The result of several years of work led by civil society organisations from Latin America and Asia establishes criteria for good practice in each of the phases of the search process, especially in the context of exhumations. As a derivative of this work, the *Standards of Good Practice for Psychosocial Accompaniment in the context of Involuntary Disappearance in Migration* have been developed in recent years.

Most of the theoretical reflections regarding psychiatric and psychological aspects has been linked to teams in Latin America during the 1980's and 1990's. The 11S terrorist attacks in US and political violence and collective catastrophes in Nepal, Sri Lanka and the South Cone of Africa have fuelled research in other cultural contexts incorporating a fascinating cross-cultural perspective that has enriched the debate. There is a lot of work ahead. There is a lack of studies, for instance, of the bereavement process and psychosocial support in cultures where there is a tradition of healing the dead that are suffering for not being found, or the particularities of cultures where the disappeared is part of the ancestors and remains active and present within family life through dreams and premonitions, just to mention two examples. There also challenges in better knowing in non-western contexts the dynamics between perpetrators and victims and the interplay between traditional healing and justice systems. The Argentinian and Chilean centres working with survivors, following previous research on Holocaust survivors have proposed that the impact of ED in relatives go as far as to the third generation (EATIP et al., 2002). There is recent research in other cultures showing different patterns (Dalgaard et al., 2019; Kaplan, 2013). More research is needed in understanding the different trans-generational impacts of ED and the links with torture. There is also very recent research adapting the available knowledge to other groups of relatives of missing persons that the WGED has recognised as victims of involuntary disappearance.

Truth and justice are often seen as unsurmountable challenges, especially in the context of truth commissions and processes of transitional justice. Victims' needs are often considered secondary to the supposed needs of peace, stability and development that impose

either silence or truth without justice. Algeria is an example. among many. But in the practice and literature of Transitional Justice there are also many voices that insist that both (Truth and Justice) are indispensable elements in the fight against impunity. And these voices have on their side almost all of the legal precedents of international organisations.

Conclusion

There is very little doubt as to the fact that the great majority of - if not all - enforced disappearances with respect to the abductee and the nature of the harm suffered by the relatives with close bonds amount to torture.

When State agents disappear an individual it is generally with the intent to inflict suffering and terror upon his or her relatives/personal social environment, as illustrated in the emblematic case of the Night and Fog Decree cited earlier. This being said, in certain circumstances, the impact of the disappearance may vary on the relative, friend or colleague, depending on a series of factors including the degree of proximity of the relationship, the psychological characteristics of the victim or the duration of the psychological harm suffered, for instance. But the psychological and medical literature certainly points to the fact that the pain, anguish and suffering of abductees and relatives with close bonds alike amount to torture. In addition, notwithstanding the type of impact that the disappearance may have from one person to the other, the measures' intent and its gravity remain objectively the same: it severely punishes and/or intimidates. In judicial proceedings, if each case is to be analysed on a case by case basis, it is suggested that one could presume that enforced disappearances amount to torture for both the abductee and his or her relatives/personal social environment, and that such a

presumption can be rebutted by convincing evidence to the contrary.

This conclusion, as reviewed in this text, is not new. It was already asserted in 1988 in the Velasquez Rodríguez judgment and in many international instances since then while there appears to be no convincing precedents of an opinion disputing such a finding of medicine and law.

In this issue

We present in this Issue the first 6 contributions of the Special Section on ED as Torture. In Issue 2021/3 will appear the remaining 4 texts.

Manon Bourguignon et al. text analyses how grief is experienced by victims of such crimes who are endlessly confronted with uncertainty and exacerbated impunity. She makes a comparative analysis of the different conceptualisations used to describe the grief of relatives and proposes key elements that are common to all of them. The authors conclude that the passing of time does not support the grieving process, on the contrary it seems to reactivate the injury of loss. , *Nicolas Morales* addresses the impact of inadequate investigations and reparation measures regarding enforced disappearances, which occurred in the region of Paine, in Chile, during the Pinochet dictatorship. He stresses the importance of first-person experiences of the relatives of the disappeared which make it possible to account for the subjective and collective dimension of forensic identification. He also discusses the importance of better understanding the intergenerational impacts of such crimes. The concept of victimhood is analysed by *Mina Rauschenbach* in her study dealing with the recognition of victims' status in El Salvador and in Colombia, two countries in which enforced disappearances have occurred on a massive scale during internal armed conflicts. She consid-

ers how such status is legally defined in both countries and how it impacts their experiences in the judicial system.

Alejandra Vicente and Eva Nudd examine the importance of the phenomenon of disappearances in Africa, a region where this crime is underreported. The authors also describe the current discussions held by the African Commission on Human and Peoples Rights on the topic, in particular the evolution of draft guidelines on enforced disappearances in Africa currently being developed by the Commission's Working Group on Death Penalty, Extra-Judicial, Summary or Arbitrary Killings and Enforced Disappearance. *Aïcha Madi* presents a Case Study of Enforced Disappearances in Algeria showing that the impact crosses more than one generation and remains as a hidden wound in society that needs to be addressed by all political actors *Inamul Haq's* contribution discusses how enforced disappearances have impacted women in Kashmir, more specifically how the latter have been marginalised as "half widows", lacking adequate rehabilitation measures to address the emotional and psychological trauma that they face on a daily basis. Both are short reports of qualitative data arising from interviews with victims.

We also have three regular scientific papers not part of the special section. *Ebbe Munk-Andersen et al* present the positive results of a structured questionnaire used for screening asylum seekers in Denmark, *Dongmi Kim and cols* make a review on Efficacy of pharmacotherapy for major depressive disorder and post-traumatic stress disorder from torture showing the lack of strong evidences for any the treatments proposed. *Karen Fondacaro and cols* published in 2018 in Torture Journal a paper explaining the The Chronic Traumatic Stress Framework as a conceptual model to guide empirical investigation and mental health treatment for refugees and survivors

of torture. In this issue they complement that paper with a second paper on Chronic Traumatic Stress Treatment.

It is with great pleasure that we welcome a Forensic Case Series, a new section of the Torture Journal edited by Ben McVane and James Lin. Cases in this section may describe unique or uncommon physical and psychological findings, illustrate barriers to a thorough evaluation, or present features that make effective articulation of a survivor's claim challenging. Case discussions aim to provide further information about findings or reflections on how challenges were approached. They also aim to address common misconceptions about the clinical evaluation and the experience of torture.

All together, this issue, makes up more than 150 pages, the longest in the history of the Journal. All of you, the readers and authors, are responsible for the increasing growth of Torture Journal: a home for all.

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Grief among relatives of disappeared persons in the context of state violence: An impossible process?

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Key points of interest

- Enforced disappearance has political, legal, and psychosocial implications. The absence of a body affects the grieving process of families of disappeared persons.
- Highlighting the complexity of this grieving process helps scholars and practitioners understand the multiple factors at stake and thus help families cope with their loss.
- More research is needed to develop clinical and diagnostic tools to consider the ambiguity of the loss due to the unconfirmed death and the traumatic circumstances in which enforced disappearance takes place.

litical weapon to spread terror within society. However, enforced disappearance is a crime against humanity. According to the Disappearances Convention, the relatives of disappeared persons are recognised as direct victims. The effect of this crime on families remains a topical issue.

Methods: We conducted a narrative literature review focusing first on the impact enforced disappearance has on the relatives and second on the specificity of the grieving process for relatives of disappeared persons.

Results and discussion: The literature concerning enforced disappearance allows us to make an inventory of interconnected features explaining the phenomenon of enforced disappearance in the context of state violence. We also emphasize the extensive terminology used to qualify grief among relatives of disappeared persons and the specificity of time in this context. We highlight factors that could jeopardize the grieving process.

Conclusions: The literature clearly shows the political, social, and legal issues of enforced disappearance. Relatives of a disappeared person are endlessly confronted with uncertainty, exacerbated by impunity. In this case, time does not seem to support the grieving process. On the contrary, time can reactivate the injury of loss because the disappeared is condemned to an eternally provisional status.

Abstract:

Introduction: During the dictatorships in Latin America, states allied with the Condor Operation used enforced disappearance as a po-

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Therefore, enforced disappearance could be considered endless torture for families.

Keywords: enforced disappearance; grieving process; psychological impact; state violence

Introduction

In 2006, the International Convention for the Protection of All Persons from Enforced Disappearance recognized enforced disappearance as a crime against humanity (United Nations Convention, 2006). The ED Convention, which entered into force in 2010, defined *enforced disappearance* as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law” (UN Convention, 2006, Article 2). In this article, we adhere to this definition of enforced disappearance. Following this choice, we decided to present the paradigmatic case of Latin American dictatorships allied in Operation Condor.¹

Victims of enforced disappearance are not limited to the disappeared person. The International Convention for the Protection of All Persons from Enforced Disappearance stated in 2004 that families are direct victims as well (Article 24). Families of disappeared persons have to endure lifelong torture, living without any information about their loved ones and their fate (Adams, 2019; García Castro, 2011). What is the impact of enforced disappearance on families of disappeared persons? In a context of uncertainty and the unknown, how do families cope with this singular absence? What would affect the grieving process? These are the research questions that we will explore in this article.

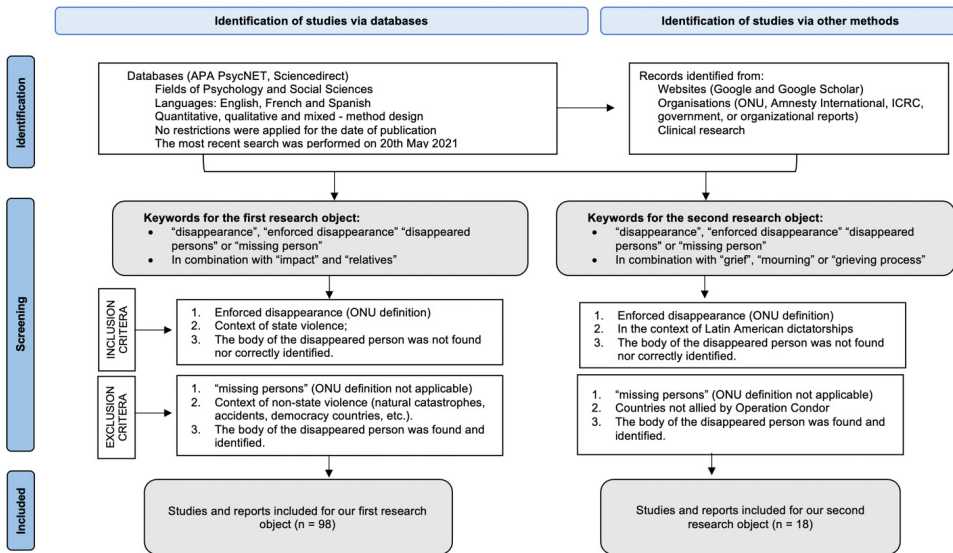
This article aims to show the specificities of enforced disappearance and its impact on families in the context of state violence. As a second aim, we will focus on the grieving process of families of disappeared persons in the case of Latin American dictatorships. We will discuss the complexity of defining the grieving process and the factors that seem to support the mourning process.

Methods

Narrative literature review

To answer our research questions and shed light on the phenomenon of enforced disappearance, we carried out a narrative review of the literature. We were interested in two topics: the impact of enforced disappearance on relatives and the grieving process among these relatives. Figure 1 outlines our methodology design.

1 This is the research field of the current project conducted by the authors at the Institute of Psychology of the University of Lausanne (Switzerland) and funded by the Swiss National Science Foundation: “From enforced disappearance of persons to the victims’ relatives’ complicated grief: observing the historicization process”. The project was approved by The UNIL Research Ethics Commission (CER-UNIL). It focuses on enforced disappearance during the dictatorships in Latin America and its impact on family members through generations. It is estimated that more than 90,000 persons were missing in Latin America between 1966 and 1986 (Amnesty International, 2011; Ayala, 2011).

Figure 1. The methodology design of the narrative review of literature

Findings

The loss of a family member in the context of enforced disappearance: a complex phenomenon

How can the impact of enforced disappearance on relatives be understood?

Apprehending the phenomenon of enforced disappearance and its impact on relatives is a complex task. Based on our literature review, we endeavoured to highlight the features implicated in the repercussion of this crime on family members. Despite the massive use of enforced disappearance in the context of political repression, the impact of this crime on victims is not always the same and many features may influence it (Crenzel, 2007; Lira, 2016).

Through a narrative literature review on the topic, we collected all the descriptions of the features involved in the impact of this crime on family members. To present our find-

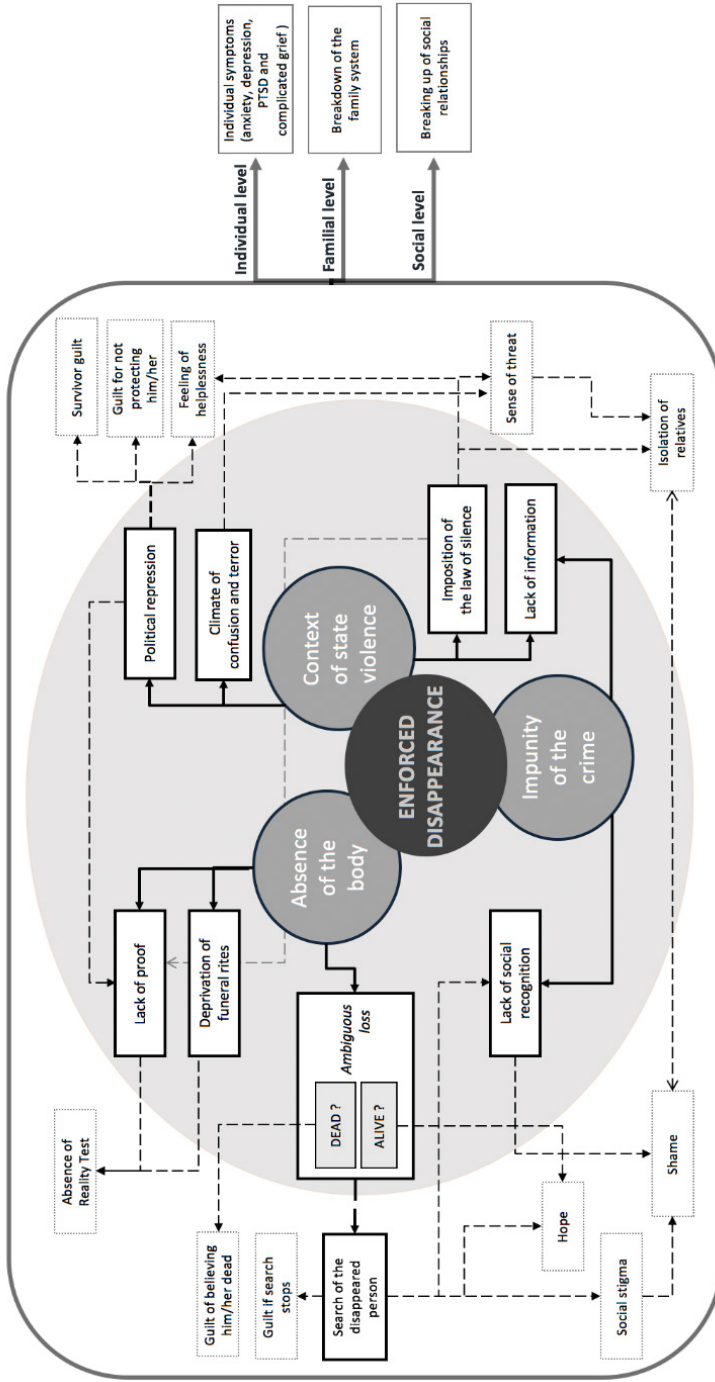
ings, we followed the three main features characterising enforced disappearance according to the ED Convention's definition:

1. The context of state violence in which the enforced disappearance takes place
2. The absence of the disappeared person's body
3. The impunity of this crime, even years after the end of dictatorship.

Each main feature is linked to the others and involves elements from the others. Figure 2 shows the magnitude of the impact of enforced disappearance.

To understand the phenomenon of enforced disappearance better, the first feature that should be considered is the context of state violence: this crime takes place in a climate of political repression and confusion. Families face not only the disappearance of

Figure 2. Features of enforced disappearance that impact family members



their loved ones, but also threats against their lives and trauma (Haq, 2020). In this regard, authors emphasize individual and collective repercussions of this context: survivor's guilt (Biedermann, 1991; García de Villagrán, 2004), feelings of guilt for not protecting the relative (Blaauw & Lähteenmäki, 2002; Féres-Carneiro & Da Silva, 2010), and feelings of helplessness (Cerutti, 2015; Lira, 2016; Molina Theissen, 1998; Tully, 1995). These repercussions are also linked to the law of silence imposed by the dictatorship within the society and the sense of threat that many members of the family felt at the time (Escalante et al., 2014). Finally, this climate of terror made it difficult for families to search for information. The lack of information and the absence of a body results in the impunity of the culprits.

The second feature considered, the absence of a body, is the most studied in the literature. This is one of the main specificities of this crime, and it could partly explain the complexity of the grieving process (Escalante et al., 2014; Féres-Carneiro & Da Silva, 2010; Isuru et al., 2019; Kajtazi-Testa & Hewer, 2018). Without the body, a disappeared person could not be considered dead (Escalante et al., 2014). The victim's body is separated from his or her name and identity (Gatti, 2014), leaving the relatives to wonder where their loved one is? Disappearance creates a new place between presence and absence, life and death. Pelento (2009) claims other situations exist in which the body is absent, such as airplane crashes or earthquakes, but in these circumstances, the state provides at least some information to families that allows them to mourn the missing person. In the case of enforced disappearance, official institutions do not provide information about the time and the circumstances of the death (Kijak & Pelento, 1986). This impunity contributes to the negation of the very existence of the person who disappeared (Crenzel, 2007).

The body's absence and lack of information deprive relatives of funeral rites (Blaauw & Lähteenmäki, 2002; Escalante et al., 2014; Pelento, 2009). The reality test that usually triggers the grieving process – leading relatives to work on separation and disinvestment (Freud, 1915) – is troubled. Instead, doubt sets in, and relatives are inhabited by a phantom object (Braun & Pelento, 1989) that continues to haunt both individual and family memory. Not finding the body of the disappeared person can be defined as an *ambiguous loss* (Boss, 1999), which is “a situation of unclear loss that remains unverified and thus without resolution” (Boss, 2016, p. 270). Hence, the disappeared person continues to be psychically present even when physically absent. Families find themselves in front of an impossible choice: believing the disappeared one is still alive or considering him or her already dead (Kajtazi-Testa & Hewer, 2018).

To explain this situation, authors have discussed the *double link* (Díaz & Madariaga, 1993), a *living-death duality* (Blair, 2018), or an *ethical and moral dilemma* (Lira, 2016) in which relatives are caught. On the one hand, presuming the person is alive implies that the family is overwhelmed by fantasies of what could have happened to their relative (Díaz & Madariaga, 1993; Lira, 2016) or is disturbed (Pelento, 2009). On the other hand, assuming that the loved one is dead, without any proof, could lead to feelings of guilt (Busch & Robaina, 2006; Díaz & Madariaga, 1993; Kijak & Pelento, 1986). Accepting that the loved one is dead means somehow being responsible for the death of a close one, with the feeling of having “killed” him or her (Blaauw & Lähteenmäki, 2002; Taiana, 2014).

At first, families looked for their loved ones, led by the hope of finding them alive (Wayland et al., 2016). However, the searches were often unsuccessful and many questions remained

Table 1. Psychological impact on families at an individual level

Dimension	Psychological impact	Authors
Mental disorders	<ul style="list-style-type: none"> • Anxiety • Depression • Post-traumatic stress disorder • Complicated or prolonged grief 	Baraković et al., 2013, 2014; Blaauw & Lähteenmäki, 2002; Busch & Robaina, 2006; Kennedy, Deane, & Chan, 2019; Lenferink et al., 2019; Zvizdic & Butollo, 2001
Additional symptoms in qualitative studies	<ul style="list-style-type: none"> • Somatisation • Symptoms of sleep disorders • Hypervigilance and increased arousal • Fear and trepidation • Mistrust • Guilt • Intrusive recollections • Phobic ideas • Concentration difficulties • Loss of interest 	Baraković et al., 2013; Busch & Robaina, 2006; García de Villagrán, 2004; Lira, 2016; Zia, 2016) Blaauw & Lähteenmäki, 2002; Blair, 2018; Lira, 2016; Robins, 2010; Weinstein, Maggi, Gomez, & al., 1987 García de Villagrán, 2004; Robins, 2010 Adams, 2019; García de Villagrán, 2004; Hollander, 2016; Lira, 2016; Pérez-Sales, Durán-Pérez, & Herzfeld, 2000; Weinstein et al., 1987
Symptoms in quantitative studies	<ul style="list-style-type: none"> • Depression • Post-traumatic stress disorder 	Zvizdic & Butollo, 2001 Baraković et al., 2013, 2014; Isuru et al., 2019; Quirk & Casco, 1994

unanswered: Families clashed against a wall of silence, lies, and denial by the authorities (Thornton, 2000). Authors reported the social stigma of being “related to - or child of a missing person” (Busch & Robaina, 2006; Powell et al., 2010). The repercussions are the breaking up of social relationships, isolation, and feelings of shame (Basto & Melo, 2018; Blair, 2018; Molina Theissen, 1998). As time passed by, and without any sign of the disappeared persons, the thought of death began to take place, and families had to face a differ-

ent scenario.² However, giving up the search could be experienced as murdering the loved one. It seems important to highlight the role played by families: by continuing the search, relatives allow the disappeared to continue to

2 Based on research and her clinical practice as a psychologist, Castillo (2013) observed that the minority of families in Latin America had been able to find the bodies of their loved ones and to give them a proper burial. Most of the families had not found the body: Some still looked for disappeared persons, others gave up the search for various reasons (practical or emotional).

exist in the social environment (García Castro, 2001). According to this author, enforced disappearance presupposes the intervention of a *third witness* to attest to the crime.

The third feature is the impunity of the crime. The lack of social recognition of this crime exacerbates the idea that the decision to consider the disappeared person alive or dead depends on family members (Blaauw & Lähtenmäki, 2002; Pelento, 2009): the authorities' denial of all responsibility places the disappearance as a *private event* (Lira, 2016) and relatives as responsible for the search of their loved ones. Moreover, this impunity could lead families to take responsibility for what happened to their loved ones (Escalante et al., 2014). Confronted with the authorities' impunity (as well as with unsuccessful research), families could feel indignation, anger, and frustration stemming from a sense of helplessness (Adams, 2019; Blaauw & Lähtenmäki, 2002; Crenzel, 2007). Impunity could also be a retraumatisation and source of fear, mistrust, demobilisation, and social exclusion (Bekerman et al., 2009; Busch & Robaina, 2006; Cerutti, 2015; Edelman & Kordon, 2006; Munczek & Tuber, 1998).

At what level does enforced disappearance have an impact on relatives?

The phenomenon of enforced disappearance is not a singular event. It has an important impact at individual, familial, and social levels.

At an individual level, authors have identified that relatives of disappeared persons are likely to suffer from four mental disorders as well as several additional symptoms (Table 1). In quantitative studies on families of disappeared persons, the impact of this crime is often evaluated in terms of depression (Zvizdic & Butollo, 2001) or post-traumatic stress disorder (PTSD) (Baraković et al., 2013, 2014; Isuru et al., 2019; Quirk &

Casco, 1994). However, according to Adams (2019), there is no consensus among researchers about the symptomatology of relatives of persons who have disappeared due to war or state terrorism.³

At a family level, enforced disappearance causes a breakdown of the family system and a fracture with their pre-disappearance lives (Adams, 2019; Basto & Melo, 2018; Biedermann, 1991; Blaauw & Lähtenmäki, 2002; Cerutti, 2015; Díaz & Madariaga, 1993; Faúndez et al., 2018; Kajtazi-Testa & Hewer, 2018; Kordon & Edelman, 2005; Lira, 2016; Munczek & Tuber, 1998; Tully, 1995).

Many factors could play a role in the disruption of the family system:

- Confusion and contradiction of the double link (believing the disappeared to be alive or assuming their death) that immobilises the response and blocks the reorganisation of the system (Díaz & Madariaga, 1993)
- Perturbation of the everyday routines of families of disappeared persons by the constant searching (Isuru et al., 2019)
- The change of roles among members of the family (Alvis Rizzo et al., 2015; Biedermann, 1991; Cerutti, 2015; Kordon & Edelman, 2005; Robins, 2010)
- The need to reorganise tasks and responsibilities within the family (Díaz & Madariaga, 1993; Faúndez et al., 2018; Lira, 2016)

3 Some authors found the high rate of PTSD among relatives of disappeared persons was similar to the rate for people who have experienced the death of a family member (Heeke et al., 2015). For others, we cannot speak about PTSD for relatives of a disappeared person (Robins, 2010) because PTSD is linked to a specific trauma event, whereas in the context of enforced disappearance, the anxiety expressed by families is about the disappeared person rather than the event of their disappearance.

- Economic, legal, and social problems (Adams, 2019; Hollander, 2016; Zvizdic & Butollo, 2001).

Because of the ambiguous situation for relatives, as well as the sorrow and the fear they experience, communication could be troubled within and outside the family system. No single type of communication was observed, although silence seems to prevail (Brinkmann et al., 2009; Haq, 2020; Hofmeister & Navarro, 2017; Kordon & Edelman, 2007; Kordon et al., 2011).

Enforced disappearance also has a major impact on a social level (Basto & Melo, 2018; Díaz Facio, 2008; Hamid et al., 2021; Pelento, 2009). It always “affects the population as a whole; everyone is threatened and tyrannized by the terror those in power exert” (Preitler, 2015, p. 79). Because of the mystery and the ambiguity, families of disappeared persons can be seen as dangerous, leading to a breakup of social relationships (Pelento, 2009). Families feel isolated and social bonds are disrupted (Blair, 2018). All this leads to deterioration and fraying of the social fabric (García de Vilagrán, 2004). Hence, families have an ambiguous status in society (Hamid et al., 2021).

What factors could influence the impact of enforced disappearance on relatives?

Figure 2 is a synthesis of major features implicated in enforced disappearance and the impact on the relatives. However, it is important to remember that the repercussions of enforced disappearance of a loved one are always unique for each person affected (Sánchez et al., 2020), and they depend on several factors.

Following our literature review, eight factors are highlighted:

1. The age of the relative when the disappearance took place (Baraković et al., 2014; Edelman & Kordon, 2006)
2. Inner-psychological factors such as personality and past experiences (Preitler, 2015)
3. The number of traumatic events experienced, especially in the context of state violence (Adams, 2019; Baraković et al., 2014; Bekerman et al., 2009; Blaauw & Lähteenmäki, 2002; Blair, 2018; Busch & Robaina, 2006; Cerutti, 2015; Edelman & Kordon, 2006; Lenferink et al., 2017; Preitler, 2015)
4. The relationship bond with the deceased and identification (Adams, 2019; Baraković et al., 2013; Busch & Robaina, 2006; Edelman & Kordon, 2006; Haq, 2020; Powell et al., 2010; Preitler, 2015)
5. The role disappeared person played in the lives of the victim’s relatives: affective, economic, spiritual, or political (Blair, 2018)
6. Whether the body is returned. Without the restitution of the body, some authors observed an accentuation of depression and symptoms of prolonged grief disorder (Isuru et al., 2019)
7. The belief and hope that the disappeared person is still alive. Higher psychological comorbidity is observed in people believing they will find their loved ones still alive (Heeke et al., 2015; Isuru et al., 2019)
- h. The culture and the social context (Preitler, 2015; Zia, 2016)

The grieving process among relatives of disappeared persons in the context of Latin American dictatorships

In this section, we focus on the grieving process of families of disappeared persons in the context of Latin American dictatorships, which is a paradigmatic case of enforced disappearance, according to the ED Convention’s definition. It allows us to explore the spe-

cificities of the social, political, and historical context in which enforced disappearance took place. Many authors agree that enforced disappearance undermines the grieving process.

How is grief defined in the literature in the context of enforced disappearance?

Exploring the grieving process, we faced a difficulty: all the quantitative studies identified as assessing grief among relatives of disappeared persons used diagnoses (Heeke et al., 2015; Isuru et al., 2019; Pérez-Sales et al., 2000; Powell et al., 2010), such as prolonged grief disorder (Prigerson et al., 2009) and persistent complex bereavement disorder (American Psychiatric Association, 2013). More than one diagnosis was used to assess this type of grief. Some authors also used the

term of *complicated grief* to define the grieving process of this population. However, according to Jordan and Litz (2014) and Lenferink et al. (2019), complicated grief is often defined, conceptualised, and measured in different ways. The term *complicated grief* has been progressively substituted with *prolonged grief disorder*. In studies, prolonged grief disorder is used as a definition as well as a diagnosis to evaluate this type of grief. A third diagnostic concept was introduced in the *DSM-5: persistent complex bereavement disorder*. According to Maciejewski et al. (2016), there appears to be a compromise between *prolonged* and *complicated* grief.

All of these diagnoses were based on a confirmed death to evaluate grief among families, whereas enforced disappearance is precisely

Table 2. Terms used in the qualitative literature to qualify grief among families of disappeared persons

Dimension	Term used	Authors
Temporal dimension	Special grief	Braun & Pelento, 1989; Kijak & Pelento, 1986; Pelento, 2009
	Frozen/delayed grief [<i>duelo congelado</i>] ¹	Díaz & Madariaga, 1993
	Prolonged grief [<i>duelo prolongado</i>]	Kordon & Edelman, 2002
	Endless grief [<i>duelo interminable</i>]	Portillo, Guilis & Noailles, 2007
	Suspended grief [<i>duelo suspendido</i>]	Bekerman et al., 2009
Outcome possibility	Possible grief [<i>duelo posible</i>]	Díaz Facio, 2008
	Impossible grief [<i>duelo imposible</i>]	Féres-Carneiro & Da Silva, 2010
Psychological Impact	Traumatic grief [<i>duelo traumático</i>]	Castillo, 2013
	Enigmatic grief	Taiana, 2014
	Denied grief [<i>duelo negado</i>]	Lira, 2016

1 The terms in italics are the translations from Spanish proposed by the authors of this paper. The original terms are written in square brackets.

Table 3. Terms and criteria used in the literature to define grief among relatives of disappeared persons

Criteria's Dimension	Criteria	Terminology of the grieving process													
		Special grief	Prolonged grief	Possible grief	Impossible grief	Traumatic grief	Enigmatic grief	Frozen grief	Endless grief	Suspended grief	Denied grief				
Factual elements	Absence of body														
	Lack of information														
	Consideration of the social context														
	Lack of recognition and impunity														
	Deprivation of funeral rites														
Specificities of the loss	Consideration of the traumatic circumstances														
	Ambiguity of the loss														
	Absence of reality test														
	Social isolation														
Psychological Impact	Extension in time/ reactivation														
	Feelings of guilt														
	Feelings of helplessness														
	Feelings of hate														
	Idealization of the disappeared person														
Psychopathological symptoms															

characterised by the uncertainty of the death. The confusion about the terminology and the conceptualisation of this form of grief makes us wonder whether authors are exploring the same phenomenon.

Additionally, some authors are concerned about the risk of over-pathologising this form of grief: in their view, the circumstances in which enforced disappearance takes place are pathological and not the reactions of families to the loss of their loved one (Hollander, 2016); therefore, classifying this population based on diagnoses could be problematic (Hollander, 2016; Pérez-Sales et al., 2000). For these reasons, we decided not to consider studies working with diagnoses based on a confirmed death to take into account the context in which enforced disappearance takes place.

Therefore, we focused on the qualitative literature because we estimated that it is more consistent with the specificities of ambiguous loss that characterises enforced disappearance. The grieving process is mostly described by psychologists and psychiatrists, who directly work with relatives of disappeared persons. Among qualitative studies exploring grief among families of disappeared persons in the context of state violence, the wide range of qualifying adjectives used to refer to this form of grief is impressive. As you can see in Table 2, we decided to classify them according to the dimension to which they refer: an indication of time, an outcome possibility of the grieving process, and finally, the mention of a psychological impact.

Behind this extensive terminology, are the authors aligned on the topics? Do they conceptualise grief among the relatives of disappeared persons in the same way?

To answer these questions, we looked for the criteria authors used in defining this form of grief. Table 3 illustrates the criteria used by the authors we took into consideration. It

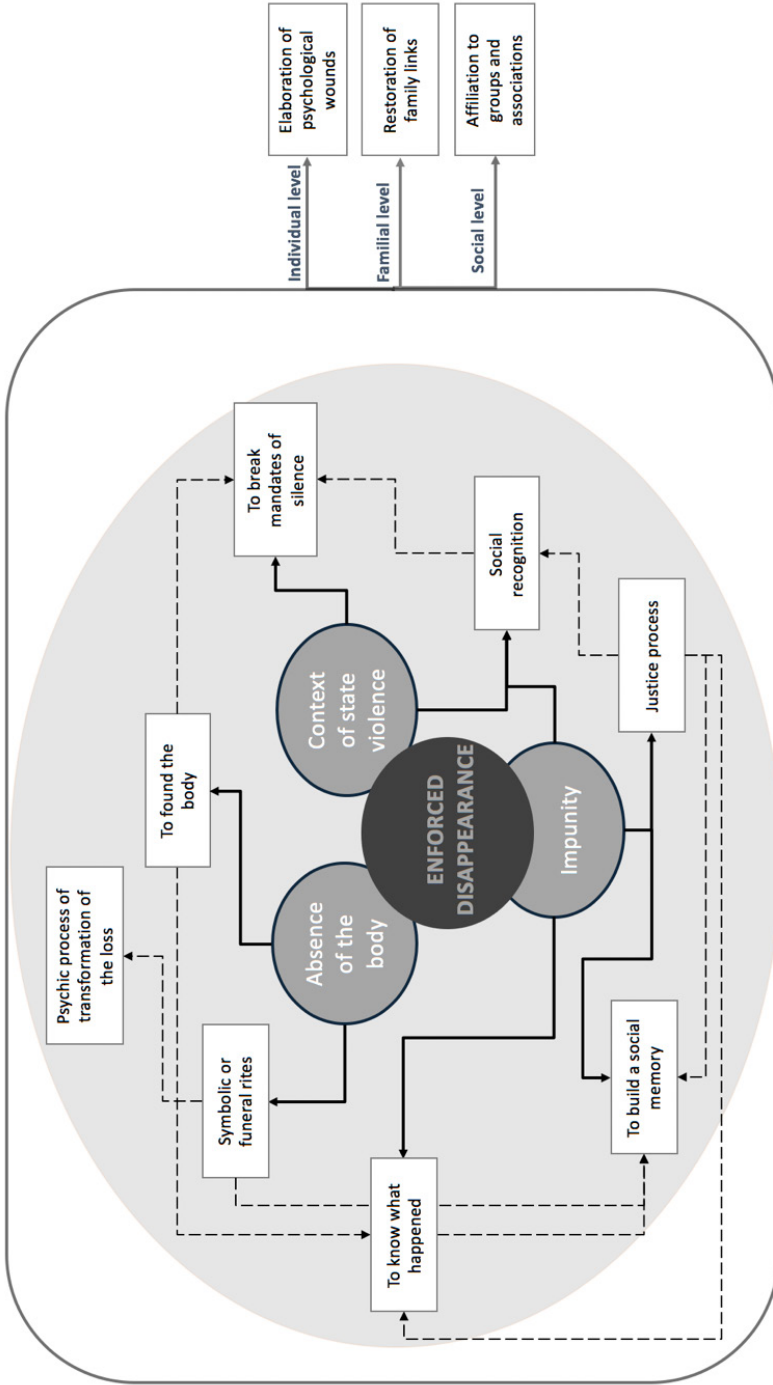
aims to compare similarities and differences between them.

We observed that all of these criteria are related to three dimensions:

1. Factual elements: absence of body, lack of information, consideration of social context and traumatic circumstances surrounding the loss, lack of recognition and impunity, deprivation of funeral rites
2. Specificities of the loss: ambiguity of the loss, absence of reality test
3. Psycho-social impact: extension in time/reactivation of hope and pain, social isolation, idealization of disappeared persons and feelings of guilt, helplessness and hate, psychopathological symptoms (e.g., anxiety and depressive symptoms).

The criteria used in the literature to define the grieving process of families demonstrate that many factors could play a role in the process of coping with this particular loss. As a result, even if the terminology employed by the authors varies, they seem to consider the same characteristics when defining grief. The features characterising enforced disappearance in the historical and political context that we are interested in (Figure 2) are similar to those that could complexify the grieving process. Nevertheless, a new dimension is highlighted to describe the impact on relatives: prolongation in time and risk of reactivation. Without the confirmation of death, any new information could likely reactivate hope and pain (Bekerman et al., 2009; Braun & Pelento, 1989; Castillo, 2013; Díaz & Madariaga, 1993; Díaz Facio, 2008; Féres-Carneiro & Da Silva, 2010; Kordon & Edelman, 2002; Lira, 2016; Pelento, 2009; Portillo, Guilis, & Noailles, 2007; Taiana, 2014). This temporal aspect will be discussed further in this article.

Figure 3. Conditions supporting the grieving process among relatives of disappeared persons



Which conditions could support the grieving process among families of disappeared persons? After having presented a list of aspects of enforced disappearance affecting the grieving process, we will now focus on the findings of our literature review concerning conditions that could support this process among relatives. Figure 3 illustrates these conditions according to the three main features of enforced disappearance.

Many authors point out that knowing the truth of what happened to the disappeared person (Braun & Pelento, 1989) and finding the body could help families to find closure (Castillo, 2013; Cerutti, 2015; Rojas-Perez, 2013). Funeral and symbolic rites are identified as factors that support the grieving process (Braun & Pelento, 1989; Castillo, 2013; Díaz Facio, 2008). Sites of exhumation can become places of commemoration (Rojas-Perez, 2013) and play a role in the reparation process; however, practices of exhumation must follow a standard of quality to respect families and their dignity (Navarro-García et al., 2010).

Being part of associations of victims could restore the social recognition of the crime and the victims and therefore support the grieving process (Braun & Pelento, 1989; Castillo, 2013; Díaz Facio, 2008; Portillo et al., 2007). Additionally, breaking the wall of silence imposed by the state could help families, as was the case in Argentina for the Mothers of the Plaza de Mayo (Thornton, 2000).

Some authors affirm that the construction of a social memory, recognising victims and culprits, could enable families to better cope with the loss (Castillo, 2013; Portillo et al., 2007). In that regard, the process of justice and the fight against impunity could be a key factor in the way families cope with the loss (Castillo, 2013; Díaz Facio, 2008; Lira, 2016; Portillo et al., 2007; Rojas-Perez, 2013). At a

family level, some authors consider that restoring family links (Alvis Rizzo et al., 2015) and breaking the mandates of silence within the family (Kordon et al., 2011) will support the grieving process. At an individual level, the psychic process of transformation of the missing object (Díaz Facio, 2008), as well as the elaboration of psychic wounds (Portillo et al., 2007), would allow families to process the loss. Finally, according to these authors, finding a meaning associated with their loss could help people to grieve and to cope, despite the ambiguity of the situation.

Discussion

Exploring the impact of enforced disappearance on relatives allows us to define the main features implicated in this complex phenomenon and their interconnection: the context of state violence, absence of body, and impunity. In these circumstances, how can relatives grieve their disappeared person? To answer this question, a narrative literature review has been conducted.

In this article, we decided not to consider quantitative studies that use diagnoses to assess the grieving process among relatives of disappeared persons because diagnoses are based on a confirmed death, which is not the case in the context of enforced disappearance. This finding led us to explore the ways authors in qualitative and clinical research define this type of grief. In our view, the qualitative literature has the merit of emphasizing the uncertainty of death, which represents an important particularity of enforced disappearance, but also the circumstances in which this crime takes place. As shown in Table 3, more than one dimension should be considered to understand this form of grief.

To our knowledge, we are the first to collect all the terms used to qualify this form of grief through literature focused on the context of

Latin American dictatorships. That multiple terminologies are used testifies to the challenge of apprehending the specificity of this type of mourning. However, deeper analysis shows that authors use similar characteristics in defining grief (Table 3). Moreover, authors who speak of the grieving process among families of disappeared persons refer to the main features of enforced disappearance (Figure 2). An additional dimension is highlighted to describe the grieving process: prolongation in time and risk of reactivation. This aspect is not mentioned in publications concerning the global impact of enforced disappearance on relatives. In our view, adding the temporal dimension allows us to understand the grieving process in the context of state violence.⁴ In this case, enforced disappearance often results in impunity even after the recovery of democracy. Ambiguity is a strong feature: time does not cancel it and impunity seems to exacerbate it. Relatives of a disappeared person are confronted with this second denial and still have to manage the hope that their loved one will come back one day. As Petrou (2016) claims, disappearance is an *absence* more than a loss because of the permanence of hope and ambiguity. Without proof and real recognition (legal, social, and political), families are condemned to live with uncertainty. The transgenerational impact needs to be considered.

4 When we speak about “context of state violence”, it is linked to the ED Convention’s definition of enforced disappearance (2006): These crimes are committed by agents of “the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State” (Article 2). This definition raises the question of situations in civil war where both parties use enforced disappearance as a weapon. The plural political situations point out the limitation of this definition and the complexity of this phenomenon. This issue needs further research.

Believing that the disappeared person is dead could imply for relatives that they accept the reality claimed by the state and therefore release the state of its duty to recognize its actions. Moreover, families could perceive resolving the grief and finding closure as betraying the disappeared, as abandoning their loved one (Braun & Pelento, 1989; Robins, 2010). As Rousseaux (2001) asserts, if the crime stays unpunished in legal terms, grieving could be perceived by relatives as forgetting the loved one. Enforced disappearance shakes the foundations of our representations of life and death, the body, and existence (Gatti & Peris Blanes, 2021). We agree with Haq (2020) that the political dimension of the grieving has to be considered: “The mourners reclaim their attachment with the missing as a form of political protest” (p. 110). Mourning always has an individual and a collective dimension. This process is not only intimate, but it also involves a collective memory process, whose stakes are political (Dutermé, 2021).

In the case of enforced disappearance, the families face a plurality of loss. According to Kajtazi-Testa and Hewer (2018), they have to grieve twice: not only for the physical loss of the person but also for the loss of the body over which to grieve (Edkins, 2011). Additionally, the disappeared person could represent many important aspects of life, such as an ideal of freedom, love, and trust; therefore, grieving involves not only losing a loved one, but also all the values that this person represented (Escalante et al., 2014). In *Mourning and Melancholy*, Freud (1915) points out that grief corresponds not only to the loss of a person, but also to the loss of one’s country, of liberty, or of an ideal. In this situation, we consider that these families have not only to grieve for the person and the body, but also for their ideals and for their institutions. Guardians of fundamental prohibitions, institutions

have failed in protecting citizens from death and torture as well as in ensuring the right to access justice.

It appears essential to think about the socio-political and socio-historical dimension in which this type of collective trauma is inscribed, as suggested by other authors (Betelheim, 1943; Faúndez & Cornejo, 2010). In our reflection, two concepts are interesting: Martín-Baró (1989) concept of psycho-social trauma [*trauma psicosocial*] and Puget et al. (1989) concept of psychic and social catastrophe. These two concepts allow us to highlight the social origin of the trauma and to consider its repercussions not only on the psyche of the direct victim (i.e., the relatives), but also on social links, groups, and society, as well as across generations. Hence, the concepts of loss and grief in the context of this crime could merit deeper investigation, even decades after the events.

Limitations

By having chosen to summarise the work of many authors, we have lost part of the specificities of each author's approach and the details of the psychological processes at stake in this phenomenon. The narrative literature review is mainly descriptive and could be incomplete; for this reason, it would be interesting to make a systematic review to explore which inclusion or exclusion criteria is the most relevant in this topic. The pertinence of regarding studies from various fields (e.g., clinical psychology, human rights, social psychology, and sociology) can be questioned. Nevertheless, considering that our research subject is still little studied, this method allows us to have an overview of this topic and to explore the similarities and differences between these fields. Another limitation is that we considered studies with different methodologies: qualitative, quantitative, mixed, and clinical,

as well as reports from associations and governments. It was a choice to seek a global view on this issue. We gain in terms of relevance and depth of the review, which can be useful for future research.

To explore the grieving process among relatives of disappeared persons in the context of state violence, we focused on clinical and qualitative studies because of the small number of studies based on a standardized questionnaire and involving large cohorts of relatives. Such studies failed in shedding light on the question of the global and specific impact on relatives of a disappeared person. Diagnosis is a major issue because it leads to the recognition (social, administrative) of the victim status of the relatives of a disappeared person. Nevertheless, we question the use of diagnoses without considering all the internal and external characteristics of the sufferer. In this sense, we wonder whether it would be necessary to create a new diagnosis incorporating the specificity of unconfirmed death. It would be interesting to develop new clinical tools of analyses and a questionnaire to understand this complex process better and to support families properly in coping with this type of loss. Enforced disappearance is not only an unconfirmed death (e.g., an accident or airplane crash) but also a crime committed by other people in a context of state violence: The diagnostic tools should consider the ambiguity of the loss due to the unconfirmed death and the traumatic circumstances in which enforced disappearance takes place.

This review shows us the confusion in the literature between the terms of *disappearance* and *enforced disappearance*. Further analyses would be necessary to improve the understanding of the differences between socio-political contexts in which disappearance happens. Moreover, the incidence of the context in which the studies are produced

needs to be further considered. How does the evolution of legislation and conventions influence the way relatives of a disappeared person cope with the loss? In that regard, we agree with Robins (2016) and Rojas-Perez (2013) concerning the importance of allowing families of disappeared persons the chance to describe their experience in their own words, to find meaning, and to become the authors of their story in the proper way.⁵ To establish the terminology used to define the grief of relatives in a context of state violence, we considered only studies referring to the Latin American dictatorships; it would be interesting to broaden the study to other countries that have experienced state violence. Moreover, studies comparing the impact of enforced disappearance on families in the context of state and non-state violence would be relevant to improving the understanding of the features implied in this phenomenon. Finally, longitudinal studies evaluating the impact of enforced disappearance on families many years after the event could give us a better understanding of the grieving process: to what extent could time have a role in the way families cope with this peculiar loss?

Conclusion

We have tried to highlight the complexity of such a political crime, which has an impact at an individual, familial, and social level. We point out some of the features that might play a role in the grieving process of families of enforced disappearance victims in the context of Latin American dictatorships. The literature clearly shows the political, social, and legal issues of enforced disappearance

with which relatives of a disappeared person are endlessly confronted. In this context, the relationship to temporality is unique: in fact, relatives are condemned to an eternally provisional status due to the uncertainty, which is exacerbated by impunity. This suspends the grieving process, which confers an equally singular status on relatives. Indeed, the progress toward a modern society has historically meant establishing a border between the world of the dead and that of the living. However, in the case of enforced disappearance, all these benchmarks collapse, which undermines social cohesion. It dehumanises both the disappeared and their loved ones, making this crime a permanent torture.

Even when influenced by the social environment, the grieving process is an intimate process, and a generalisation could never completely explain what people really feel about their loss and how they cope. Our reflections are a humble attempt to understand this complex phenomenon.

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5 It is an objective of our research, which is based on narrative interviews of families of disappeared persons from Latin American countries who are now living in Switzerland.

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The aftermath of forced disappearance and concealment: a qualitative study with families in Paine, Chile

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Key points of interest

- The first-person experience of the relatives of the disappeared makes it possible to account for the subjective and collective dimension of forensic identification.
- Intergenerational relationships are key to studying the impact of forced disappearance.
- Concealment contributes to understanding the enduring intergenerational effects of political repression..

Abstract

Introduction: The forced disappearance of peasants in the commune of Paine, Chile, dates back to the first months after the coup d'état in 1973. Ten years ago, a judicial investigation revealed the location of a mass grave that led to the identification of detainees who had disappeared; eleven using genetic

methods, along with another five recognized based on forensic archaeological evidence. Our main objective is to give an account of the consequences of the forced disappearance and concealment in three generations of relatives of disappeared detainees.

Methods: A qualitative case study was conducted between 2014 and 2015, with a total of nineteen interviewees across three generations, belonging to six families in Paine. Semi-structured interviews were conducted, with two to three sessions per interviewee and three focus groups, one for each generation.

Results: There are differences in the way the three generations deal with disappearance and attribute meaning to bone remains. Whereas in the first, generation the »duty to recognize« is prominent, in the second, what dominates is silence, and in the third, the processes of collective grief. In the experiences of intergenerational dialogue, spaces of memory have come to the fore. At last, one of the outstanding results of this investigation has been to give an account of the social experience of forensic identification.

Conclusions: Forced disappearance and the operation of concealment straddle trans-generational effects, among which, voids of representation, silences, and the installation of doubt over the certainty of death stand out. The third generation questions the silences of their predecessors and creates the conditions for intergenerational dialogue, which is expressed

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particularly through collective commemoration rituals. Through DNA analysis, science offers the statistical evidence of forensic identification, but the decision remains in the individual jurisdiction of each family member.

Keywords: Forced disappearance, body remains, exhumation, forensic genetics, intergenerational relations, Chile.

Introduction

This investigation arises from a clinical space - an external unit in a public hospital - dedicated to the care of people who have been recognized as victims of human rights violations by truth commissions in Chile. This space is called PRAIS - an acronym for Program of Reparation and Integral Attention in Health and Human Rights. It is implemented in all the Health Services of the country, "PRAIS Sur" is the corresponding team of the Southern Metropolitan Health Service (SMHS). It covers eleven communes in the southern area of Santiago, including Paine. The authors, who were part of this team, accompanied the families of the disappeared detainees in Paine at different stages linked to the judicial case known as the *Paine Case*.¹

The investigation seeks to understand the experience of family members during the process of bone-remains identification, carried out following the discovery of a mass grave in which eleven people were identified. They belong to a population of seventy men arrested, executed, and disappeared between September and November 1973 in the commune of Paine

(Table 1). Locating the grave, more than 140 km from the place of detention, represents a significant stage in a long and exhausting search, denunciation, and judicial process. Although family members have participated in each of the judicial proceedings relating to the *Paine case*, the overall perception is that they have suffered from a lack of planning in the medical-legal expertise. The support received from professionals from various public institutions and NGOs has been more affective than technical. One of the most strongly associated factors in the search for the truth has been the late revelation of errors in the process of identifying the missing persons identified after the exhumation of the mass grave in *Patio 29* of the General Cemetery between 1993 and 2002 (Bustamante & Ruderer, 2009).

The forensic work in Chile² in recent years has allowed the identification of a group of disappeared detainees from biological (bone remains) and cultural evidence (cultural remains³) (Table 1). In this paper, we present a summary of our research, giving priority to the main consequences of forced disappearance and concealment as this is experienced by the families and focusing in the trans-gen-

1 Caso Paine is the name of the judicial process Causa Rol N°4-2002, initiated in 2002 and based in the Court of Appeals of San Miguel, Santiago. The information systematized by the National Institute of Human Rights is available at <http://www.indh.cl/>

2 For a review of the main background to the work of forensic anthropology and archaeology in the investigation of crimes against humanity in Chile, see: Padilla (1995); Jensen and Cáceres (1995); Madariaga and Brinkmann (2006); Padilla and Reveco (2006); Cáceres (2011); Garrido and Intriago (2012); Intriago, Stockins and Garrido (2015); and Intriago, Uribe and Garrido (2020). For a critical approach see Wyndham and Read (2010); Rosenblatt (2015); and Wagner and Rosenblatt (2017).

3 The cultural remains correspond to personal objects or fragments of them that are recovered in the forensic archaeological work. A description of this work in the mass grave exhumed in Fundo Los Quillayes, including textile fragments discovered in it, can be found in Intriago, Stockins and Garrido (2015).

Table 1. Disappeared detainees and politically executed in Chile and the identification process

	Disappeared Detainees (DD)	Politically Executed	Total	Disappeared Detainees identified ¹	Source
Chile	1109	2118	3337	176	Rettig, CNRR, Valech 2, SML
Patio 29	126	-	126	76 ²	SML
Paine	36	34	70	11 ³	INDH
Paine & Patio 29	11	1	12	3 ⁴	Rettig, SML, INDH

Authors' own work. Sources: CNRR (Comisión Nacional de Reparación y Reconciliación, 1996); INDH (Instituto Nacional de Derechos Humanos, 2016); Rettig (Comisión Nacional de Verdad y Reconciliación, 1991); SML (Servicio Médico Legal, 2021); Valech 2 (Comisión Asesora Presidencial para la Calificación de Detenidos Desaparecidos, Ejecutados Políticos y Víctimas de Prisión, Política y Tortura, 2011)

- 1) Information corresponds to DD identified in Chile; another 9 DD have been identified in Argentina by EAAF.
- 2) Includes three identified persons not qualified by truth commissions.
- 3) Other 5 DD were identified from cultural evidence (Corte de San Miguel, 2019)
- 4) Of the 5 DD identified by cultural evidence cited in the previous note, 2 of them are also part of the cases linked to Patio 29.

erational effects. It should be noted that in the study we addressed three specific objectives: grief elaboration, trans-generational effects, and social disaffiliation of families, but in this research paper we only deal with second one.

The analysis has focused on the new “turn” in the field of human rights and transitional justice in recent years: the forensic turn in the investigation of genocide and crimes against humanity.⁴ Following Wagner and Kešetović

(2016), we are interested in addressing the social experience, both subjective and collective, of relatives of disappeared detainees confronted with forensic evidence.

The commune of Paine is located 42 kilometres south of Santiago and maintains its rural character to this day. Most of the seventy men executed and disappeared under the dictatorship were peasants who had participated in the process of Agrarian Reform in the long 1960s (Maillard & Ochoa, 2014; Weitzel, 2001).

4 Based on the international comparative research programme “Corpses of mass violence and genocide” directed by E. Anstett and J.-M. Dreyfus whose first conference was held in 2013, a series of publications is available from Manchester University Press under the name

Human Remains and Violence, including Anstett and Dreyfus (2015). In addition, a special issue of the journal of the same name, edited by P. Colombo, is dedicated to the forensic turn in Latin America (Colombo, 2016).

Political awareness of the peasant movement in Paine was linked to the processes of unionization, the creation of settlements and land seizures.⁵ The specific repression of the peasantry implied not only the extermination of the main local political actors in the Agrarian Reform, but also a process known as the Agrarian Counter-Reform, which consisted of a radical reconcentration of land into the hands of big landowners and was linked to the legal changes introduced by the Chilean dictatorship (Comisión Nacional de Verdad y Reconciliación, 1991; Verdugo, 1990; Villela, 2019).⁶

Memories of violence are part of the daily sociability of several generations of *paininos* through political graffiti, educational talks, public commemorative spaces and social housing projects. The claim of ‘national’ reconciliation has been opposed to the search for truth and the demand for justice since the early years of the political transition (García-Castro, 2011; Lira & Loveman, 2005; Padilla, 1990). The passing years have sedimented despair and mistrust of the pending justice. An associated phenomenon has been the so-called *biological impunity*, in which the death without criminal sanction of the perpetrators and accomplices, including both civilians and military, is recorded, as well as the death of mothers and wives of the disappeared detainees who saw no compensation

for their lives in struggle (Contreras, 2013; Torres, 2014). It was only at the end of 2019 that the Paine Case was sentenced, in which 13 retired members of the Army and *Carabineros* and one civilian were convicted (Corte de San Miguel, 2019).

Forced disappearance and concealment

The forced disappearance of persons constitutes a genocidal practice used by South American dictatorships (Argentina, Bolivia, Brazil, Chile, Uruguay, and Paraguay), among other crimes classified as crimes against humanity by the Rome Statute (Feierstein, 2014). Although the debate on the concept of genocide has developed much less in Chile than in Argentina (Robben, 2012),⁷ the questioning of wider society (civilians and military, collaborators and accomplices) mobilises a series of reflections on grieving processes that escape the strictly individual dimension (Robben, 2014). In this sense, as the case of Paine shows, the consequences of forced disappearance in various peasant settlements reveal a set of silences that have operated at multiple levels. These silences reveal processes of concealment of the bodies of disappeared persons; of concealment of the crimes by both civilian and military perpetrators through institutional pacts of silence; of rumours and social stigmas about grieving families; and of family silences that operate above all in trans-generational relations.

The *modus operandi* of forced disappearance acquired common characteristics - at least for the cases of Chile, Argentina, and Uruguay - in which there is a selective character of kidnappings and murders and a particu-

5 “Federación de Asentamientos Área Sur” was a Peasant Federation formed in the Southern Area that did not discriminate based on political affiliation. The following Union Federations were included: “Nuevo Horizonte” from Paine, “Estrella” from Buin, and the “Sargento Candelaria” from the Province of Santiago (Peña, 1973).

6 Decree-Law 208 published in December 1973 annulled Agrarian Reform Law. The collective work mode of the settlement was transformed into small family property and dependence on wage labour (Villela, 2019).

7 One of the few references to the term genocide in the Chilean case is found in economist Andre Gunder Frank’s publication in epistolary form addressed to the ideologists of the Chicago School (Frank, 1976).

lar treatment of the bodies of victims of mass crimes (Anstett, 2017, pp. 41-42). According to Anstett, the notion of concealment summarises two relevant actions: the appropriation of victims' bodies and the 'invisibilization' of crimes. In the Chilean case, this concealment was formed through the deployment of an operation called *Retiro de Televisores* in 1978 (Cáceres, 2015). This type of military operation required "logistical support from institutions that were well organized and equipped, such as the army (for the use of telecommunications, means of transport, kidnapping of victims, and treatment of the bodies), along with a rigorous use of secrecy" (Anstett, 2017, p. 43). "*Retiro de Televisores*" was, precisely, a cipher code ("the A-1 Cryptogram") sent from the Commander-in-Chief of the Army to all military divisions to signal the order to exhume and eliminate any trace of the bodies of the disappeared who had previously been buried, either by throwing them into the sea, or by cremating them inside regiments or private enclosures (Cáceres, 2015).

Regarding the arrests of the town of Paine and in the settlements '24 de Abril', 'Nuevo Sendero', and 'El Tránsito', all carried out in the early morning of October 16, 1973⁸, the kidnapping could be reconstructed following the testimony of some defendants in the judicial case. Limited by the references provided, despite certain misleading information, the location of the mass grave was made possible by the discovery of a piece of bone and a leather shoe in 2007 (Corte de San Miguel, 2019). The site of the grave is located in the northern sector of Rapel Lake, in Los Arrayanes Ravine, Fundo Los Quillayes (Intriago et al., 2015). As a consequence of the process we have described as

concealment, forensic analysis allowed the recovery of only "1175 bone elements and 127 dental elements, disarticulated, mixed and eroded, which, according to anthropological, odontological, and genetic analyses, represent at least thirteen people" (Corte de San Miguel, 2019). Among the anthropological studies, it was concluded that "49 elements present fractures compatible with peri-mortem trauma, caused by firearm projectiles, since they present radial, concentric, and bevel fractures that indicate entry or exit holes" (Corte de San Miguel, 2019). In many cases, the genetic analysis involved the destruction of the bone fragment. Finally, in 2010 and 2011, DNA identification of bone remains confirmed the identity of eleven disappeared detainees,⁹ and another five were identified by cultural evidence.¹⁰

The fragmentation of the bodies of the disappeared, the impossibility of reconstructing the skeletons, the displacement of the site of execution to an unpopulated place more than a hundred kilometers away from where the arrest takes place, and the series of military operations aimed at covering up the crime, all give an account of objectives that seek to transform both the physical and symbolic territory. Achille Mbembe (2019) describes that "space was thus the raw material of sovereignty and of the violence it bears within it" (p. 79). Sovereign power, which Mbembe describes as *necropower*, operates over life and death, and territorializes new spatial relations. In the Chilean and Argentinian cases Antonius Robben, also observes that:

8 With the exception of arrests on the previous days, on October 8 and 10, which were part of the repression in Los Quillayes.

9 The genetic analyses were performed at the Institute for Forensic Medicine of the Innsbruck Medical University (Austria) (Cáceres, 2011).

10 Among the personal objects reported in the forensic survey, the presence of an engagement ring, some glasses, and "318 textile fragments, 120 buttons, zipper sliders and metal rivets, and 6 shirt collar structures" stand out (Corte de San Miguel, 2019).

The three principal symbolic meanings of mass graves and anonymous burials mirrored for the Chilean and Argentinian military the Clausewitzian objectives of war: the annihilation of the insurgency and political Left, the reconquest of national territory, and the incapacitation of political agency (Robben 2015, p. 57).

In this territorial dimension of the mass graves, in the field of sovereignty and necropower, is articulated the symbolic dimension of the impunity of the perpetrators and the impossibility of performing funeral rites. Thus, mass graves “functioned to occult massacres, destroy incriminating evidence, prevent martyrdom, and deny the bereaved relatives their mourning and their dead a proper mortuary ritual” (Robben, 2015, p. 57).

Methodology

The qualitative design followed the structure of a case study. From the beginning of the investigation, we had the participation of the relatives of disappeared detainees, thanks to the collaboration of the *Agrupación de Familiares de Detenidos Desaparecidos y Ejecutados de Paine* (Association of Relatives of the Detained Disappeared and Executed of Paine; AFDD-Paine) and the Paine Memorial Corporation. Theoretical sampling was used to ensure both the heterogeneity of the participants (who were not necessarily active members of the group) and the typological representation of some categories in line with the objectives. For the sample typology, it was assumed that each family comprises a group of individuals who maintain relations of consanguinity or alliance with the missing subject. Since in Paine’s case all the disappeared detainees are male, kinship relationships were represented through the following categories:

- Wife: generation 1
- Son or Daughter: generation 2
- Grandson or Granddaughter: generation 3

The participation of one interviewee of at least three generations per family was delimited. In addition to the generational criterion, the typology sought to account for the impact of forensic identification in an intentional way. The selection featured three families that received confirmation of the identification process by the Special Forensic Identification Unit of the Forensic Medical Service and three families where this process has not been completed. At each family we asked to a member of the first generation who suggested and facilitated contact with members of the other generations. The resulting sample size was six families, and nineteen people were interviewed: four men and fifteen women. The composition of the sample is summarised in Table 2, where the gender, relationship, age (for the year 2014 when the interviews are carried out), and in some cases a fictitious name for the location of the interviewees when they are cited in the vignettes, are indicated.

In the first stage of the project, a collection and systematization of archival data was carried out¹¹, as well as a press review on exhumations and the process of genetic identification. The participants signed an informed consent, with the mediation of a Certifying Officer appointed by the director of the Barros Luco General Hospital, in a protocol previously approved by the SMHS Ethics Committee.

11 Among the sources consulted are the Report of the National Commission of Truth and Reconciliation and documentation from the *Fundación de Documentación y Archivo de la Vicaría de la Solidaridad* (Foundation of Documentation and Archives of the Vicariate of Solidarity).

Table 2. Interviewees in the sample design according to generation and identification process.

	Generation 1	Generation 2	Generation 3
Family member identified	Wife (78)	Luisa (daughter, 48)	Grandson (34)
	María (wife, 56) ¹	Daughter (42)	Granddaughter (27)
	Daughter (68)		Carmen (granddaughter, 24)
	Julia (daughter, 56)		
Unidentified family member	Wife (72)	José (son, 43)	Granddaughter (32)
	Wife (70)	Daughter (42)	Granddaughter (23)
	Son (63)	Sisters (55 and 62)	Grandson (20)

1) María was 15 years old at the time of arrest and is also the daughter of a disappeared detainee.

The information collection phase involved eighteen semi-structured interviews (note that one interview involved two sisters), which were recorded and transcribed. In the interviews the central theme was the identification of bone remains as part of a family process of searching for the truth. Each interview was conducted in two to three sessions with an average of sixty-minutes per session. The interviews were conducted between April 2014 and May 2015. The interviewers were the researchers themselves, who each separately had a research assistant. At a later stage, three focus groups (divided by each generation) were held to address the objective of social disaffiliation of families. The focus groups were held between February and July 2015.

The analysis of the information was carried out through a codification of the data from main thematic categories according to the research objectives. The codification and systematization of the data was carried out with the assistance of a qualitative analysis program (MAXqda). The triangulation of the data was carried out between the interviews and the discussion groups, together with the notes and reports. In addition, four sessions were held

by a “technical panel” composed of representatives of the AFDD-Paine, representatives of the AFDD in Santiago, other relatives of disappeared detainees and representatives of the “Martyrs of Paine” group, whose members are the children or grandchildren of disappeared detainees. The aim of the technical round table was to compare the investigation, its progress and results with the critical voice of the population studied through its representatives. In this publication, the SRQR criteria were applied (O’Brien et al., 2014).

Results

The presentation of results has been organized in five interconnected sections where the voices of some participants emerge. The first three sections illustrate how consequences of the disappearance and concealment affect each of the three generations with respect to the search, the meaning attributed to the bone remains, and the recognition process. The last two sections synthesize reflections on inter-generational dialogue and the social experience of forensic identification.

The disappearance question: Where are they?

The banners with the question “*Where are they?*” accompanying the black and white photo of the disappeared have been a symbol of relatives’ demands for truth and justice. This slogan has been present throughout the last forty-seven years, spanning at least three generations. The message is sent to society, vindicating the political position of family members of disappeared persons, and, with time, their presence becomes permanent (García-Castro, 2011). Housed in a small format photograph pinned at chest level, it becomes a signifier of the real disappeared person, that historical subject that is no longer there (Orrego, 2013). The symbolic function of the slogan has been sustained in the unanswered question. Even when partial truths about the concealment and fragmentation of the bodies have been revealed, the question remains: Where are the persons beyond the disappeared bodies? Where are the political subjects who challenged to change the world? For Carmen, when she did not yet know the story behind the banner, she remembers that in creating the mosaic of the Paine Memorial,¹² they set out to reproduce the photograph, reflecting “that is the only thing we have tangibly seen of our grandfather,” writing around it “your face gives us strength”.

The three generations with whom we have carried out the research face the question of *where they are* in a different way. The first generation faces the dilemma of a death without a body, without the possibility of performing the funeral rites (Catela, 1998). Furthermore, this generation has lived constrained by the

dispossession of collective networks of protection and sustenance, that is, the dispossession of land in the agrarian counter-reform, as well as the social practices of stigmatisation and discrimination. Some older children have undertaken a search on their own, collecting and handing over records to investigating judges, with no possibility of carrying out these investigations. Other wives have taken the decision to end the search in order to ensure the economic survival of their family group. The latter has also involved older daughters taking on caretaking responsibilities for their younger siblings.

The second generation grew up under the silence and stigma of being the *hijo de* (“child of”). Most were either very young or had not been born at the time of arrest. This generation perceives itself as “neglected”, since it does not have the testimonial and/or political protagonism of the first generation. This generation has also had to ‘support’ and ‘accompany’ its mothers, but at the same time has not been able to reflect on its own bereavements and has received scarce attention from health teams. José recalls, with regard to the silence:

They were always hiding the subject. My mom... with us, with me she didn't talk about it much. She was always kind of quiet. I always remember her crying, always suffering, always working.

In the third generation, the family silences are challenged by some grandchildren, either in the form of dreams that reveal the truth about the absent grandfather¹³ or in the direct ques-

12 The Paine Memorial is a commemorative space located in the town of Paine where the disappearance of the 70 men is represented through a plaque made by each family based on the mosaic technique.

13 Across generations, the presence of the onerific world has been recounted at critical moments, whether in the relief of the materiality of death, in the enunciation of an ineffable doubt, or as dreams of reunion. In Peru, A. Cecconi (2013)

tioning of the story behind the photograph that is treasured in everyday space. Often, they find the information outside the domestic space, in the same testimonies that their grandmothers have given in interviews with journalists and researchers. Carmen reflects on her relationship with her grandmother:

Before, yes, before, maybe they talked and I remember that journalists came, always came to talk to her, to talk to my great-grandmother and they started to go on the 24th¹⁴ [...]. There she would talk. So I found it strange that she always talked to these people, but when you asked, there weren't many answers. There were more answers like "yes, yes, no, he's been through this", but more monosyllabic, I don't know, like you couldn't find deeper answers like when I read the Callejón de las Viudas [Widows' Alley] book.

Meanings of Bone Remains

Gatti (2014) includes forensic work in the "narrative of meaning" (p. 13), and characterises forensic anthropologists as "modern-day heroes striving to restore meaning where meaning has been erased" (p. 64). From interviewed relatives' view bone remains have dissimilar meanings and are embedded in memories of previous identifications and misidentifications (Wyndham & Read, 2010).

gives an account of the oneiric manifestations that have preceded the exhumations in Peru, in the context of the relationship between the living and the dead in the Andean communities. Pérez-Sales, Bacic and Durán (1998) have also described "dreams of reunion" in relatives of the disappeared in Araucanía.

14 It refers to the place of detention known as El Callejón de las Viudas, formerly the "24 de Abril" settlement.

For the first generation, the bone remains meaning is determined by the long waiting time and search for relatives. The bone remains bear the historical burden of the repression experienced by them and by the missing relatives. This burden is expressed in the individual imperative of closing a process of suffering. The bone remains are a limited and fragile representation of the body and the person of the disappeared. Their recovery helps to generate in relatives the feeling of the end of the search and waiting stage, and allows the elaboration of a place for death, "a place to put flowers". For Maria, who received the identification of her husband, but not that of her father, also disappeared, "the only thing that has changed is that one has a place to leave just one flower", "one thought that one was going to receive the whole skeleton. But you don't."

For the second generation, the bone remains represent the materiality of death. This generation grew up surrounded by stories of detention in which the figure of the father is blurred. This absence can be described more as a void than a loss (Castillo, 2000). The family's fear of causing pain to their children explains the lack of an account of the person who disappeared, in a context of impunity and stigmatisation.

For this generation, the bone remains are the proof of death as a logical end to the story of detention and repression. This evidence not only brings back the disappeared, but also the woman (mother/grandmother) who was absent for many years.

The story of the second generation has been built on the self-sufficiency (self-reliance) and accompaniment role of the first generation, usually without taking over their pending grieving process. In Luisa's case, the grief process was linked to a dream that occurred after the identification process: "then I had the dream that my father said 'we are all

well’, so I said: ‘my father is well, he is happy, my father is not bad’”.

In the case of the third generation, the bone remains are an imprint of the raw, unrelenting violence exerted on the missing person. This generation has had to observe the incomplete mourning and has lived the individual experience of inheriting a fragmented discourse around the disappeared. It inherits a subject dispossessed of everyday and political dimensions, exalted around kindness and innocence in narratives characterized by voids and silences (Rojas, 2009, p. 183). This generation has built itself between the distance of the facts of suffering (detention and repression) and the account of the demand for truth and justice of its predecessors. In this regard, Carmen points out:

(about the grief) is part of an important rite and that if it is not closed it leaves an open process. It is always remembered for the ‘16th of October’ that many of the ladies have died. For example, my grandmother and my great-grandmother died, my grandmother waiting to find her husband and my great-grandmother her son. So, these are processes that do not close, and that leave that wound that makes the silence continue and be maintained; that a discourse cannot be formed, and that history cannot be transmitted; that this is always lived as a personal grief and that it is not seen as at the level of a history that affects the whole family.

The duty to recognize

The families of the disappeared have been confronted at various times in recent history with the possibility of closure of the process both individually and collectively. At an individual and family level, the postponement of projects, the detention of biographical time due to the liminal statute of disappearance

(Regueiro, 2011) have led some relatives to acknowledge the presumed death. At the community and social level, demand is expressed in the inclusion within the community under the identity of “relative of the disappeared” and the stigma that this condition has caused. At the political level, this demand is located in the calls for amnesty for the crimes, as well as the truths agreed upon without justice represented by the narratives of the Truth and Reconciliation Reports (Crenzel, 2009) or the Dialogue Table (Bakiner, 2010)

For the first generation, the “duty to recognize” is an imperative that has been expressed in the recognition of the skeletons (including for those who were first misidentified in the case of *Patio 29*)¹⁵, in the recognition of the bone remains and cultural vestiges, and in the acceptance with objections of the genetic analysis reports. The scientific scene of a skeletal identification is the moment when the truth of the death crystallizes before the relatives. Few images can account for this scene in such a direct and respectful way as those we see in Silvio Caiozzi’s documentary, *Fernando ha vuelto* (1998). In 2006, the same director reported, after the official recognition that the human remains correspond to another disappeared person, that the documentary was still in force as a testimony of an era (Caiozzi, 2006). This is what Ferrándiz (2014) suggests as the “scientific scenography” of the mass

15 In addition to the devastating effects of the “second disappearance” caused by misidentifications, the concealment of information by several governments underwent during the transition to democracy meant that the very institutions that were supposed to ensure the return of the missing family member denied critical reports and continued to employ methods that international experts pointed out as questionable (Bustamante & Ruderer, 2009; Rosenblatt, 2015; Wagner & Rosenblatt, 2017).

grave, by presenting the forensic evidence of the traces of political violence on the body. Unlike the skeleton, to which it is possible to superimpose a photograph on a skull and face image in classical forensic methods, the bone remains are a fragment of a history of concealment, a silent witness to the horror.

The second generation silently contemplates how this duty to recognize is instilled in the family. The third generation questions the positions regarding the duty to recognize of previous generations who have sought to give course to the need to continue life, resolve pain, and process grief. This need for recognition is embedded in a process of collective grief, marked by public funeral rituals and tribute ceremonies with the participation of public officials and political leaders.

The intergenerational dialogue

The possibilities of intergenerational dialogue within families have been limited to some specific circumstances, such as the elaboration of the mosaics that are part of the Paine Memorial or the annual commemorative activity that takes place at the Fundo Los Quillayes every October 16th. Bustamante (2014, p. 287) points out that the mosaics of the Paine Memorial make up a memory device that operates through the remembrance of what has disappeared (the relative), the transmission of historical facts embodied in a particular iconography that provides key data on the history of violence in Paine, and the vindication of the victims' humanity by illustrating their family and work context. Likewise, for Hite (2013, pp. 94-126), the intergenerational elaboration of the Memorial contributes to a post-nostalgic memory thanks to the social and educational work carried out by the grandchildren, the third generation.

However, in our research experience we have found that the Memorial has not been

appropriated by generations of children and grandchildren of the disappeared, except for those directly involved in the management of this site of conscience. The interviewees remember with emotion the instance of collective elaboration of the mosaic, but this commemorative work has not been prolonged in a continuous use of space. Nevertheless, the work of memory that has been carried out since the management of the Memorial has allowed for the socialization of the memory of the disappearance through workshops and guided visits to students of the commune. We consider that this lack of appropriation of the space by the families reflects the difficulties in breaking the family silences sustained for decades, as well as the frustration, distrust, and anger generated by the impunity and the coexistence with the civil perpetrators.

On the other hand, the ravine in the Fundo Los Quillayes condenses the scene of the execution of the detainees on the morning of October 16, 1973. After the discovery of the clandestine grave, an annual commemoration is held in which the AFDD-Paine and, in recent years, the *Agrupación de Derechos Humanos Mártires de Paine* (Martyrs of Paine Human Rights Association), created by the grandchildren of disappeared persons in Paine, participate. The trip from Paine to both the place of memory and the commemorative event held in the open space beside the ravine, have a profound meaning for the families who come there year after year. There, families whose relatives have been identified by the bone or cultural evidence found in the mass grave, as well as those who have not, come together. The relevance of the site of Los Quillayes is associated to the fact of knowing, in the words of Julia, that "it is the last place where they were alive, in that place they were shot, and their blood was consumed in that land".

The social experience of forensic identification

The social experience of forensic identification has generated unprecedented socio-cultural responses in the collective elaboration of grief (Robin-Azevedo, 2015, p. 77). In Chile, since the discovery of the mass grave in the *Hornos de Lonquén* in 1978, the appearance of skeletons has contributed to the hope of finding the bodies of the disappeared, while at the same time it has triggered the beginning of the operation of concealment (Cáceres, 2011). In the words of Calveiro (1998), it is a two-pronged form of power that conceals and makes disappear, but at the same time leaves evidence of the ‘open secret’ of horror. In this way, those disappeared who challenge the world with their tales of terror direct the exemplary message of what can “happen again, we must know how to behave”. In Paine, this situation has been re-edited with the most recent social conflicts. For example, during the “truckers’ strike” in 2015, the possibility of “returning to 73” was symbolically installed.

With the passage of time, the possibility of finding bodies decreases, and so does the possibility of finding them as ‘bodies’. The most real possibility is to find ‘remains’; fragments that not only evidence deterioration over time and the conditions of burial, but also evidence the cruelty of the perpetrators who, after arrest and murder, return in their own footsteps and the traces of their crimes disappear.

The policy of concealment developed by the dictatorship, added to errors of identification in the case of Patio 29 in the midst of political transition, disqualified the recognition of the other by the gaze (traditional forensic methods). The certainty created by the participation of families in the recognition of skeletons must have given way to a search through genetic identification. The DNA method allows the family member to

accept or reject the authorised word of the forensic expert. This is how the relatives were placed in the complex position of ‘having to decide the death of the other’¹⁶. Doubt is instilled in the decision to trust the discourse of science and authority. It is no longer the subject himself who ascertains the death, but he must believe in the word of the expert. It is a cognitive operation that reconstructs the materiality of the rest with the identity of the disappeared person in whose interstices doubt slips (Gatti, 2008; Robin-Azevedo, 2015, p. 85). In the face of this doubt, cultural remains, such as the “sole of a shoe”, take on greater relevance than the DNA analysis report itself. This report is questioned on its degree of reliability: “can you tell me that it is one hundred percent?”, to which forensic science responds with “a percentage of 99.95” (Wagner, 2008, p. 115). Except for the glasses recovered few objects have “returned home” (Bustamante, 2014). However, the story they evoke allows us to reconstruct traces of significant family memories based on the recognition of a piece of trousers, a particular form of belt loop, or the handcrafted making of an *ojota*¹⁷.

Conclusions

Forced disappearance and the operation of concealment straddle trans-generational effects. Necropolitics translates at the local

16 Wagner and Kešetović point out that the official identification process of missing persons from Srebrenica requires the acceptance of identification by a designated next of kin. Since in the described case the finding of bone remains in different secondary graves could occur, it used to happen that some families postponed the decision in the hope of finding additional remains (2016, p. 47)

17 Sandal used by the peasant class, with a tire sole and leather straps. Its name derives from the Quechua term *usuta* (Pacheco, 2000).

level as a stigmatised family history, and to the mobilisation of the generation of wives and older children towards public denunciation, registering the pending grief as a private phenomenon.

Inwardly, family relationships do not transmit an integrating story but rather what stands out is the void of representation and the intergenerational silences. The second generation, due to its proximity to the origin of the facts, can be considered as traumatised just like the first generation. And although it has been accompanied by mental health professionals, his enduring silence suggests further studies on this issue.

The third generation tries to recover the history of the grandparents from a position that questions the necropower and questions the silences of the first and second generation. The social memory is reworked based on the possibility of an intergenerational dialogue that is sustained, among other mechanisms, by collective rituals of commemoration. Among them, the visit to Fundo Los Quillayes' ravine every October 16th stands out, summoning all the families, not only those who received a genetic identification.

Another trans-generational effect of concealment is the installation of the doubt of the certainty of death. Science, through DNA, provides the statistical evidence, but the decision remains in the individual jurisdiction of each family member. As Wagner and Kešetović (2016) point out, the participation of families in the forensic process is key to achieving identification. However, the experience of errors in identification of the bodies exhumed from *Patio 29* still undermines confidence in Paine's families. The judicial conviction has come unfortunately too late for many family members, mainly wives and mothers already dead. Nevertheless, the social experience of forensic identification has mobilised collec-

tive grieving efforts and the voices of the new generations augur well for a *relay* in the lives of the struggle.

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Supplementary material

Spanish version of this paper is available in the Torture Journal website: <https://tidsskrift.dk/torture-journal/issue/archive>

Who are they to say? Experiences and recognition of victimhood of enforced disappearance in Colombia and El Salvador

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Key findings

- Political and social constructions of victimhood may facilitate or hinder the struggle for recognition of victims of ED. A lack of recognition, due to legal and institutional obstacles and the psycho-social challenges these create and/or exacerbate, generates additional injustice for ED victims.
- Recognition constitutes a significant and multifaceted process essential for the provision of effective redress to ED victims and in addressing the inhumane or degrading treatment / torture that they continue to suffer

Abstract

Introduction: Enforced disappearance (ED) entails a complex experience of victimhood for the family and friends of the disappeared who are in search of answers about the fate or whereabouts of their loved ones. Their victimhood stems from the suffering of not knowing, which is understood in psycho-social scholarship as amounting to ambiguous loss and in jurisprudence as a violation of the prohibition of inhumane or degrading treatment. It also stems from the community-pervading fear instilled by ED and the social stigmatization that these victims often face. For victims, the social and political recognition of the harms to which they have been subjected is of great significance, especially because ED is committed with the involvement of the state.

Method: Starting from scholarship on the significance of victimhood recognition for victims on the one hand, and the legal framework for ED on the other hand, this article addresses the remaining gap regarding the interactions of these two viewpoints. It is based on a multi-disciplinary analysis focusing on the experiences of interviewed victims and search actors against the backdrop of the development of the legal landscape addressing ED in Colombia and El Salvador.

Results: Victims interviewed in this study describe having faced most often a lack of recognition due to the legal and institutional

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obstacles, as well as the social stigmatisation they experienced. Meaningful forms of recognition, particularly public and official ones beyond the legal realm, were highlighted as pathways which can help to restore victims' sense of dignity and reintegrate them into the social and political community.

Conclusions: This analysis offers a valuable insight into victims' agency in pursuing their rights, as well as how political and social constructions of ED victimhood can both facilitate, and hinder victims' struggles for truth and justice.

Keywords: enforced disappearances, victimhood, recognition, Colombia, El Salvador

Introduction

"Victimhood" of enforced disappearance

The destructive nature of enforced disappearance (ED) affects not just the disappeared¹, but extends to their family, friends, and community (pursuant to Art. 24 para.1 International Convention for the Protection of all Persons from ED (ICPED)). Coined by Boss (2004) as a sense of "ambiguous loss", the effect of ED on the loved ones creates one of the most taxing forms of loss (Robins, 2013). The undetermined nature of the fate and/or whereabouts of victims of ED amounts to a violation of the prohibition of torture, inhumane or degrading treatment, which prevents the family and friends of the disappeared from entering into the psychological and social healing process associated with coming to terms with their pain (Fulton, 2014; Boss, 2004). The all-encompassing, constant, and

seemingly unending nature of the suffering endured by family and friends is understood as the primary cause for their victimhood (Fulton, 2014). Their own suffering starts following the disappearance, which marks the beginning of their identity as victims (Adams, 2019).

As a tool of state suppression, perpetuating fear is one of the main aims of ED (Dulitzky, 2019; Kovras, 2017). ED not only affects those who personally knew or were acquainted with the disappeared. Fearful that further EDs may occur, individuals often choose distance from the family and friends of a disappeared, leading to the fragmentation of community relationships (Kovras, 2017). Ties to the community may also be weakened because of the social stigmatization relatives suffer as a result of the uncertainty surrounding ED and its implications in terms of loss of societal status (Robins, 2013).

Importance of recognition

Recognition is key for victims' struggles for redress (De Greiff, 2012; Haldemann, 2008) and particularly for victims of ED, because the unjust harm that they suffer is often purposefully not recognised due to the state's involvement. In the past ED was often either denied or represented as a legitimate action carried out by the state against subversives. As a result of this state misrecognition and adding to it, social recognition may also be deficient due to the stigmatization that victims of ED suffer in their communities.

Socially and politically determined, recognition for victims reflects a constructed understanding of victimhood as an identity or a status.² Victimhood can pertain to an individ-

1 We use the terms "forcibly disappeared" and "disappeared" interchangeably for the purposes of this paper.

2 Whilst 'victimization' refers to a specific harm or the experience of a violation, 'victimhood'

ual's identification as a victim, or the sense of belonging to a collective developed by victims around shared experiences of injustice and suffering (Wilke, 2007; De Waardt, 2016). Victimhood also relates to a status that is determined by an external set of criteria which reflects the "violation of a specified set of norms" and defines a general victim status within a society (Wilke 2007, p. 481). For victims of ED, recognition is important in how it reflects their relationship to a state which allowed their victimization. Recognition for victims of ED can thus also entail victims' claims for a new civil status as citizens with equal rights and agency (De Greiff, 2012; Fulton, 2014).

Victimhood in legal discourse

Victimhood as a status is constructed institutionally and politically (Hearty, 2018). Consequently, victims of ED must adhere to the state's definitions to be legally recognised as victims, which can pose many challenges. Moral innocence is one such popularised state-supported quality of victimhood (Wilke, 2007; De Waardt, 2016). Yet, victims of ED often come from communities historically excluded and criminalised by the state. They are not likely to fit the "ideal(ised)" status afforded to victims in legal and political discourse. They are also more likely to fall into a category of individuals whose victim status is disregarded (e.g. illegitimate, undeserving or unofficial victims) (Rudling, 2019). Victimhood is not black and white but operates as a spectrum of experiences and can reflect complex victim identities, as well as ways of coping with these different experiences, which

do not fit the 'ideal victim' imagery (Bouris, 2007). This may imply also that ED victims must put on an act, performing and moulding their identity to suit the state's victimhood rhetoric in order to be recognised (Wilke, 2007).

The legal frameworks and jurisprudence concerning ED at international and national levels offers victims a language through which their victimhood can be recognised by the state. Examples are Article 24 of the ICPED, and the case law of the Inter-American Court of Human Rights, which has explicitly stated that next of kin (including family members) of forcibly disappeared persons are also considered victims. Legal language takes the harm inflicted by ED upon these individuals and translates this into legal terminology, which can then be used by victims to express and claim their victim status and their rights. It allows them to express the harms they have suffered in a way that is recognised within state and international discourses, as shown with families' mobilisations in many countries (Naftali, 2016; Barton-Hronešová, 2020). Legal language can also increase victims' sense of agency, as it can be both used to achieve concrete gains such as reparations and to enable the victim's self-acknowledgement of victimhood (Vera Lugo, 2016). However, legal language is only empowering when victims are able to use it. When the family and friends of the disappeared are not aware, do not understand, or crucially cannot speak the legal terminology, it may be "empowering elites and outsiders at the expense of victims" (Gready and Robins, 2014, p. 343).

The recognition of ED victimhood by the international legal framework stems from decades of victims' struggles. While it has provided victims of ED with more possibilities for redress and justice, their recognition still faces challenges in many countries, such as Colom-

refers to a social and discursive category born from the experience of victimization which can be understood as part of an individual's self-identification or as an attributed and constructed status.

Table 1. Participants

Interview Code	Case	Socio-demographic characteristics
1CV	Colombia Victim	Middle-aged woman. Husband was a victim of ED.
2CV	Colombia Victim	Elderly peasant woman. Two sons were victims of ED.
3CVA	Colombia Victim/activist	Middle-aged woman and victims rights defender. Father was a victim of ED.
4EVA	El Salvador Victim/ activist	Woman from a rural El Salvador. Several relatives, including her husband, were victims of ED. Also a human rights defender.
5CVA	Victim/activist Colombia	Colombian human rights defender, two relatives were victims of ED.
6EV	Victim El Salvador	Had two children taken from her and given for adoption.
7EVA	Victim/activist El Salvador	Lost his mother and brother, another brother was held captive.
8CA	Activist Colombia	Colombian lawyer.
9CA	Activist Colombia	Works in a human rights organization.
10CO	Colombia Official	Anthropologist.
11CV	Victim Colombia	Man whose older brother was disappeared. The remains were delivered to the family 16 years later.
12EV	Victim El Salvador	From semi-rural El Salvador. In 1985, his father who was part of the FMLN was captured and disappeared.
13EA	Activist El Salvador	Activist working in a state institution:
14EV	Victim El Salvador	From rural El Salvador. Lost two daughters in the conflict, including one from ED. Reunited with her later.
15EV	Victim El Salvador	Woman from rural El Salvador. Her three children were disappeared.

bia and El Salvador, which were analysed for this paper. Here, victims of ED often belong to marginalised communities whose victimhood experiences have mainly been denied or delegitimised by state institutions. This paper aims to understand how victims have experienced recognition and what it means for them in the contexts of Colombia and El Salvador against the backdrop of the legal frameworks and state responses to which victims are subjected.

Methods

This multidisciplinary paper draws on research conducted in Colombia and El Salvador between January 2019 and March 2021. In addition to the analysis of the legal frameworks relevant to the search for victims of ED, fifteen semi-structured interviews were conducted (see table above). with families of the disappeared, civil society representatives, former and current representatives of different state institutions and experts.

The selection of the sample of family members and civil society representatives who were interviewed was determined in great part by the existence of previously established relationships of trust with the local project partners - the non-governmental organizations (NGOs) DeJusticia (Colombia) and ProBúsqueda (El Salvador) - and the interviewees. Researchers also benefited from the help of particular gatekeepers to establish contact with persons willing to participate. The selection strategy was also based on a “do no harm” approach, taking all measures to ensure that interviewees were not endangered in this process and to devise strategies for containment against potential risks that they may be facing. Consideration for interviewees’ vulnerability and ensuring that each interviewee was psychologically ready to share, or to continue sharing, his/her experience outweighed concerns for the representativeness and complete-

ness of the data. This sensitivity also limited the choice and extent of questions which were asked to respondents. In addition to ensuring the absolute anonymity of participants during the process, an informed consent procedure was carried out for all persons before each interview began.

Lasting between 1 and 2.5 hours, all interviews were transcribed, translated, and anonymised. They were then inductively analysed, and a set of codes was gradually generated alongside multiple readings of the interview transcriptions. The main themes were developed using a thematic coding method grounded in Braun & Clarke’s (2006) approach and adapted by the team to fit the challenges related to analysing data without a qualitative analysis software. These thematic analyses involved also regular online meetings among team members in which multidisciplinary exchanges and negotiations over meanings took place with the aim of constructing shared understandings of the themes highlighted.

Case studies: the development of legal frameworks and state responses to ED

Colombia: It is assumed that at least 184,870 persons have been victims of ED during the Colombian armed conflict (1958-today). As part of a broader civil society-led focus on victim rights, families of victims have increasingly mobilised for the recognition of ED as a crime, for the closure of the impunity gap and for the adoption of protection measures by the state (Centro Nacional de Memoria Histórica 2016). This led to the recognition of a fundamental right not to be forcibly disappeared by the Colombian Constitution, the typification of ED as a crime, the establishment of search and protection measures and the ratification of the Inter-American Convention on Forced Disappearance and the ICPED. The legal framework for addressing ED further devel-

Table 2. State responses relevant to ED victims in Colombia

1991 Constitution which includes the right not to be subjected to ED.
 2000 Law 589 criminalizing ED and creating the National Search Commission.
 2005 Justice and Peace Law.
 2005-today Development of various memorialization initiatives.
 2005 Ratification of the Inter-American Convention on Forced Disappearance.
 2011 Victims and Land Restitution Law 1448 further defining victims' status and rights.
 2012 Ratification of the ICPED.
 2016 Measures implemented in the wake of the peace agreement between the guerrilla group FARC-EP and the government: A Truth Commission, Special Jurisdiction for Peace and the Unit for The Search of Disappeared Persons (Search Unit).

Table 3. State responses relevant to ED victims in El Salvador

Despite the UN-led Truth Commission report in 1992 referring to many cases of ED, an Amnesty Law to evade prosecution of grave human rights violations, including ED was in place until 2017.
 El Salvador has not ratified the Inter-American Convention on Forced Disappearance of Persons, nor the ICPED.
 2010 and 2012 Symbolic reparations (e.g. official apologies to victims of ED).
 2010 Creation of a search commission for children
 2013 Creation of administrative reparations program (Presidential Decree 204).
 2017 Creation of a search commission for adults

oped the concept of “victims” by not only enshrining the victim’s need for protection but granting diverse rights at their disposal. While ED victimhood is institutionally recognised in Colombia, it is still attached to socio-political and socio-economic charges suffered by both victims and society, which can lead to the stigmatization of all those affected by ED.

Despite the solid legal framework and infrastructure put in place to recognise the rights of victims of ED, given the large scale and structural nature of the violations, the implementation of these frameworks continues to be unsatisfactory to this day.

El Salvador: It is estimated that more than 8,000 cases of ED were committed during

the internal armed conflict (1980-1992). ED was included as a crime against humanity in the criminal code in 1997. While the practice of ED was specifically mentioned in a UN sponsored Truth Commission report, an amnesty law passed in 1993 prevented significant legal developments for ED victims until 2016, when the Amnesty Law was declared unconstitutional. Domestic legislation has not addressed the issue of ED (only including a general mention of victims in criminal procedure), and does not spell out “the right to truth”. Domestic jurisprudence, which has at least in the past years followed the standards established by the Inter-American Court of Human Rights (IACtHR), has been the sole

means to address ED victimhood. Moreover, the two search commissions and the reparations program created by presidential decree upon requests from judgments of the IACtHR, fail to clearly define the term “victim”. Thus, the legal situation in El Salvador remains uncertain for ED victims, and its interpretation and sustainability are subject to political interests.

Results

Meanings attached to being a victim and to recognition

When searching for answers as to the whereabouts and faith of their loved ones, victims struggle to have their victimhood recognised in the face of denial and silence. Yet, victimhood is a multifarious experience which ranges from powerlessness to agency.

For some victims, victimhood is related to feelings of **powerlessness in the face of injustice**. 2CV describes her plight to have the remains of her children returned by the perpetrators: *Of course, how can I not be a victim? They took the children, they took them! (...) I followed that man, I said: “Give me back my child”, I said to his face: “Give me back the child, at least this one” and they did not want to.* (2CV)

Other victims describe their victimhood as a lifelong burden which they want to escape, but which they have no other choice but to confront. 1CV explains that she must go ahead with her life for the sake of her children and continue her struggle for truth. While she has the certainty that her husband is dead and that his remains have been found, her struggle is far from over. In the face of unsupportive legal actors, this struggle is exhausting: *Yes, I’m mom and dad at the same time. (...). I’ve taken a lot of blows, (...) I don’t want any more. I’d like to run away and forget everything, (...), but I know I can’t do it, I have to live it.* (1CV)

This victimhood is often described as entrenched in **ambivalent feelings and emotions**. 3CVA explains that the state of ambiguous loss she has experienced since learning about the disappearance of her loved one dominates her daily life. She describes how she sometimes escapes from this feeling momentarily so as to retain a sense of normality within her life. She describes in detail how victims may switch from a state of sadness and despair to momentary light-heartedness: *You can see a victim (...) very sad and after five minutes it’s as if that hadn’t happened, because I think that the soul, the spirit, surrounds itself like a shell and people let go of their feelings for a moment and it comes back and it’s like a sudden forgetfulness (...) it happens to all the victims of ED and it happens to me. I may be very sad in a moment, but then I can joke without any problem and go on with life.* (3CVA)

9CA, a professional working with victims of ED, also highlights this ambivalence of feelings experienced by most victims: *(...) the constant uncertainty of not knowing what happened, which leads you to despair and hope on the same day. The hope that he will suddenly appear alive but knowing that it has been so long that you will most likely find him dead.* (9CA)

While victimhood can be understood by some victims in terms of feelings of vulnerability and helplessness, many also describe this experience as a **struggle which reflects agency and power**. In 12EV’s recounted experience, these contrasting meanings of victimhood are not antagonistic. She distinguishes between the forcibly disappeared person, in this case her father, and his family, who are not only victims but also survivors struggling for memory and justice. Their struggle serves as a form of resilience for relatives: *(...) he was and will always be a victim, because for me a victim is a person who is in a vulnerable situation, confronted with external powers and they*

have the power to do and undo things (...) at the time I think that we as a family were victims, but now we no longer consider ourselves victims, (...) we are the surviving relatives of victims of ED because (...) we are still fighting for life, and to rescue the memory and social justice of that person. (12EV)

This reflects a certain **resistance to an external identification of victims as passive actors**. Taking on such an agentic stance may be necessary for victims to continue their struggle to effectively defend their rights.

Similarly, 4EVA explicitly rejects the idea of recognition of victimhood, if this does not lead to any constructive outcomes through the rights and duties to claims that this status implies. She refuses the victimhood status if this means being considered as a passive and non-agentic individual who will be satisfied with the mere recognition of their suffering. Victims need recognition of their dignity, that is to have the agency to claim their rights as legitimate citizens who have been wronged: (...) *if they don't recognise us as victims, they will recognise us far less as people who have a right and a duty to claim, because they don't accept it. But if they accept it, it would be good if they saw us as people who are thinkers and we have a calm conscience if they tell us what they did with them. (...) we are people, that we have rights, that we were born with rights. And that rights cannot be evaded at any time. I prefer to be told that I am a person with dignity, with rights, than to be told that I am a victim but in reality, we are victims of the state. (4EVA)*

This also points to the importance of recognition for victims as a means of validation and vindication. As 4EVA suggests, the recognition that their suffering is valid is important, but not sufficient for victims. Victims also need vindication, that is the recognition that they have been wronged, leading to the possibility to claim rights and duties from the state.

Recognition as validation: 14EV, using the example of the psycho-social support received from the NGO Pro-Búsqued, explains that recognition as validation of victimhood is important, because it can help victims make sense of their pain and finds ways to live with it: (...) *the one who is destroyed, needs an accompaniment that gives him strength, that helps him to live with the pain (...), it has been very successful, because it has known to understand the victims. (14EV)*

Recognition is also important in the **collective validation** it offers to victims. The sense of shared solidarity which can result from being in a collective is emotionally comforting for victims, particularly in the face of fears of reprisals or repression: (...) *this led the families, to get together and take the initiative to gather the family of the disappeared and start looking for them, because when you went to a courthouse, you went to a garrison, how they gave you information, if possible they sent you into fear, (...) you could not walk alone. (14EV)*

Within a collective, victims can identify with each other's struggles and mutually recognise shared experiences of suffering. As 3CVA explains, this can also result in perceived opportunities to mobilise within an organised movement: *The relatives, each one in their own pain that we met and that we decided to get together to look for and above all to demand that they return alive. (3CVA)*

Recognition as vindication: How victimhood is constructed by external actors determines whether the wrong done to the victim is recognised, as explained by 15EV. She describes how her experience of victimhood was re-constructed by a media interviewer as being the result of a wrongful action on her part: this implied that she herself had lost her children and that no wrong was done to her. She had to correct the interviewer and explain that her children disappeared because the armed forces

had kidnapped them: (...) *the one who was interviewing me said “look, (...) and how did you lose the children”, no, I have not lost them I said, they were taken away from me, (...) they were kidnapped, I told him, that’s not called losing.* (15EV)

Having the perpetrator acknowledge that the victim has been wronged by his/her actions is also central for victims because it restores the balance of power which was tilted towards the perpetrator through the commission of the violation. This diminishes the victim’s sense of injustice in the face of impunity and denial, can also facilitate the societal understanding of a victimization experience and may diminish stigmatization within the community, as one Colombian activist (8CA) highlighted.

How victims are perceived and how this affects them

ED generally occurs within a socio-political context of denial and stigmatisation, forcing victims to continue their lives without any official acknowledgment of the disappearance or/and state involvement therein. Due to this lack of public acknowledgment of their victim status, victims may also be viewed with suspicion within their communities. Many victims describe how painful it is not to have their suffering and the violations that they have suffered acknowledged, and the consequences in terms of added stigmatization and entrenched feelings of injustice.

A lack of recognition from the state, reflected by the denial and inaction of authorities in terms of the search, may also further impact the public legitimacy of their victimhood claims and provide further cause for stigmatization. 5CVA explains how victims’ claims were delegitimised as they were blamed for their relatives’ disappearances: (...) *they scolded us, mistreated us, for “not having educated our children”, (...). Because people who thought differently (...), who thought about social justice,*

about rights; of course, they were subversive people, (...)? (5CVA)

In the face of such stigmatization, some prefer to deny their own victimhood. E.g. 12EV explained that her father’s capture and disappearance was covered-up with a story that he went abroad to work to avoid questions and suspicion from the community: (...) *we had to tell people with a smile: “That my dad had gone to America, that he had gone to work...”, so, of course, that takes the questioning out of people. (...), you had a smile even though inside we were ultra mega afflicted.* (12EV)

Victims may face stigmatization from law enforcement, particularly in cases where they are part of social groups which are criminalised or stigmatised (e.g., youth). As 12EV explained, there is a disconnection between imageries of victimhood and the complexity of victims’ experiences and identities. This in turn can bias the handling of cases, with certain cases being given less attention or even being closed by the Attorney General’s Office in El Salvador when the disappeared come from criminalised communities: *if it is not a gang member then they put a little interest in the case, (...) and otherwise sometimes (...) they practically classify it.* (13EA)

The delegitimization by state authorities of individual’s claims of victimhood is felt to be unjust and humiliating. Such experiences affect victims at the core of their sense of dignity, as 11CV describes. They send an unfavourable message about their standing and value as citizens, denying victims the basic rights attached to citizen status: *And we go to the Victims’ Unit and they receive us with the other blow: “You are opportunists, (...) you are looking for help that you do not deserve, that you do not have the right to. We said: “We never came here (...), to be recognised as victims (...) because I need to know about my brother, what happened,*

how the process is going”. (...) That it is a recognition of dignity is what one claims. (11CV)

Similarly, another victim, 14EV, described this lack of recognition by the state as demeaning and re-victimizing, a state which: “(...) *has not known how to deal with the victims (...) we have been treated as something inferior, we have been re-victimised more.*” It leaves victims powerless to search for their loved ones: “(...) *in the end they have conformed to live like this and not look back, because also the state has not given them a chance, to be able to look for their family.*”

Pre-requisites to legal victim recognition

Within national contexts, being recognised as victims and having access to the rights which are attached to this status is not to be taken for granted. In El Salvador, the legal establishment that a violation has been committed, that is whether the victim’s experience can be understood as a violation of the law, is the main issue. Impunity reigns and legal frameworks to address the issue of ED victims’ rights are largely absent. In the case of Colombia, the problem concerns a failure to adequately implement the legal framework and a lack of effective access to justice for victims.

El Salvador: In El Salvador, ongoing impunity for ED is an obstacle for official and state recognition of victims in the form of reparations or criminal justice proceedings. Impunity, which is reflected in almost non-existent sentences for ED, has several consequences in terms of legal recognition.

7EVA explains that victims have no chance to have their claims recognised, even after the major socio-political transformation based on the peace agreement, when the state is involved in the violations that they have suffered and continues to deny these violations. The state authorities did not recognise the existence of disappearances: “(...) *the Attorney General’s Office, the political power was still main-*

tained by the right wing that was the one, accomplice, of course a policy without conflict but accomplice. Then it turns out that when they went to the Attorney General’s Office, the prosecutor was elected by them of course, that via the Assembly, but they elected him. Well, they refused when the cases just came up. (...) they did not accept to say: “yes indeed it was us. (7EVA)

Moreover, individuals are unlikely to be recognised as victims when they are presented as subversives against whom state agents acted legitimately. As 4EVA explains, during the armed conflict, and even after with the enactment of the Amnesty Law, there was no possibility to seek justice because the violation was perpetrated by a state agent and the latter had been entitled to amnesty. Victim recognition cannot occur when perpetrators’ actions are constructed as legitimate responses to insurrection and victimhood experiences are delegitimised: *My sister when she went to put the complaint to Verapaz of the death of her husband (...) Since he was killed by the guard, that’s why they have no right to be recognised, nor to have anything written down, that was the response of the judge at that moment in Verapaz, how were we going to go somewhere else, if in the same municipality we were being discriminated against. (...) he said: “No, it is that those who the guard kills do not have the right to be recognised because the guard is in on his duty to do what it wants”. (4EVA)*

As 4EVA further explains, the repeal of the Amnesty Law in 2016 should have opened the door to the recognition for victims, in that it enabled crimes committed during the armed conflict to be investigated and prosecuted. However, it did not change anything for them. They are still faced with silence and uncooperative state authorities, leaving them struggling for recognition, answers and ultimately justice: *We wanted the archives of the armed forces to know where one’s relatives were, I have not*

heard any answer. (...) we don't even have a space where they can take care of us, where they can tell us what happened, (...). (4EVA)

13EA, a Salvadorian activist, describes how impunity taints the judicial system, making prosecution of ED in national courts unlikely and resulting in very limited recognition: *(...) the majority of cases remain at the administrative level in the Attorney General's Office, and those that have been taken to the Court have perhaps been (...) one or two that I know of, but no more.* (13EA)

In El Salvador, state recognition may also be hindered by complex victimhood experiences, which result in those who have been forcibly disappeared being represented within their communities as victims, or alternatively as heroes. These diverging imageries of victimhood within communities may also pose challenges for victims to mobilise collectively in their struggle for recognition. 12EV explained that this created tensions around the memorialisation of her father. Her uncle was opposed to adding his name to a monument in honour of victims and have him recognised publicly as a defenceless civilian, because he wanted him to be remembered as a hero and a guerrilla.

When impunity and the state denial of grave human rights violations prevail, victims are also often not aware of their rights and of the possibilities for them to claim them. 4EVA describes how this marginalises victims even more in their struggle for recognition: *(...) we did not know that everyone had the right to life, the right to many things, a fair job, a fair salary, we did not know that there were those rights and we did demand them but without having protection, no one protected us, (...) so they marginalised and murdered right and left and gave no true explanation.* (4EVA)

Faced with poor chances of obtaining justice, public recognition by authorities may bring validation and vindication for Salva-

dorian victims. This does not necessarily have to occur in the judicial realm, as 12EV reflects on the importance of “effective recognition” by the state through a symbolic trial. The latter aims to symbolically restore victims’ moral worth and dignity as citizens. It helps victims to have their claims legitimised and their experiences officially recognised within their communities as well as to facilitate their collective mobilisation: *it is our right to know what happened to him (...) even if it was a symbolic trial, because I am not even asking for a trial of those who captured him, in the end they are responsible for that situation, (...) a symbolic trial where there is effective recognition that there has been a violation of rights and of life itself, which is the maximum right of a person, that there be recognition by the state through a trial, (...) something that can unite us, because all the survivors who are victims of ED can be united in this search for justice.* (12 EV)

In the face of state-level inaction, legal recognition for victims may come from other international institutional channels. As some of the victims interviewed highlighted, international recognition of ED as a crime has constituted a significant resource, if not last resort, for victims’ struggles in El Salvador. As 4EVA explains, the hope is that the Inter-American Court of Human Rights and the pressure it exerts on the state will bring some form of recognition to victims in the long run: *“this can also help them to recognise that they hurt the population, that they hurt the people and that they have no choice but to recognise the truth and that they are investigated.”*

Colombia: In contrast to El Salvador, various legal frameworks exist in Colombia. Yet, the law can be considered to be more of a mirage than an effective resource for victims. There is a disconnection between the multiplicity of existing laws and the ineffectiveness of the

national legal framework. The failure to implement legal criteria is explained by various factors.

Many victims argue that their difficulties in achieving recognition are due to the administrative burden which accompanies the initiation of the different processes for justice.

As 1CV recounts, the disappearance of her husband, which left her alone to take care of her children and which should have constituted enough evidence of her victimhood, did not suffice to obtain recognition of this status. This depended on whether she could provide proof of her children's affiliation to her disappeared husband: *And if you don't have the evidence then you're no longer a victim (...). I'm a victim because you don't see that it's my children's dad and it's my husband who died?* (1CV)

2CV explains her struggle to achieve administrative recognition of her victimhood in a bureaucratic maze. She had to go back and forth between different actors for a year and a half just to obtain the death certificate for the disappearance of her two children, which she needed to receive minimal financial compensation: *I went to Bogotá and they said: "You have to bring the death certificate to prove it anyway". (...) Then I came to Chaparral and talked to the secretary, I said: "Doctor, this is where they killed the child", (...) He said, "We need the death record." (...) she took my data and I went to Bogotá that day. And at the end of the month they called me from the battalion to ask them for the address (...): "to send you the register of death". They sent it to me, three days later I went and took it to Social Action.* (2CV)

11CV's account illustrates the complexity of the judicial bureaucracy. Although his brother filed a case before the Office of the Human Rights Ombudsman (Ombudsman's Office) to be recognized as a victim in order to obtain reparations for the property which belongs to both of them, 11CV needs

to file a separate claim to also be recognised as a victim, because he has a different address.

Moreover, the legal framework is just the first step towards recognition in practice. This recognition on paper needs to be followed up by concrete actions to implement the law on the ground.

3CVA, a victim and an activist, explains how many laws which have been enacted in Colombia are obsolete and do not help victims. Referring to a situation where a family member disappeared, she explains that when the Victims Law was enacted and the family received the body, they thought that they could qualify for reparations, but then realised that this was not possible. The timing of the law did not fit the timing of the victims, which led to disappointed expectations and additional violations: *And there begins another degree of violation of rights. (...) Because laws are made without socialization and sensitization for victims, (...) anyone writes them.* (3CVA)

1CV criticises the Victims Law, which creates expectations in victims which are then disappointed when they experience a lack of support and recognition from the state authorities. She explains that her experience of the process to claim for compensation for her husband's death due to ED was very painful and that she had not expected it to be so difficult: *And if this [the Victim Law process] is so cumbersome and so unconscious and so inhuman, you'd better not give him anything, that's simple. Because it's more the suffering they give to you and what you do to cause, than you suddenly expect, right? (...) You don't see it because things often aren't how you paint it.* (1CV)

Similarly, 11CV questions the multitude of institutions created in the wake of the peace agreement and deplores that they have not brought more recognition to victims: *"we have continued to be outraged. The mere fact of denying us at least recognition as a victim..."*

The lack of state recognition and support for ED victims is also observed by civil society actors working to help them. One official explains that the state's inaction may result from a lack of resources or a lack of political will to prioritise victims' needs on the state agenda: "(...) the state structures, the offices of the disappeared that we have as such no longer exist, they have been blurred. (...) either there's no money or politically they're against it, or nobody cares...". 10CO

In a similar vein, another activist gives the example of the law which had created the Commission for the Search of Disappeared Persons. This Commission illustrates a well-intended initiative which has not fulfilled its promises for victims, because it was never given the proper means to do so: "*although it has a valid purpose and objective, it was not given the necessary strength to act: budgetary strength, administrative strength, it does not have a team.*" 8CA

Meaningful forms of recognition beyond the legal
Our findings indicate that recognition takes on different forms which are expressed as meaningful for victims.

Truth as a form of recognition: Obtaining truth and its different layers is the form of recognition which is most salient in the interviewees' discourses. For 1CV, knowing the fate of her husband, the circumstances of his death and the reasons why he was killed are the most saliently expressed concerns, while demands for accountability and justice in the sense of a judicial outcome are absent from her discourse. Knowing that her husband's remains have been located, identified, and buried constitutes only a small part of the truth. Moreover, knowing that this information is withheld and that someone somewhere can answer her questions is felt as a lack of justice and recognition in and of itself: *In Legal Medicine he*

says it was December 22, 2007, would that be the date he was killed? (...) Or was that the date he had the necropsy? (...) Where did you find him? (...) there is no one to tell you "we found him in the river" or "we found him in a park." Why? What did they do to him? (...) yes, I have questions, and who answers those questions? (...) No one, because we don't know who to ask. Or all of a sudden there are people who can know them, but they don't tell me. (1CV)

Knowing the truth, or some part of the truth, is a central form of recognition for many victims, as it is often the only outcome that they may expect in a context of impunity.

Victims, such as 2CV, who come from a poor and rural Colombian community, have little hope to obtain justice through the prosecution of perpetrators, and thus express truth as a necessity in the face of denial and silence. Talking about her two disappeared children, one of whose remains have not yet been found, 2CV expresses this powerfully: (...) *let them give me the remains to give them a Christian burial and so it would be that I would rest as a mother. (...) but I know they're there. But don't let them give me a body that's not my son (...). Yes, sir, that's what I'm asking. (2CV)*

Furthermore, 2CV reiterates her need for truth and explains the injustice she feels about the lack of recognition she receives, as she is denied answers and lied to, whilst still having to struggle to survive for her other children: "*It's an injustice, that's unjust! (...) Having to go and ask, having to endure hunger (...) What did they do with our loved ones? (...) We need the truth, but let it be the truth, that they don't put lies in us.*" 2CV

This Salvadorean victim describes knowing the truth as a right which is not only essential for relatives, but which is also very important for society at large, as it may contribute to healing communities and restoring social ties: *First of all we want to know about it as a family,*

and I personally want to know about it as well, so that society also has knowledge about this type of situation, which occurred and continues to occur, in order to restore the rights of both the disappeared and the surviving family members, which is very important for a healthier and more liberated society. (12EV)

Reparation as a form of recognition:

Victims also highlight the importance of reparation as a valuable form of recognition, either in the form of financial compensation or symbolic acts of satisfaction, such as commemoration and other remembrance practices.

2CV explains that she would like some form of state compensation, as a validation of her suffering and a message of the state's recognition of its obligation to repair the wrong done to an innocent citizen: *Then I would like the state or they, just as they have made me suffer (...) that they put themselves in our shoes because we carry the bulge, see, paying rent, (...) so that (...) pay the victims at least something (...) To alleviate that weight you carry (...) because of them!* (2CV)

2CV contrasts the lack of financial compensation for her to the financial support received by the former guerrilla FARC-EP as part of the demobilization process, expressing disbelief that former perpetrators, “people who did badly” and “who did wrong”, are given more state attention than victims.

Yet, for reparation to be a meaningful form of recognition, it should not constitute a means to maintain denial and silence. 15EV expresses this feeling well, highlighting that compensation is a right for victims', not a way for the state to silence people: *(...) they will give you the money and they will shut you up, no, (...), I do not accept that, if they give me the money it is because I have the right because a house was lost, animals were lost, all the patrimony was lost (...) where one was born, (...) all that is a debt*

that they have, and they do not recognise that, the state. (15EV)

One official from Colombia denounces those who minimise the symbolic importance of financial compensation, which is an important form of recognition by the state of the suffering of the victims and the harm that they have experienced. This compensation is also a right that all victims of the armed conflict can claim in virtue of the Victims' Law: *I heard many times from my colleagues and from people in the Victims Unit where they say: “It's that people only care about money”. (...) they are claiming the little that the state gives them by acknowledging the death, or the loss or the disappearance and the torture of their loved one. (...) I think they have absolutely every right to claim what little they are given. (...) I don't know if it would hurt less but at least they would feel less badly treated and less alone.* (10CO)

8EA, a Colombian activist, explains what reparations mean for victims in terms of recognition, underlining their potential to re-affirm the dignity of victims and restore them as members of the moral community to which they are affiliated: *I think that reparation should be fair, (...) some gesture that soothes. The recognition of compensation is a form and has positive effects, but also the performance of symbolic acts, the recognition of a good name... In this, no type of action should be underestimated. (...) There are many ways in which a contribution to their healing can be made.* (8EA)

This last extract also hints at the importance of symbolic acts of recognition, particularly when victims have no other means to achieve public recognition of their suffering. The significance of symbolic acts of recognition is also highlighted by other victims. E.g. 4EVA explains that in a context where victims were too fearful of reprisals to file a complaint when their relatives disappeared, they had at least a monument which was established to

commemorate these events and have them publicly recognised: (...) *What happened to us is not in any court or any human rights organization (...) Because of fear (...) we could not go to file a complaint, (...) but it is there in the monument, the massacre of the canyon they say, there in the monument of Cuscatlán Park.* (4EVA)

There exists potential for recognition using symbolic forms of reparation as meaningful societal marks of solidarity and care for victims when no other official channels to recognise their victimhood are available. This official describes how such symbolic forms of reparation have been used to create relationships of solidarity between victims and ordinary citizens who were not affected by ED across Colombia. This initiative consists in adopting a tree and growing it, then once a disappeared person is identified, giving this tree to the relatives of this person: (...) *you adopted a tree, I give you the letter (the necropsy of that person), you go to plant that tree in memory of... And then you give it to him and incredible things happen there. Why? Because this person (...), knows that this beautiful young man who has nothing to do with that person planted a tree and took care of it and is going to give it to him.* (10CO)

This, as 10CO explains, creates a symbolic link of solidarity which constitutes a meaningful form of recognition for victims who are often left alone with their feelings of ambiguous loss and unrecognised within the broader society.

Finally, searching for their loved ones is a painful process for families and friends and is rife with many obstacles, fears, and uncertainties. In this long and uncertain trajectory, victims need to be accompanied and receive empathy from others. As described by some of the participants, support can constitute a meaningful form of recognition which validates victims' experiences of victimhood.

Discussion

Our findings highlight the complexity of the victimhood experience for families and friends of forcibly disappeared persons, as well as the struggles they face to have their victim status recognised. Different, ambivalent, and contrasted meanings afforded to victimhood can be identified among the victims interviewed, ranging from feelings of powerlessness and despair to a strive to re-affirm their agency and a rejection of the passive victim label. Having their victimhood recognised is very important for victims.

Furthermore, the findings show how recognition is particularly meaningful due to its value in terms of validation and vindication. Both of these dimensions of recognition help victims to make sense of the pain that they experience, as well as to provide them with the legitimacy to rightfully seek redress for the injustices that they suffered, which may also help to lessen their stigmatised status within the community.

At the collective level, the mutual recognition of victimhood within a group of victims may provide them with a sense of solidarity and agency, thereby bolstering their mobilisation in searching for answers.

Yet, most victims interviewed describe experiences of denial, inaction, silence and the delegitimization of their claims by state authorities, as well as social stigmatization. This lack of recognition is experienced as adding salt to their wounds and as profoundly unjust.

A more fine-grained analysis of victims' experiences in the legal realm carried out against the backdrop of the institutional responses to ED in Colombia and El Salvador reveals the multifaceted nature and entrenched legal and institutional mechanisms of this lack of recognition. It suggests a gap between legal responses to victimhood and the concrete implementation of these responses with regard to

victims' needs, which translates differently in both contexts.

In El Salvador, ED victims face a legal system where impunity reigns and legal frameworks to address their rights are largely absent. ED victimhood is often not recognised, because these victimization experiences are for the most part unlikely to be constructed legally as a violation and a crime. For Colombia, victims tend to describe experiences reflecting a context where legal criteria and frameworks exist, but are only partially implemented, thereby affecting victims' access to justice. This reveals an insidious and paradoxical system for victims. Legal norms are numerous and the legal framework recognises the victims as legal subjects, a status which in theory should serve as a basis to make claims on the state. Yet, the existing laws create high expectations, which fail to be achieved in practice due to various implementation flaws, leaving victims disempowered and unable to effectively exercise their rights.

The effective pursuit of victims' rights within the legal domain is thus challenged in more or less explicit ways in both contexts: through the delegitimization of victims' claims, the bureaucratic and politicised obstacles to effective legal recognition and the absence of the official recognition of the commission of ED by a state. The latter makes it almost impossible for victims to obtain redress.

Many victims highlight other forms of recognition. For example, some emphasise the significant role of international and regional channels for legal and institutional recognition. Many reveal the significance of meaningful forms of recognition beyond the legal realm, particularly the different layers of truth found by the victims in their search for answers, the support received from the NGOs, as well as the role of reparations, such as financial compensation or commemorations. All of

these are valuable ways to recognise victims' experiences, which involve different actors and realms, whether public or private, official or informal, collective or individual.

Our findings reveal that obtaining some form of recognition is very meaningful for victims, particularly when it is public and official. Such recognition constitutes a significant step towards restoring victims' sense of dignity and a message of solidarity and care, which can pave the way towards reintegration in the social and political community.

Our findings suggest that recognition may also have a beneficial impact on the search. Recognition may render victims' participation in the search process more legitimate by acknowledging their suffering and right to know the fate of their loved ones. Moreover, as some victims also describe, recognition may have an important part to play in victims' collective mobilisation. E.g. organised collectives of solidarity may be generated through the mutual recognition of shared victimhood experiences and a shared need for answers.

In addition, increased societal recognition of victims of ED in public spaces may also bolster civil society initiatives which pressure for the prioritization of the search by state actors. The more the plights and concerns of victims are recognised in both public and official discourse, the more visibility and resources can be afforded to ED, which can result in more efficient and successful search processes. Bringing societal visibility to victims' experiences through increased recognition may also help to prioritise responses within the judicial system.

Finally, supporting initiatives to increase societal recognition of ED victimhood may help foster a better societal understanding of the violation's magnitude and complexity. This can make the reality suffered by family

members more visible by revealing the long list of the violations experienced.

Conclusions

These findings provide a valuable insight into the (lack of) agency of the families and friends of the disappeared in their search for their loved ones by illustrating how political and social constructions of victimhood may facilitate or hinder their struggles for recognition. They also suggest that a lack of recognition, due to legal and institutional obstacles and the psycho-social challenges these create and/or exacerbate, generates additional injustice for ED victims and plausibly affects their opportunities to mobilise in the search for answers and as citizens. They reveal that recognition constitutes a significant and multifaceted process involving different levels of society, which should be accounted for in the provision of effective redress to ED victims and in addressing the inhumane or degrading treatment that they continue to suffer.

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Addressing a forgotten struggle: Victims of enforced disappearance in Africa

Eva Nudd¹ and Alejandra Vicente²

Key points of interest

- Enforced disappearance in Africa takes place in a widespread manner, yet it is grossly underreported.
- Enforced disappearance is used by many African countries to suppress dissent, target migrants, or in the context of internal armed conflicts and the fight against terrorism, among other situations.
- While enforced disappearance has historically not been a focus of attention by the African Commission on Human and Peoples' Rights, the Commission has taken steps to produce guidelines that assist States in eradicating this practice on the continent.

Abstract

Introduction: Enforced disappearance in Africa occurs on a daily basis and no one is immune from becoming a victim. The practice, which drew attention since the decolonization process, continues today.

Method: this article is the result of desk-based and field research conducted by the authors and local partners in Algeria, Zim-

babwe, Sudan and Libya as part of a wider project¹.

Results: Governments routinely use enforced disappearance as a tool to oppress the opposition and instil fear among the population in order to retain power. It is also used in the context of migration, as well as in many other contexts and against a variety of victims. As enforced disappearance is a crime committed by State officials with an interest in concealing it, the statistics on its prevalence are limited and do not show the full extent of the crime in Africa. Further, the lack of political will to acknowledge the use of this practice means that many African States lack policies and laws to prevent, investigate and punish the perpetrators of enforced disappearance. Given these gaps, impunity for enforced disappearances is widespread. In the last two years, the African Commission on Human and Peoples' Rights adopted two resolutions raising awareness of the crime and paving the way for drafting and adopting specific guidelines to address this crime, which would be a first step in setting

1 The authors have been working on enforced disappearances in Africa for the last two years, implementing a project aimed at raising awareness and bringing justice to victims, with a specific focus on Algeria, Libya, Sudan and Zimbabwe. The paper reflects the desk and field research conducted as part of that project.

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up a holistic framework to eradicate enforced disappearances on the continent.

Keywords: enforced disappearance, impunity, justice, Africa, victims

Introduction

Enforced disappearance has been used as a tool of oppression all over the world. Governments have used enforced disappearances in the context of internal conflicts, to frighten the population, silence opposition and dissent, placing people outside the protection of the law and causing unbearable suffering to the victims and their families.

While it might have taken place before in Africa, the use of enforced disappearances has drawn attention since colonial times when many colonial governments tortured and disappeared freedom fighters in order to silence them. Since then many African States have deployed this practice in a range of different contexts and against different groups of victims from human rights defenders to ethnic minorities, migrants and opposition leaders among others.

While enforced disappearances have been prevalent in the continent, the extent to which this practice takes place is difficult to assess. Many States refuse to acknowledge the occurrence of enforced disappearance, do not keep an official record of the crime and the victims, and are reluctant to investigate when it takes place. Many victims decide not to report the disappearance for fear of reprisals, lack of independence and due process of the authorities in the country, and insufficient awareness of the legal remedies available at the national, regional and international levels.

The absence of political will and awareness among African States to address enforced disappearances is also reflected in the lack of adequate legal frameworks at the na-

tional level to prevent and protect against this crime. As a result, victims of enforced disappearance in Africa are left to face the consequence of the crime with no prospect of finding little or any relief.

Historically, at the regional level, enforced disappearances did not feature prominently on the agenda of the African Commission of Human and Peoples' Rights ("ACHPR"), the continent's principal human rights body. Yet, this has changed in recent years as the ACHPR has taken a number of decisive steps to raise awareness on the prevalence and pervasiveness of this practice, as well as the need to eradicate it in the region.

In the following sections, we first address the different contexts in which enforced disappearance takes place in Africa, as well as the groups or someone of the main populations generally affected. Then, we turn to analyse the international, regional and national legal frameworks on the prohibition of enforced disappearances in Africa, highlighting gaps and opportunities to address the crime. Finally, we conclude by pointing to the steps that the ACHPR is taking to provide African States with guidelines to eradicate this practice from the continent.

Enforced disappearance in Africa: widespread but invisible

Over the last forty years, the United Nations Working Group on Enforced or Involuntary Disappearance ("WGEID") has assisted those affected by enforced disappearance to ascertain the whereabouts of their loved ones. Yet, from all the cases reported worldwide to the WGEID, only 10% accounts for cases originating in Africa. In its latest report, the WGEID noted that of a total 46,271 cases of enforced disappearance in the world under active consideration, 4,784 occurred in African countries, with the majority of

the outstanding cases coming from Algeria (3,253), Egypt (308) Sudan (177), Morocco (153), and Ethiopia (113) (UN Human Rights Council, 2020, pp. 18-14).

While these numbers provide a reliable account of cases reported to the WGEID, they fail to reflect the scope of the practice of enforced disappearance in Africa. The WGEID has pointed out that it “*remains concerned that while Africa has been racked by armed conflicts over the last decade, at the same time it is the region with the fewest reported cases of enforced or involuntary disappearances. The Working Group suspects that it is dealing with an underreported phenomenon of disappearances*” (UN Economic and Social Council, 2006, para. 593).

For example, in Rwanda, where possibly a million people disappeared in 1994, the WGEID has only received around 25 cases from the country (Sarkin, 2015).

Despite this underreporting, the available data suggests that enforced disappearances in Africa are widespread, as shown below.

While enforced disappearances are typically committed by State officials, or by others with the tolerance or acquiescence of the State, in recent decades both State and non-State actors have been disappearing and abducting people in a variety of contexts. Many persons disappear during armed conflicts. In South Sudan, a country ravaged by war for decades, many people remain unaccounted for. In 2020, the International Committee of the Red Cross (“ICRC”) reported more than 5,000 individuals whose fate is still not determined in South Sudan (ICRC, 2020). Additionally, thousands of people have been missing and disappeared in Nigeria, either by Boko Haram fighters or by the Nigerian security forces fighting them. With almost 23,000 people reported missing before the ICRC, Nigeria holds first place on the number of reported missing - most of

them minors - in Africa and worldwide (ICRC, 2020).

Inter-ethnic conflicts provide another context in which enforced disappearances have been committed, as illustrated by South Africa, where as many as 2,000 people might have disappeared during the Apartheid years (Sarkin, 2015).

Enforced disappearances are further used in many African countries to suppress the regime’s critics and any political opposition in the run up to or post-election period. In Zimbabwe, election cycles are often associated with a rise of enforced disappearances against opposition leaders. Most famously, in 2008, during the disputed election between Robert Mugabe and Morgan Tsvangirai, the Zimbabwe NGO Forum documented 137 disappearances, while in the 2013 elections, 30 people were reported forcibly disappeared (Zimbabwe Lawyers for Human Rights, 2016).

Additionally, some African States use enforced disappearance under the pretext of fighting terrorism, security operations and policing. In Kenya, police and military routinely disappear individuals suspected of links to the terrorist group Al-Shabab. In 2007, for example Kamilya Tuweni, a resident of the United Arab Emirates, was arbitrarily arrested while traveling to Kenya by members of the Kenyan counter-terrorism forces, and transferred to undisclosed locations in a number of East African countries for two and half months. In 2009, Tuweni brought a claim for extradition against the Kenyan authorities, which was recently dismissed by the Kenyan High Court and is pending appeal (REDRESS, 2009). In 2016, Human Rights Watch documented 34 cases of enforced disappearances in Nairobi and North-eastern Kenya (HRW, 2019).

The fear of enforced disappearances, poor economic conditions and lack of opportunities force thousands of Africans every year to seek

refuge in other countries or to seek a better life in Europe or elsewhere. Yet, the journey further exposes migrants to enforced disappearances, torture and other human rights violations. The International Organization for Migration recorded 3,689 missing migrants since the beginning of 2020, almost half of whom originated from the African continent (IOM, 2021). The statistics often include both those who go missing and those who are forcibly disappeared, but the WGEID has explored the connection between enforced disappearance and migration, noting it can occur in the form of abduction for political or other reasons, in the context of detention or deportation processes or as a consequence of smuggling and/or trafficking. The disappearance of migrants has been reported in Tanzania - in relation to Burundian refugees (HRW, 2020) - as well as Sudan (Dabanga, 2017; Mendez, S., 2012) and Libya (IOM, 2020), among other countries in Africa (The New Humanitarian, 2021).

Finally, enforced disappearance is often used as a method to discriminate against marginalized populations and to silence human rights defenders seeking to hold States accountable for failing to uphold human rights obligations. In the last few years, female political leaders in particular have become victims of enforced disappearance. In Libya, Siham Sergawi, who was critical of the military offensive in Tripoli, was forcibly taken from her home by an armed militia on 17 July 2019. More than two years later, her whereabouts are unknown, and the perpetrators remain at large (Lawyers for Justice in Libya, 2020). In Zimbabwe, in May 2019, three female opposition leaders were arrested and shortly thereafter disappeared for several days. When they re-appeared, they revealed that they had been tortured and sexually assaulted. Instead of launching an investigation into their disappear-

ance, the Zimbabwean government charged the three women with lying to the police and faking their own abduction and their trial is currently pending (BBC News, 2020).

Who are the main victims of enforced disappearance in Africa?

The International Convention for the Protection of All Persons from Enforced Disappearance ("ICPPED") and the UN Working Group on Enforced or Involuntary Disappearances defines victim as the disappeared person and also any individual who has suffered harm as the direct result of enforced disappearance. Victims of enforced disappearance are therefore defined broadly and include those who suffered the crime directly as well as all other individuals affected by it. While some victims of enforced disappeared are unaccounted for a short period of time, others are never found.

In Africa, victims originate from all groups within society and all ages. Human rights defenders, journalists, political leaders and union leaders, as well as anyone who dissents from the views of governments or challenges the political *status quo* often become victims of enforced disappearances.

Civilians often become victims for example as a result of civil wars ravaging the continent in several countries. The opposing sides of the conflict target civilians whom they deem to be supporters of the other party. In Algeria, during the civil war in 1990s, the government forcibly disappeared several thousand civilians whom they deemed to be supporters of the Islamic regime (MENA Rights Group, 2020, p. 16). In Sudan, the Al-Bashir regime forcibly disappeared civilians to stop support for the militias and used the terror of enforced disappearance to ensure compliance. Following a fact-finding mission to Sudan, the UN Commission of Inquiry into Darfur, in its 2005 report, noted that "the most serious cases of

enforced disappearance involved disappearance of civilians by security and military apparatus” (African Centre for Peace and Justice Studies, 2020).

Women and children are also victims of enforced disappearance. As mentioned earlier, three female opposition leaders in Zimbabwe and a member of parliament in Libya were all forcibly disappeared in recent years. In Sudan, women and children have been abducted for the purpose of slavery or as part of a strategy to ethnically cleanse the population within the different armed conflicts. The WGEID, in its 1995 report, reported instances of abduction noting that, “the Popular Defence Forces of the Government of Sudan have abducted women and children in Southern Sudan. These women and children are then reportedly taken to the north where they are compelled to work as slaves” (UN Economic and Social Council, 1996, para. 404).

Human rights defenders, students, and union leaders who are dissatisfied with the political status quo and use their voices to oppose the government often meet disappearance. In Sudan, the government relied heavily for instance on the use of ‘ghost houses’ to hold political opponents, providing perfect cover for torture and incommunicado detentions (African Centre for Peace and Justice Studies, 2020). In Zimbabwe, the government has relied on short-term disappearances to silence the opposition. In 2008, two employees of Zimbabwe Peace Project, Ms. Jestina Mukoko, the executive director, and Mr. Broderick Takariwa, the provincial coordinator, were forcibly disappeared and held incommunicado for about three weeks before they were brought before a judge. They both showed signs of torture and ill treatment (OMCT, 2009). In 2018, Dr. Peter Magombeyi led the doctors and nurses protesting for increased wages and working conditions.

He was forcibly disappeared for several days, until he appeared outside Harare (RFI, 2019).

Reporting on the government often exposes journalists to enforced disappearance, torture and other human rights violations. This is the case of Jean Bigirimana, a Burundian journalist who has been disappeared since 2016, allegedly after being arrested by the National Intelligence Service (Amnesty International, 2020). Cameroonian journalist Samuel Wazizi was detained incommunicado without access to his family for 300 days. He was arrested in August 2019 by the police on the suspicion that he was supporting the English-speaking separatist groups and he died in government custody a year later, although his body was never returned to his family (Al Jazeera, 2020). In April of 2020, a radio journalist, Ibraimo Abu Mbaruco, was forcibly disappeared in Mozambique on his way home from the radio station. The information obtained shows that he was disappeared by the military forces, but the Mozambique government denies any involvement (VOA, 2020).

Similarly, Ethiopian authorities use the practice of enforced disappearances against a wide range of individuals in addition to protesters, including human rights and political activists. On 9 June 2005, police arrested Mr. Chernet Tadesse at his home. He was mandated by the Ethiopian Human Rights Council (“EHRCO”) to report on human rights violations perpetrated by police against protesters in Addis Ababa in May 2005. When his family and friends inquired about his whereabouts, the police refused to provide any information. He was eventually released on 4 July and charged with trying to overthrow a legitimate government by force (OMCT, 2005). In Sudan, during the year of protest that led to the downfall of Omar Al-Bashir, State security agencies resorted to violence and forced disappearance to disperse the protestors. During

the 3rd June 2019 massacre, the Rapid Service Forces used live ammunition to attack the protestors, killing 127 protestors and disappearing more than 100 (Dabanga, 2020).

What is the impact of enforced disappearance on victims?

Enforced disappearances leave long-lasting material and psychological impacts on victims. The suffering of the victims of enforced disappearances is horrific and can last months, years or decades. Many relatives devote their lives to uncovering the truth of what happened to their loved ones. The uncertainty of whether the person is alive or dead causes severe trauma and suffering to those left behind. International law recognises that the anguish of the victims and their families can amount to torture or ill treatment. The suffering serves ‘as a double form of torture, in which victims are kept ignorant of their own fates, while family members are deprived of knowing the whereabouts of their loved ones.’ (Sarkin, 2013). As such, enforced disappearance leaves many family members experiencing feelings of helplessness, depression, and anxiety; relationship conflict; and somatisation. (Boss, 2002).

While men are predominately the ones who are forcibly disappeared, women and children often bear the burden of this crime. They are the ones who lead the search for the victims and the fight for justice and truth. Considering the stereotypes and gender roles that still exist in many African societies, female victims experience differentiated forms of trauma. Women relatives of the disappeared confront intersecting economic, social, and psychological harm in different ways than male relatives. Women experience more severe poverty and victimization when the disappeared is the family’s main or even sole breadwinner. (ICTJ, 2015)

Who are the perpetrators?

While enforced disappearance requires State involvement, in recent decades, non-State actors have resorted to the use of acts which are analogous to enforced disappearance. However, discussions are ongoing within and between treaty bodies at international and regional levels as to the appropriate legal principles to be applied to such acts and such perpetrators. Additionally, enforced disappearance can be committed by “de facto authorities”, such as rebel and insurgent groups, which exercise prerogatives that are comparable to those normally exercised by legitimate governments (WGEID, 2019).

In Africa, enforced disappearance is committed by a wide range of State actors and by non-State actors acting with the tolerance and acquiescence of public officials. Acts that would amount to enforced disappearances are also committed by non-State actors across the continent.

State security agencies, police and military are the main perpetrators of this crime. For example, in Libya, the profile of perpetrators includes the State security agencies, militias operating with the consent of the government or independent militias. The Eastern part of Libya has been controlled by Libyan Arab Armed Forces, supported by the Interim government led by the Field Marshal Khalifa Hafta. The west of the country is governed by the internationally recognized Government of National Accord and its affiliated militias. All of these groups have been accused of committing gross human rights violations, including torture and enforced disappearances (Lawyers for Justice in Libya, 2020).

In Algeria, during the civil war in the 1990s, the different branches of State security forces unleashed terror on the population following the 1992 disputed elections in which the Islamic Salvation Front defeated

the governing party. The special anti-terrorism unit and ordinary units of security forces forcibly disappeared people all over Algeria and held many in *incommunicado* detention, where they were exposed to torture, forced disappearances and other human rights violations (MENA Rights, 2020).

In Sudan, the security forces, including the notorious National Intelligence and Security Service (“NISS”) have forcibly disappeared political opponents, students, minorities, journalists and anyone who they deemed to be a threat to the regime of former President Omar Al-Bashir (The African Centre for Justice and Peace Studies, 2019).

In Zimbabwe, the police and State security agents have used enforced disappearances during election cycles and as a tool to control the oppression in other times. One example is the case of activist Itai Dzamara, a known critic of President Mugabe, who has reportedly been abducted by State security agents since 9 March 2015. Despite a High Court ruling ordering the State authorities to investigate Mr. Dzamara’s disappearance, no evidence exists to suggest that such investigation was ever carried out. Mr. Dzamara’s whereabouts remain unknown (HRW, 2016). During the Covid-19 pandemic, the government has cracked down on dissent, forcibly disappearing any voices of the opposition. Like in the previous cases, the government denies involvement and fails to carry out any investigations, while pointing fingers at foreign entities (DW, 2020).

Rampant impunity and lack of national legal frameworks to eradicate enforced disappearances

In most African countries where enforced disappearances occur, members of the security apparatus and non-State actors acting with State tolerance operate with total impunity.

One of the main reasons for the prevailing impunity is the lack of political will to investigate the officials, as well as the policy and legal gaps that allow for enforced disappearances to fester, leaving victims feeling frustrated and abandoned.

The ICPPED, the main international treaty banning the practice of enforced disappearances, was adopted in 2006 by the United Nations General Assembly and came into force in 2010. Since the Convention was adopted, only 18 out of 54 African countries have ratified the Convention and another 17 have signed on to it. The ICPPED outlines specific obligations that State parties must undertake to prevent, prosecute and provide reparations for enforced disappearance.

Specifically, Article 4 of the ICPPED notes the State party’s obligation to take the necessary measures to ensure that enforced disappearance constitute an offence under its criminal law. However, from those African countries that have ratified the ICPPED, only Senegal and Burkina Faso have incorporated, or are in the process of incorporating, legislation into their domestic system that uses a definition of enforced disappearance aligned with that of the Convention. Senegal has stated that it is in the process of reforming its Criminal Code to include a new section on enforced disappearance and a definition aligned to that of the ICPED (UN Committee on Enforced Disappearances, 2017). Burkina Faso amended its legislation in 2018 to broadly follow the definition of enforced disappearances envisaged in the Convention (Burkina Faso Loi N°025-2018/AN Portant Code Pénal, Article 523-4).

Further, only a handful of African States have adopted legislation to criminalize enforced disappearance as a crime against humanity, including Senegal, the Central Africa Republic, Benin, Gabon, Mali, Niger, South

Africa, Sudan and Ethiopia. Out of the 17 countries that have ratified the ICPPED, only Mali, Niger and Senegal have passed domestic legislation criminalizing enforced disappearance as a crime against humanity (IHL Database, 2020, Part IV).

The review of domestic laws shows that most of the States lack laws criminalizing enforced disappearance. Further, if the states have laws in place, the definition, often does not correspond with that under the ICPPED. In Libya, a country that has yet to ratify the Convention, the criminal code lacks a proper definition of enforced disappearances. Law No. 10 of 2013, that criminalizes torture, forced disappearances and discrimination, does not provide a clear definition of enforced disappearance and, instead, conflates it with kidnapping and abduction rather than recognising it as a separate crime (Lawyers for Justice in Libya, 2020).

In addition to the lack of adequate legal frameworks, amnesties and other forms of impunity are used to prevent victims from obtaining truth and justice. Impunity for crimes committed by State agents or under the cover of the State, not only entails the failure to punish those responsible for the crimes, but it also impedes the clarification of the facts, resulting in cover-up, and even the falsification of the facts to protect the perpetrators (Sarkin, 2013).

International law as well as the ACHPR recognize that amnesty laws that prevent the State from conducting an investigation, prosecution and punishment of perpetrators of human rights violations are not compatible with State's due diligence obligations (ACHPR, *Kwoyelo v Uganda*). Yet, amnesties and other measures preserve the impunity prevalent in the continent.

For example, in Algeria, more than three decades after the civil war many victims and

their families continue to live in anguish not knowing the fate of their loved ones or having avenues to justice due to amnesty laws passed in 2005. In particular, Ordinance No. 06-01 granted blanket amnesty from prosecution to security and state-armed groups. Over 30 Algerian victims filed cases with the UN Human Rights Committee which has repeatedly called on the Algerian government to repeal the Ordinance as it breaches the victims' right to an effective remedy (Khirani, Mihoubi and Guezout).

Similarly in Zimbabwe, following its independence, the government passed Amnesty Ordinance No.3 of 1979 and Amnesty Ordinance No. 12 of 1980 to prevent prosecutions and investigations of any human rights violations committed during the liberation war, including killing, rape, assault or torture (Zimbabwe Human Rights NGO Forum, 2019).

While some countries have set up Commissions to investigate human rights violations, the implementation of the recommendations of these Commissions is still pending, contributing to the climate of impunity and leaving victims with no hope for justice. In Morocco, two Commissions were set up to deal with the country's past human rights violations. In 1999, King Mohammed IV gave the Indemnity Commission a six-month mandate to indemnify victims of enforced disappearances and arbitrary detention (Slymovics, 2001). In 2004, the King issued a decree creating the Equity and Reconciliation Commission with a mandate to investigate enforced disappearances and arbitrary detention between Morocco's independence in 1956 and 1999, to rule on reparation requests pending before the former Independent Commission of Arbitration (created in 1999), and to determine "the responsibility of the state organisms or any other party" (US Institute of Peace). The report while determining the fate of 742

victims of enforced disappearances, did not mention individuals responsible for these violations and until today no one has been prosecuted for the crimes (US Institute of Peace).

Regional legal framework: a slow approach to face a grave crime

At the regional level, the African Union has not adopted a treaty banning enforced disappearances and offering guidance to States on how to eradicate this practice.

While the African Charter on Human and Peoples' Rights ("the Charter") does not specifically prohibit the use of enforced disappearances, several rights that are often violated in the commission of this crime are protected under the Charter. Among others, Article 4 protects the right to life; Article 5 prohibits torture and cruel, inhuman and degrading treatment; Article 6 protects the right to personal liberty and protection from arbitrary arrest, while Article 7 provides for the right to fair trial.

Further, while the Charter does not contain an explicit prohibition of enforced disappearance, several regional treaties, focusing on specific issues incorporate provisions that prohibit this practice. Article 9 of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention") specifically calls on States to protect the rights of internally displaced persons by refraining from, and preventing, a number of acts, including enforced disappearances, arbitrary killings, torture and other human rights violations.

In addition to the Kampala Convention, enforced disappearance as a crime against humanity is prohibited by Article 28C(1)(i) of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights ("Malabo Protocol"). The relevant provisions mirror the provisions in

the Rome Statute of the ICC. The Malabo Protocol was adopted on 27 June 2014 and will enter into force once it has been ratified by 15 Member States. At the time of writing, 15 States had signed the Malabo Protocol, and no State had ratified it (African Union, 2019). Article 1(2)(i) of the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children of the International Conference of the Great Lakes ("SV Protocol") specifically prohibits enforced disappearance of women and children as a crime against humanity. The SV Protocol entered into force on 30 November 2006 and is binding on the 12 States parties to the 'Great Lakes Pact.'²

Despite the scarce caselaw on the issue, the absence of a specific instrument on enforced disappearances has not dissuaded the ACHPR from addressing the crime. To the contrary, in the Principles and Guidelines on Human and Peoples Rights While Countering Terrorism in Africa ("Counterterrorism Guidelines"), adopted in 2015, the Commission expressly prohibits subjecting anyone to enforced disappearances and no exceptional circumstances may be invoked to justify violating this prohibition (ACHPR, 2015, p. 22).

Other relevant instruments adopted by the ACHPR that are directly relevant for the prohibition of enforced disappearances on the continent include a range of Guidelines and General Comments.

For example, the African Commission's Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa ("the Luanda Guidelines") of 2014, which are designed to assist States in ensur-

² States parties are Angola, Burundi, Central African Republic, DRC, Republic of Congo, Kenya, Rwanda, Sudan, Uganda, Tanzania, Zambia, South Sudan.

ing human rights compliance in the context of arrest, police custody and pre-trial detention, specifically urge States, in Principle 43, to “establish mechanisms, including within existing independent oversight and monitoring mechanisms, for the prompt, impartial and independent inquiry of disappearances, extra-judicial executions, deaths in custody...”.

Further, the ACHPR’s General Comment No.3 on the right to life, adopted in November 2015, which provides further clarity on the Commission’s interpretation of the scope of Article 4 of the African Charter, is an important instrument in the context of enforced disappearance. For instance, it provides that “where a State or its agent has ...forcibly caused a person to disappear and that person’s fate remains unknown, in addition to the violation of other rights, a violation of the right to life has occurred” (para. 8). It explicitly provides that “States shall take appropriate measures to investigate cases of enforced disappearances committed by persons or groups acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.” A failure to investigate and to hold accountable individuals will constitute a violation of Article 4 in and of itself, in particular where there is a “tolerance of impunity” (para. 15). The General Comment further sets out that “accountability also encompasses measures such as reparation, ensuring non-repetition, disciplinary action, making the truth known, institutional review and, where applicable reform. States must ensure that victims have access to effective remedies for such violations” (para. 17). It highlights that States should “provide necessary information on places of detention, the identity and age of those detained, as well as the authorities responsible” (para. 36).

Finally, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance

in Africa adopted in 2003, and the Guidelines on the Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, adopted in 2002, set out a wide range of safeguards that States shall adhere to in the context of arrest and detention. These safeguards are similar to those that States should put in place to prevent enforced disappearance as envisaged in the ICPED.

The ACHPR and the African Court, the two adjudicators of human rights violations in the regional system, have yet to issue a decision where the prohibition of enforced disappearances features prominently.

In the few cases touching upon enforced disappearance, the Commission has found the States concerned to be in violation of Articles 5, 6 and 7 of the African Charter, breaching the prohibition of torture, the right to liberty, the protection against arbitrary arrest and the right to a fair trial. In 2017, the African Commission held in the Kilwa case against the government of the Democratic Republic of Congo that enforced disappearances constitute a violation of the right to life since the “victims had not returned to their families almost five years after the incidents” (*Institute for Human Rights and Development in Africa and Others v Democratic Republic of Congo*, para. 106). The Commission ordered the Congolese government to take all necessary measures to investigate and prosecute the State personnel responsible for the atrocities, including the State agents and employees of the Anvil Mining Company. Further, the Commission urged the government to undertake several reparations related to enforced disappearances, including the exhumation of the bodies buried in mass graves, and measures to carry out dignified burials, and to identify and compensate the victims and their families (ICJ, 2017).

Similarly, in *Mouvement Burkinabe des Droits de l’Homme et des Peuples v Burkina*

Faso, the Commission found that the disappearance of persons suspected or accused of plotting against the instituted authorities constitute a violation of Articles 5 and the 6 of the African Charter. In *Liesbeth Zegveld and Mussie Ephrem v Eritrea*, the ACHPR found that holding 11 persons *incommunicado* and without charge and no access to their families or lawyers resulted in violations of Articles 6 and 7(1) of the Charter. Finally, in *Malawi African Association and others v Mauritania*, in finding a violation of Article 6, the Commission recommended the government of Mauritania to arrange for the commencement of an independent enquiry in order to clarify the fate of persons considered as disappeared, and to identify and bring to book the authors of the violations perpetrated at the time of the facts arraigned.

ACHPR: steps to address a forgotten struggle

The above discussions highlight that, with the exception of some isolated efforts, the African human rights system has not yet addressed enforced disappearances in a holistic manner, despite the practice being still prevalent in the continent. Recent developments, however, signal a change of approach by the African Commission, reflecting an increased awareness and concern over the crime.

In 2018, the Commission adopted a resolution extending the mandate of its Working Group on the Death Penalty, and Extra-Judicial, Summary or Arbitrary Killing to include enforced disappearances, with a view to collect studies on the phenomena and advise on urgent measures to address the situation of enforced disappearances in Africa. In August 2020, the African Commission adopted another resolution, tasking the Working Group to draft guidelines for the protection of all persons from enforced disappearances in Africa (ACHPR/

RES 448 (LXVI) 2020). The resolution calls on the Working Group to present the guidelines within one year with the aim to improve the situation of victims of enforced disappearances, raise awareness about the practice and contribute to the prevention of this crime on the continent.

The adoption of the guidelines would not only show a real commitment of the Commission to fight against enforced disappearances, but would also serve to address several gaps that allow this practice to continue taking place on the continent.

As addressed in previous sections, most national legal frameworks are not adequate to protect and prevent against enforced disappearances in the region. Further, currently, the existing regional instruments do not fully capture the context and factors for enforced disappearances on the continent. For example, they do not cover enforced disappearance committed specifically during policing or in the context of migration.

The ACHPR's guidelines could serve as a complimentary instrument to existing international and regional norms and obligations and would encourage African States to ratify the ICPED and adopt the measures necessary to prevent enforced disappearances.

The WGEID has recognized that there is a direct link between enforced disappearance and migration (UN Human Rights Council, 2017, para. 81). However, the African human rights system does not currently have a specific legal document that would address the violations of the rights of the migrants. The guidelines could fill this gap, highlighting the transnational nature of migration in the continent and the obligations of States to cooperate in searching for the victims, compiling data on people who go missing in, or while transiting, the countries and carrying out investigations into these violations.

There is also a need for the ACHPR to capture the risk of particularly marginalized and discriminated groups to become victims of enforced disappearances, including women, children, ethnic minorities and migrants.

The nature of enforced disappearance is so heinous that it impacts not just the person who is subjected to the crime but also those who are directly impacted by the disappearances. Women and children are particularly affected by the crime. While men are usually the persons who are forcibly disappeared, women bear the brunt of the impact of the crime. As men are usually the breadwinners of the family, their disappearances place the families in economic difficulties. Further, lack of financial stability hinders children's access to education and health care, marginalizing the victims even further. This is an aspect that the ACHPR could specifically address in the guidelines, noting the impact that enforced disappearances have on women and children and outlining the States' obligations to provide assistance to vulnerable groups.

Finally, the existing documents within the African human rights system do not fully address key aspects of the violations caused by enforced disappearances and, as it currently stands, the caselaw of the ACHPR on this issue remains unclear. Thus, there is a need to address the nature of enforced disappearance as a continuous crime that starts from the moment the person disappears until they are found or their whereabouts identified. The continuous nature of the crime is also closely tied with the right to truth for victims and families. This right encompasses obligations of the State to provide information on the progress and result of investigations, the fate of the victims and the identity of the perpetrators. Finally, the guidelines could address the scope of the right to redress in cases of enforced disappearance.

Conclusion:

The recent steps taken by the ACHPR are of great significance, as they signal a strong commitment to address a heinous crime and offer States much needed guidance on how to eradicate it. If adopted, the guidelines would be a first step forward to creating a holistic framework in addressing enforced disappearances in Africa. This would also acknowledge the plight of thousands of victims of enforced disappearance in the continent and would give them an additional tool to exercise their rights to know the truth, seek justice and obtain reparations.

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Analysing long-term impacts of counterinsurgency tools in civil wars: a case study of enforced disappearances in Algeria

Aïcha Madi¹

Key points of interest

- Enforced disappearance in Africa takes place in a widespread manner, yet it is grossly underreported.
- Enforced disappearance is used by many African countries to suppress dissent, target migrants, or in the context of internal armed conflicts and the fight against terrorism, among other situations.
- While enforced disappearance has historically not been a focus of attention by the African Commission on Human and Peoples' Rights, the Commission has taken steps to produce guidelines that assist States in eradicating this practice on the continent.

Abstract

Background: The decade long civil war that struck Algeria in the 90s still has strong impacts on the Algerian society today. This article argues that the instrumentalizations of mass human rights violations by state actors cause repercussions on far more than just the direct victim, complexifying the post-war recovery and transitional justice processes that

are put forward in such contexts.

Method: Interviews conducted among mothers, brothers and wives of individuals that were taken by state actors and have disappeared since were analysed to understand the impact enforced disappearances can have on more than the direct victims.

Results: The study shows that the victimizations resulting from enforced disappearances are multi-level and long-term.

Discussion: Any rehabilitation process that comes after such mass inhuman treatments which aspires to be complete and truly contribute to social well-being needs to also take into consideration secondary level victims, which represent family members, and third level victims, which represent the societal and collective memory impacts in general.

Keywords: Algeria, Dark Decade, Enforced Disappearances, Victim Impact, Social Recovery, Collective Memory Trauma

Introduction

The opposition against torture and other degrading treatments has long been considered central and essential for the protection of human rights. The attempts by the American administration in the beginning of the 2000s to introduce a new debate about torture's relevance in situations of war against terror and in the name of national security

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has pushed public opinion in the last decade to learn more about the use of torture by their governments, an actor who should represent the rule of law (Rosemann 2006). Despite the impacts of civil wars already being studied short-term, long-term repercussions on societies are rarer in the literature, especially when narrowed down to the specific contexts of the rise of Islamist armed uprisings in the Middle East and North Africa (Willis 2014). Consequences direct victims of torture experience like psychological distress are discussed in many studies, but what about the experienced consequences on relatives of the direct victims who haven't been tortured but yet know about it and constantly fear it? This quest can be addressed with a case-study of the Algerian 90s civil war: it occurred over 20 years ago so its long-term impacts can be observed today and therefore easily studied, and it was a result of the rise of armed islamist groups and a military coup, which are factors present in many current Middle Eastern crisis like Egypt and Syria. Giving a closer look to the impacts the 90s civil war and the instruments Algerian state actors used to fight it could hold interesting implications for post-war recovery processes that currently need to be prepared for some of Algeria's neighbour countries.

After military intervention in 1992 to cancel the first-ever elections held since achieving independence, Algeria sunk into a decade-long civil war that caused over 100,000 deaths - some civil society organizations counting up to 200,000 deaths (Ould Khettab 2015). Despite the different anti-regime and islamist insurgencies being responsible for many of the victims in this count, State-actors also instrumentalized many anti-human rights practices to serve its war against 'terror' and caused heavy victimizations, including torture, arbitrary arrests, secret detentions and other cruel, inhuman and degrading treatments. Between

8000 and 20 000 persons disappeared, 4000 to 7000 of them disappeared after being arrested or abducted by state actors like policemen or military (Algeria-Watch and Sidhoum 2003). As the only solution put forward to put an end to the conflict also known as *the dark decade*, the Algerian government proposed a national reconciliation charter in 2006 that conceded amnesty to perpetrators.

This article suggests revisiting the files on one of the tools used in the 1990s in Algeria to fight anti-regime insurgencies and terrorism: enforced disappearances. This form of human right violation is particular in the way that it also leaves family members of the direct (disappeared) victim in a void where they wonder if they should mourn or fight to find truth about the whereabouts of their loved one, which is in itself a form of torture and degrading treatment on them even if they were not initially targeted by the human right violation. It discusses the multi-level victimization caused to Algerian society, offering a re-analysis of this civil war's repercussions that now takes fully into consideration the impacts of the widespread use of enforced disappearances. Through a victim impact analysis, the article uses video and audio testimonies of family members of enforced disappearance, all members of the women-led organization of mothers of abductees *SOS Disparus*, based in the city of Algiers.

SOS Disparus is a local human rights organization formed in 1998 by a group of Algerian mothers looking for the truth about their loved ones who had been arrested or abducted by State actors during the 1990s civil war and who were never seen since. Their work on the ground involves collecting testimonies and assisting families of victims. The organization also created a podcast named *Radio des Sans Voix* (radio of the voiceless) and produced a number of interviews with family members of

enforced disappearances. Some of these interviews are also used in this paper.

Background: The 2006 national reconciliation charter that the government put forward to put an end the conflict posed many challenges to post-war recovery. It conceded amnesty to all preparators, whether state officials or by armed groups. The charter goes against truth-seeking for families of victims of enforced disappearances since it makes it impossible to file “complaints against a state official presumed to be the author of an enforced disappearance or any other violation human rights” (CFDA 2016). Monetary compensations have been offered to families of disappeared, but is subject to the families agreeing the provision of a death certificate of the missing person, which implicates that the person is officially no longer disappeared but dead and that the family can no longer legally ask the State to help them find their disappeared loved one. The United Nation’s Committee Against Torture’s last report about Algeria (2008) condemned this condition to touch indemnities since it lays family open to additional victimization, which is in itself a form of inhuman or degrading treatment (UNCAT 2008).

Method

Definitions: Enforced disappearances are a form of torture, which is defined by the *International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.” (OHCR 1984) The approach used in this paper pushes for a more englobing definition of torture that takes into consideration a more contemporary victims typology. This typology considers that the definition of victims “extends well beyond the individual, direct victim of crime and in-

cludes many different groups of persons” like family members (Wemmers and Manirabona 2014).

Victimology researchers such as Wemmers and Manirabona propose a typology for victims of war crimes that takes into consideration the impact on the groups, communities and societies that have suffered harm - for example, the fear that is created by the systematic use of violence. Fear alone can create trauma that is as worthy to be considered as a rehabilitation need as a direct victim’s trauma (Wemmers and Manirabona, 2014). This paper will therefore consider 3 levels of victims: the direct victim of enforced disappearance, the family of the direct victim, and the community, mainly Algerians living in the capital, as the vast majority of enforced disappearances occurred in Algiers and therefore had an impact on the social climate in the city. See figure 1 for a representation of multi-generational victimization.



Figure 1. Family of forcibly disappeared Hakim Cherguit, March 2016, Algiers (CFDA 2015)

Similarly to the definition of torture, the definition of enforced disappearances used here starts with a definition from international law, more specifically from the *International Convention for the Protection of All Persons from Enforced Disappearance* and extends it to include more victims than the direct victim. Article 2 of the *Convention* defines enforced disappearance as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State [...] followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person” (OHCHR 1992).

Method: The paper looked for victim impact statements in the testimonies of second level victims of enforced disappearances, which are family members. Victim impact analysis consists of looking for “information about the effects of a crime on the victim or the victim’s family” in a testimony the victim or the family gives (Myers and Arbuthnot 1999).

The approach developed is that victim’s voices should be at the heart of any post-war recovery process, so using victims’ oral statements is a particularly appropriate method to identify the needs the recovery strategy and policies should tackle.

In Algeria, after over 20 years since the disappearances, mothers tend to be the most active family member in the search for a disappeared loved-one, and thus they are the most present in the videos. Six (6) video testimonies available on both *Youtube* channels of *SOS Disparus* that are named *collectif disparus-algerie* and *Disparition forcée en Algérie* were used. The videos present the testimonies of 9 mothers in Arabic, French or Amazigh depending on the preferred language of the mother. The videos were all recorded in the streets, in the context of a peaceful protest or demonstration demanding the truth about the missing loved-one, except for one that was recorded at the

home of one of the mothers. Seven (7) audio recordings, still produced by *SOS Disparus* but through it podcast *Radio des Sans Voix*, were also used. One of testimonies is given by both parents of a victim, so the number of second-level victims listened to in this case is 8. The audios were all recorded at the office spaces of *SOS Disparus* in Algiers, in a safe environment, except for one audio (recorded in 2021) that was recorded through a phone-interview because of the covid-19 context.

The total number of (second level) victims listened to is 17 ($n=17$). Some videos offer short testimonies (2 minutes), and the audio testimonies are all 20 minutes \pm 2 minutes. In efforts to measure long-term victimizations of the 1990s civil war, all testimonies used were collected recently, between 2015 and 2021. The audio testimonies were semi-structured while the videos were not. The links of all videos and audio testimonies can be found in the Annex.

In the testimonies, the harm experienced by families of victims of enforced disappearances is the variable aimed to be identified. Any sign of change in the (second level) victim’s economic situation, like the loss of a lot of money to pay for judicial procedures to ask the State for the whereabouts of their loved one is what is looked for. The harm experienced can also be in the social status, for example an exclusion from the rest of the person’s family or friends because they become associated with “something” that happened during civil war, or “something” that is against the State. In these situations, it is often because enforced disappearances are not understood by most of the population, and many Algerians think that people who were taken by State actors and disappeared were probably terrorists, and that they might have deserved it. The Algerian context, as of most contexts where enforced disappearances occurred, however shows that

there was not many evidence collected on a victim before arresting her and making her disappear, which means that disappeared victims were not necessary involved with armed terrorist groups. Even if the person was, enforced disappearances remain a crime against humanity that is prohibited. Finally, any change in the psychological or emotional condition of the (second level) victim is also considered as an impact that will be analysed. It can be related to a state of tiredness or isolation because of the nature and the duration of their fight to find out about their disappeared loved one.

In the statements of the studied interviews, different factors that can have an impact on the harm experienced by family members were measured: the satisfaction or dissatisfaction with the judicial process that was made available to them for the human rights violation their loved one has been a victim of, the involvement in looking for the missing loved-one which is known to cause tiredness and loneliness, and the psychological and socio-economic situation of the interviewed person at moment of his or her testimony. These variables were inspired from the ones used in a study on victim harm published in the *International Review of Victimology* in 1997 by Edan Erez, Leigh Roeger and Frank Morgan. These factors were identified as tending to influence the way victimizations are experienced in situations of human rights violations. Since none of the testimonies followed a pre-established and controlled questionnaire, some testimonies do not give information on some factors.

Participants: The study of enforced disappearances in Algeria and its impact on victims is a difficult one because the vast majority of the parents of victims of enforced disappearances today are in an advanced age, and many have already died. Because of this, a study on their reality and experiences is very important, and the already documented work done on the

ground by *SOS Disaprus* therefore becomes highly valuable. The fact that they have gathered a lot of documentation allow researchers to study the testimonies of these family members. The present study is thus based on the information contained in the videos and audio testimonies of As for the third level victims, the harm they suffered from enforced disappearances will later in the paper be extracted from an analysis. Since it is a broad and large population, it is difficult to collect data about it.

Results

In all 17 testimonies listened to, some kind of harm and negative repercussion is depicted by the family member. Since enforced disappearances were systematic in the way that they occurred on a wide level with an organization in the context of a cycle of repression, the testimonies of families of victims have similarities. The harm documented show a long-term (over 20 years) repercussion on the family of the direct victim. All the mothers in the 6 videos show serious involvement in the quest for their missing son, where this quest has taken a big part of their everyday lives for years. All of them participate in demonstrations taking place after over 20 years and are still active within *SOS Disparus*' work. One of the sons of a disappeared man interviewed in a podcast episode also show serious involvement. Every testimony talks about a deep desire to access truth about the loved-one, to "receive the bones if he is dead" to at least have a grave to go to, and to be finally able to have the closure to mourn, which translates into a dissatisfaction of the solutions offered by the State, and in many cases an exhaustion.

Psychological and socioeconomic situation was the most difficult type of impact to measure in the testimonies studied because most of the testimonies don't naturally think of

talking about this aspect, or don't do it because of the stigma and because these are personal details. It is a limit of using pre-made testimonies that don't answer the same questions and rather let (second level) victims express freely about whatever they want to talk about related to their experience. Although reports about enforced disappearances tend to show that families left behind struggle economically and can suffer from marginalization, this factor was difficult to measure with the data available (Amnesty International 2009). However, in two of the videos and two of the audios, the family members talk about the emotional tiredness and burden of their quest. In five of the videos the person interviewed appears to want to use the platform that they were offered as a way of communicating to the government that they will not back down, showing a determination level that is not diminished by the passage of time.

In 4 testimonies (audio), the (second level) victims interviewed talk about a fear of repercussions because of their involvement in the search for their loved ones, some talking about

threats received, in form of anonymous letters for example that are believed to have been sent by State actors, or a perception of threat at least and fear of repercussion.

On the basis of the analysis of the testimonies, the factors considered to influence the trauma and the fear that the family members experience are: the level of satisfaction with the judicial process made available by the State, the involvement in looking for the disappeared loved one, and the psychological and socio-economic situation of the family member.

The impacts and trauma experienced by family members of enforced disappearance victims have been particularly violent: some families have received threats because of their quest for justice and truth, some lost their social networks and economies due to legal fees, and many have organized their lives around their revendications because they regularly attend protests (CFDA 2016). People who witness these impacts or hear rumours or stories about the state's use of torture and other inhuman treatments can later themselves become afraid and mistrustful of state

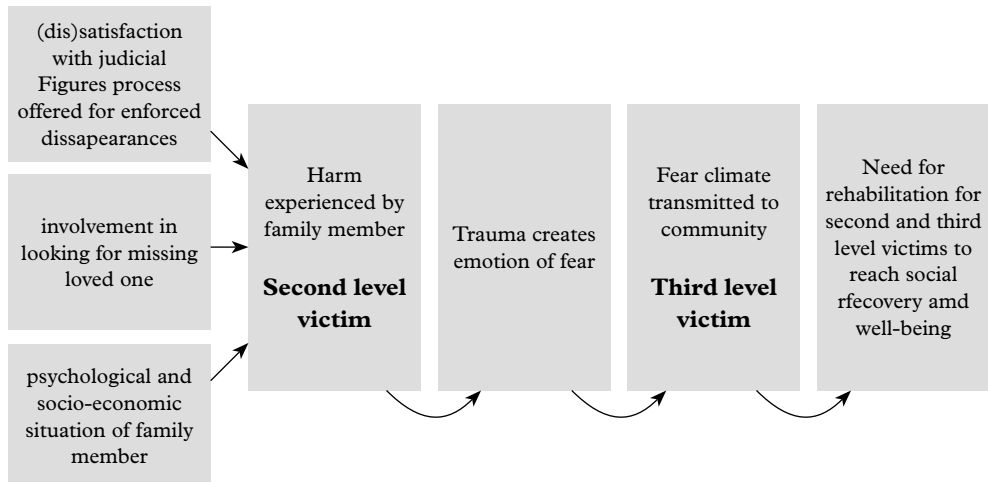


Figure 2. Enforced disappearances creating multi-level and long-term victimizations in Algerian context

actors. When this transmission of a fear climate occurs, third level victimizations take place and rehabilitation becomes needed for people who, for example, live in Algiers in a neighbourhood where enforced disappearances occurred, even if they are not direct victims nor family members of a direct victims.

Although utilizing a small sample, the results show that enforced disappearances cause harm to family members, which creates fear in some of them. Added to the other mass human rights violation committed during the dark decade, the birth and transmission of a fear climate, even to new generations, can be expected (see figure 2). The existence of victims other than those directly victimized logically demonstrates the existence of rehabilitation needs for this much larger group of victims.

Discussions

As Wendy Pearlman explains in her study “Emotions and the Microfoundations of the Arab Uprisings”, fear is an individual emotion. This was identified in the current work through some testimonies of families of victims of enforced disappearances, but it can also be an emotional climate, which can be observed in Algeria since the *dark decade* (Pearlman 2013). Algerian psychology professor Cherifa Salhi declared in 2012 in the context of Arab Spring in the neighbouring countries: “*even if we would like to fight against corruption, for justice, freedom and democracy, we are still traumatized [...] we need more time to overcome the effect of ten years of violence*” (Pearlman 2013). Even if the new generation of Algerians “*does not remember the details of the civil war, [...] every family has a victim to tell the story of the civil war*” (Zeroualia 2020). Trauma does not disappear, but rather a complete mental representation of traumatic events remains available in the memory. Since the conflict resolution mode chosen by Algeria

did not involve any form of rehabilitation, the trauma in the collective memory that emerged from experiencing, witnessing, or hearing about the systemic and instrumentalized mass human rights violation is predictable.

The absence of transitional justice procedures in post-1999 Algeria, identified as key mechanism for social reconstruction after armed conflicts, is an aggravating factor of the Algerian collective memory’s trauma here studied. The UN’s Committee against Torture has expressed its concerns for years about Algeria’s charter for peace and reconciliation that gives amnesty to all preparators, since it is within a state’s obligation to prosecute perpetrators of war crimes and crimes against humanity, including torture and enforced disappearances (UNCAT 2008).

When preparators enjoy impunity from the crimes they have committed, communities tend to grow an even larger mistrust toward their governments, which heavily blocks social recovery and marks collective memories. When a State doesn’t investigate a crime, it is rarely perceived as a lack of capacity or budget or a lack of evidence to prosecute, despite it often being a narrative diffused to victims, and is rather perceived as a voluntary strategy of impunity. This lack of trust, the absence of justice and accountability, and the general climate of fear and abandonment by the State that is initially perceived by families of direct victims, or second level victims, is what can be transmitted to the rest of the community with years passing. Nevertheless, even when transitional justice mechanisms are introduced, the sole act of instrumentalizing human rights violations, even if they are used in the name of national security, has heavy repercussions on all levels of victims.

The analysis of the Algerian experience can hold essential lessons and implications for partitioners working in post-war contexts. Tra-

ditional transitional justice mechanisms that usually involve trials between direct victims and perpetrators have an appeal for Western public opinion and therefore tend to be pushed by the international community and donors, but in some cases like in Algeria, the traumas cannot be tackled by traditional procedures (Hazan 2006). It is crucial to design mechanisms that tackle collective memory traumas like the fear climate. The need for reparation of the different levels of victims should have its place in every need's assessment process of post-war recovery projects that take place in a context where enforced disappearances occurred. Partitioners and researchers working with families of victims of enforced disappearances should also avoid as much as possible referring to family members as "mother of", for example, to help considering them fully as victims themselves instead of just family members of victims.

Conclusion

When discussing the impacts of armed conflicts, Algeria's *dark decade* rarely emerges in current debates. This paper proves itself highly relevant because it can attest of the long-term consequences that the use of torture, including enforced disappearance, can have on societies and communities at large. If analysed as a failure case of rehabilitation of war victims, the study of the Algerian context can help sensitize on the multi-level, multi-generational and often just understated and minimized victimizations and traumas that the use of enforced disappearances and their impunity can create.

As a call for future research, this article stresses on the importance to treat enforced disappearances as a mechanism that causes serious repercussions over a long period of time, far greater than the direct disappeared victim and its direct close family members.

The victim impact analysis developed here serves as a reminder that when mass violations are instrumentalized as they were in Algeria, victimizations occur on a wide multi-level, implying that traditional transitional justice mechanisms mainly focusing on the reparation process of the direct victims can be insufficient to heal collective memory traumas.

Annex

Links of videos documenting testimonies of victims of enforced disappearances used in the paper (publicly available):

- Testimony of Mrs. Mechani, November 2016: https://www.youtube.com/watch?v=m0_eZ8zcFRo
- Testimony of Mrs. Berkane, October 2017: <https://www.youtube.com/watch?v=n8jIOrLazYk>
- Testimony of Mrs. Cherguit, December 2019: <https://www.youtube.com/watch?v=ZC7crATjadM>
- Testimony of Mrs. Bouabdellah, December 2019: <https://www.youtube.com/watch?v=g0FeTP6hDiw>
- Testimony of a group of mothers, August 2016: <https://www.youtube.com/watch?v=NdJvGOX5hZc>
- Testimony of Nasserata Doutour, January 2021: <https://www.youtube.com/watch?v=w9Btw5sJFK0>

Links of audio testimonies of families of victims of enforced disappearances used (publicly available):

- Testimony of Mr. Othmane, Decembre 2019: <https://www.radiodessansvoix.org/app/assets/uploads/2019/12/La-disparition-forcée-de-Othmani-Baba-Ahmed-.mp3>
- Testimony of Mr. and Mrs. Medjeber, July 2016: <https://www.radiodessansvoix.org/app/assets/uploads/2016/07/Djilali-MEDJBER-FINAL.mp3>
- Testimony of Mr. Ouazzane, August 2016: <https://www.radiodessansvoix.org/app/assets/uploads/2016/08/Mr-Omar-OUZZANE-Noublions-pas.mp3>
- Testimony of Mr. Gherzoul, November 2016: <https://www.radiodessansvoix.org/app/assets/uploads/2016/11/DISPARITION-FORCEE-DE-SALIM-GHERZOUL.mp3>
- Testimony of Mr. Kyrza, July 2017: <https://www.radiodessansvoix.org/app/assets/uploads/2017/07/La-disparition-forcée-de-Sadek-KYZRA.mp3>
- Testimony of Mrs. Maziri, October 2018: <https://www.radiodessansvoix.org/app/assets/uploads/2018/10/La-disparition-forcée-de-MAZIRI->

Abd-Allah.mp3

Testimony of Mrs. Bennoua, January 2021:

<https://www.radiodessansvoix.org/app/assets/uploads/2021/01/MOURAD-ET-MUSTAPHA.mp3>

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The Half-Widows of Kashmir: A discourse of liminality and exception

Inamul Haq¹

Abstract

Introduction. The wives and mothers of men who have ‘disappeared’, who have been picked up and taken into custody by the authorities, or killed, remain in a tragic state of suspense. They are called the “half-widows”. According to human right organizations, the violence that has marred Kashmir has produced more than 80,000 *half-widows*. They have to bear unfavourable circumstances, indifferent society, absence of laws, poor rehabilitation mechanism and unresponsive government machinery.

Methods. Exploratory in-depth interviews with female relatives (n=30) of persons detained-disappeared by Indian authorities in Kashmir

Results. The female relatives of the men who have ‘disappeared’ are uncertain as to their marital status. In the complete absence of information on the fate of their loved ones, they live in the hope that one day their relative may return home. Economically vulnerable, the absence of any rehabilitation measures renders them emotionally and psychologically traumatized.

Conclusions. There is a lack of reliable epidemiological data on the problem of half-widows. The preliminary results show they are a hidden population that suffer in silence. The lack of a structured database is painfully evident as no thorough record has been maintained or comprehensive survey conducted to properly measure and address the problem.

Keywords: Kashmir Conflict, Disappearance, Detention, Half-widow, Psychological Trauma and Economic Distress.

Kashmir has a Muslim majority population and was ruled by Mughal-Afghan dynasties. In the nineteenth century, the British defeated the Sikhs in the first Anglo-Sikh war (1845–46). The Hindu Maharaja Gulab Singh (Dogra) ruled Kashmir from 1846–1947 and that period was marked by the alienation of Muslims in Kashmir. The Dogra imposed heavy taxes, capital punishment and terrorised the Kashmiri Muslims (Schofield, 2003).

In 1947, the Kashmiri Muslims revolted openly against the oppression of the Maharaja and the revolt was supported by the tribesmen of Pakistan’s North West Frontier Province (NWFP), which captured several towns and massacred civilians in the valley (Husain, 2009: 1008). To crush the rebellion, the Maharaja sought assistance from the state

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of India, and on October 26th, signed the Instrument of Accession with India on the condition that Kashmir should be permitted to have its own constitution (Bazaz, 2005).

On the same year, India and Pakistan fought the first war relating to the Kashmir dispute and the matter was taken to the United Nations (UN). With the intervention of the UN, a cease-fire was signed between India and Pakistan on January 1st, 1949, establishing a ceasefire line (Hussain, 2009:1008). In 1965, the countries fought another war over Kashmir and divided the old Line of Control (LOC) of the state into four political areas: Indian occupied Kashmir, Pakistan occupied Kashmir (POK), Northern area (under Pakistani administration) and Aksai-Chin (under China's control) (ibid, 2009: 1009).

Although in 1972, an agreement was signed to end the conflict (Singh, 2011: 12), there was secessionist insurgency throughout the decade. The local government began to discuss a plebiscite on the issue of independence from India (Pandita, 2003). Ashutosh Varshney (1992), argues that there was a clash of three competing visions of nationalism (Kashmiri, secular and Islamic), which added to middle-class frustration among educated youth who faced unemployment on a large scale. The attainment of higher education levels and the expansion of media increased awareness among society about the politics at local, national and international levels (Ganguly, 1996).

In 1980's, Islamization spread quickly and the names of two thousand five hundred villages were changed to Islamic names. The Kashmiri leader Sheikh Abdullah delivered speeches in mosques and the influence of Saudi Arabia emerged in 1979, through which the message of Islam spread in the Kashmir Valley. The establishment of madrasahs and schools from the early 1980's planted the seeds of Islamic fundamentalism in Kashmir

against the Sufi tradition for which Kashmir was known throughout history.

These developments contributed to the insurgency of 1987, in which a new party, the Muslim United Front (MUF), came into existence. The MUF, with the support of pro-independence activists, Islamic fundamentalists and Kashmiri youth, contested the election for state assembly (Schofield, 2003). The leaders of the MUF wanted a change of political system by democratic and peaceful method and by the process of elections. Many of them were arrested, tortured and disappeared by the security forces and police, creating a spiral of violence in the region and prompting youth to join the insurgency (Akhtar, 1991). Some of them joined the Jammu and Kashmir Liberation Front (JKLF) (Puri, 1993). In 1988, the wide-spread protest in the Valley began along with anti-India demonstrations, resulting in strikes, arrests and torture by the police (Schofield, 2010, Akhtar 1991). The insurgency spread rapidly in the Valley after the Gawkadal massacre on January 20th, 1990, in which fifty-three civilians died and hundreds were wounded by indiscriminate firing by Indian security forces. By 1990, simmering resentment led to mass rebellion in favour of freedom (Ganguly, 2001). The insurgents gained popular support for their struggle, rendering the police and paramilitary forces unable to maintain law and order. The demonstrations and the objective of the uprisings in the Kashmir Valley is, basically, an answer to end human rights violations (Jha, 1991).

India perceives Pakistan's proxy-war as aimed only to disturb the peace and order in the Valley. The insurgent people living in the Valley and their supporters have demanded a plebiscite from 1953-1975, and revolted against Indian rule in 1990, and more recently in 2008, 2009, 2010 and 2016. The Valley at that time became a site of open warfare, re-

sulting in widespread militarization (Chowdhary, 2014).

Besides that, various laws reforms were introduced to legitimize warrantless arrests and the illegal detention of suspected people, increasing the number of individuals subjected to physical, sexual and psychological torture, sometimes resulting in death. Likewise, the collective rights such as the right to lands and resources, as well as peace and security in the territories, have been systematically violated (Ariate, 2014). In Kashmir Valley, these laws have created an area of “exception” in which inhabitants are stripped of their basic rights. The Kashmir Valley is in a state of siege, where authority is vested in military power and fundamental rights have been suspended in furtherance of the maintenance of law and order (Hussain & Arbor, 2003).

Half-widows are most victimised by state violence, which has impacted their family, property and liberty.

Theoretical framework

Conflict, warfare and state repression, as well as symbolic and structural violence, give rise to social suffering, social abandonment and social death (Duschinski, 2010). States justify using violence against its own citizens in the name of national security, and suspending the rule of law. But theorist argue that the State uses violence to protect its own claim to rule of law (Benjamin, 1978).

Violence and law mix with each other at the heart of the state, giving rise to dissolution between legal and the extra-legal through various disciplinary, regulatory and enforcement practices that are practiced differentially across a range of citizenry, creating social (as opposed to spatial) landscapes of cores and peripheries that are shot through with power and violence (Aretxaga, 2003). Agamben argues that exception is mostly common in war and re-

bellions. However, in modern politics, the state of exception is not an “exception” but it has become a rule providing immunity to the sovereign by suspending the judicial order. In *Homo Sacer*, he states that a person cannot be sacrificed or murdered because of crimes but can be killed with impunity (Agamben, 2005). Achille Mbembe coined the new term, ‘Necropolitics’, in which a state can decide who can live and who can die (Mbembe & Meintjes, 2003). The state applies liminality towards its subjects. As per Victor Turner (1967), “the essence of liminality is an unstructured phase of rituals, where participants transit from one social status to another”. He defines liminal individuals or entities as neither here nor there; they are betwixt and between the positions and at the same time being both” (Turner, 1967). While as, Arpad Szakolczai in his book *Reflexive Historical Sociology* argues, that liminality becomes permanent in modern societies, where an individual is recognized as a part of society and is welcomed in that order with a new role, which becomes frozen for him/her (Szakolczai, 2000: 220). In liminal situations, the persons often come to feel nameless, spatio-temporally dislocated and socially unstructured (Thomassen, 2006). The person live, in the state of exception, at the margin, in liminality, for rest of their lives.

Half-widows are trapped on the “threshold” for an endless period of time. Over the last three decades, the half-widows are “waiting” in their liminal status, faced with situations of ambiguities and dilemmas, in what appears to be a liminal phase that has become ‘fixed’. Being almost perpetually frozen in this state, the half-widows are confronted with vulnerabilities and existential questions with no answers (D’Souza, 2016:28).

Enforced disappearance in Kashmir Valley

Enforced disappearances began with the birth of insurgency in 1989 and remains a

state policy along with extra-judicial killings, torture, and sexual violence. Journalists, human right activists, political activists, students, and militants have disappeared in custody since then (Imroz, 2005).

According to the Association of Parents of Disappeared Persons (APDP), there have been an estimated 8,000 to 10,000 disappearances in Kashmir (APDP 2011) since 1989 while official figures recognize 6,000 cases since the start of the insurgency. In July 2002, the late chief minister Mufti Muhammed Sayeed stated in a National Conference and in the assembly that the number of people disappeared since 2000 where 3,184, asserting that the men had gone to Pakistan for arms training (Noorani, 2003:2592). If there are disputed figures regarding the number of ED victims, there is no accurate number of half-widows. According to Pervez Imroz, a human rights activist and lawyer of Srinagar High Court, the number ranges between 1,000-1,500.

Case examples

Mushtaq Ahmad Dar, a resident of Tengpora Srinagar, was working as a baker. On 20th April 1997, 20 Rashtriya Rifles cordoned his house. The members of the family were separated in different rooms. The army started torturing him and forcing him to admit that he was a militant, in possession of arms. Mushtaq was interrogated until morning and later taken into detention. The following day, the relatives went to the camp, where the forces denied his detention. His parents visited every detention centre in Jammu and Kashmir, but could not find any clue about him. A First Information Report (FIR) was launched at a nearby police station, and a written petition filed in the High Court and a case was registered at the State Human Rights Commission (SHRC). However, to date, there is no clue regarding Mushtaq's fate. (Independent Peo-

ple's Tribunal, 2010).

Abdul Rashid, a resident of Kupwara District and a farmer by profession, was detained by members of the military 131 battalion on 5th January 1998 at 7 pm. The next day, his wife Halima went to the office of Deputy Superintendent of Police (DSP) who denied having custody of Abdul Rashid. She then approached the military units. However, everyone denied having custody of her husband. She tried to file a FIR, which was denied, and demanded a bribe of 15,000 for launching it. According to her, she went from pillar to post searching for her husband without finding any clue. During this journey, she was verbally abused by many police officers. Halima recounted that she even knocked on the door of the Home Minister, but she did not find any clue regarding her husband either (Independent People's Tribunal, 2010).

Mehraj was an only son, was married and had two children. On the night of the 19th of April 1997, army personnel broke the door and entered forcibly into his house. He got caught and the rest of the family was locked up in one room. Mehraj was detained and, to date, there isn't any clue on whether he is dead or alive. Mehraj's parents visited every army camp to try to ascertain the whereabouts of their son. They paid a huge amount in bribes to army officers, but all their efforts bore no fruits. The case file of Mehraj's disappearance is sub-judice in the high court and his parents have lost hope of his return. (Independent People's Tribunal, 2010).

Ethnographic Findings

This section of the paper is based on the narratives of the half-widows interviewed for this research.

Crisis of Identity. The women whose husbands have disappeared often face an identity crisis. They are in a liminal status where

they cannot consider themselves widows, nor even envisage re-marriage. Living in a constant state of uncertainty, their marital status is unknown. *“I was happily married and have two children. One day my husband left for the market and never returned. I waited... then searched... went to the market... local friend’s place... nearby police station to complain... I told my children their father would return, and I still tell them that their father will return. They have lived an entire life believing that one day their father would return... he neither came, nor has my search ever finished.”* (Sakina). Sakina comes from Dardpora Kupwara, also called as the village of widows.

The children of the disappeared also might face identity crisis (APDP, 2011). Women are often stigmatised by their own family and most of them decide not to remarry, because of this stigma and to protect the identity of their children.

Process as punishment. After the disappearance of their beloved ones, the first and foremost task undertaken by these women is to register the FIR in a police station. However, the police often refuse to do so stating, following the official version, that their husbands might have gone to Pakistan for arms training. This was the case of Farida (name changed), whose husband was disappeared in 2010. *“They have dubbed my husband as a militant and now I am not eligible for ex-gratia relief.”* Like Farida, other half-widows have gone through the same trauma and have searched for their husbands from jail to jail, camp to camp and even travelled outside Kashmir. The AFSPA is an emergency law issued in 1990 that gives legal cover to the armed forces operating in disturbed areas from prosecution. Although filing a FIR, relatives know that the detention body is exempted from judicial review and citizens have no legal remedy to challenge the detention. Besides that, there is no official record of people in detention by security forces that

can be consulted. This prevents citizens from seeking and receiving information about detainees and prevents people from taking recourse by way of a writ of *habeas corpus* (Kazi, 2012).

Sexual violence. While searching for evidence of their husbands’ fate, these women have visited army camps, police stations and jails. These efforts lead to these women being disrespected by a society in which such behaviour is entirely against the norm. Most women have been subjected to sexual harassment during their search for their husbands but remain silent about the ways in which state or non-state actors have abused them (Bhat, 2011). Rubina (name changed), a half-widow of Kaloosa Bandipora, became a victim of sexual violence when she began the search. *“My body is not the site of violation. I am violated to the extent of my husband’s disappearance”*, she said. For half-widows, even their own society is not safe for them.

Economic hardships. The absence of their husbands has made these women economically vulnerable. In already marginalised communities, the disappearance of a family’s breadwinner is catastrophic. Families have lost their ration cards, they cannot transfer the name of bank accounts or transfer their husband’s property. These processes either require death certificates or government verification procedures, which cannot be attained where there is a suspicion that the disappeared person may still be alive, working underground. The children and the wives of the disappeared person cannot claim an inheritance from in-laws, under either state law or Islamic law. Thus, the family of a half-widow are dependent entirely either on her parents or in-laws (APDP, 2011).

Health issues. A survey conducted by Action Aid International in Kashmir in 2000-2001 showed unusual high rates of depression

and drug use, especially among young people. Testimonial reports show the mental health impacts of 25 years of militarisation (Dabla, 2012) including sleeplessness, fear, nervousness, anger, aggressiveness, depression, drug uses and suicides (Shafi and Hassan, 2013). No specific data on the relatives of disappeared people are yet available.

Daunting legal procedures. The official processes that a half-widow endures under the legal justice system are relentlessly complex, protracted, and discouraging, especially for those half-widows who live far away from the cities, those who have young children to take care of, and those who do not possess any form of elementary educational qualification. In most cases, half-widows are able to pursue a legal remedy only if they find a lawyer that agrees to take their case free of charge. They have to file a *habeas corpus* petition in the Jammu and Kashmir High Court in order to seek information from the State as to the location of their disappeared husbands. The State almost always denies possessing any information (APDP, 2011).

Conclusion

There are no records of the experiences of the so-called half-widows. There are only testimonial narratives of women who have lost their husbands, mothers who have lost their sons, sisters who have lost their brothers. Neither the State nor society recognises their rights. They are alone in the fight to uphold their and the disappeared person's rights.

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Screening asylum-seekers in Denmark for torture using a structured questionnaire

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Abstract

Background: The United Nations Committee against Torture recommends systematic torture screening throughout the asylum process. The goal of this study is to evaluate the workflow following introduction of a structured questionnaire, coding for torture.

Material and Methods: The screening questionnaire is built up as a check list meeting the legal definitions of torture according to United Nations Convention Against Torture (UNCAT), article 1. The screenings were carried out during a 2 years period as a part of the routine health screening of newcoming asylumseekers, and alleged torture victims were referred to further medical examination and offered assistance to carry information about the torture to the Immigration Service. Results of the screenings were registered retrospectively, using electronic medical records.

Results: The participation rate was 85.2%, and torture was reported among 27.8% of the males and 14,1% of females with a mean of 21.2% among both sexes. The Immigration Service refused access to asylum documents.

Conclusions: The screening test for torture needs further validation (e.g. for interrater reliability), but offers preliminary data for early identification of tortured asylum-seekers. Data are easily extracted from electronic medical records and urge the medical service and legal authorities to ensure as full rehabilitation as possible to victims of torture.

Keywords: Torture, screening, questionnaire, asylum-seekers, UNCAT

Key findings

Identification of torture survivors in big groups of asylum-seekers must take place throughout the asylum process but early identification of torture survivors is crucial to both rehabilitation and the legal asylum procedure.

A checklist based on the legal definition of torture (UNCAT) is applied and is well accepted by staff

Introduction

The United Nations Committee against Torture published their concluding observations on their periodic reports of Denmark in 2016 and expressed *concern at the lack of a regular mechanism for the identification of victims of torture throughout the asylum process.It is also concerned at the lack of a system for handling victims of torture upon their identification during administrative detention* (arts. 3, 13 and 14).

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Moreover, the Committee recommended Denmark: *“to put into place procedures for the systematic screening and medical examination of alleged torture victims by qualified personnel throughout the asylum process, including at reception centres and places of detention and ensure, that victims of torture have prompt access to rehabilitation services”* (The United Nations Committee against Torture, 2016).

In saying this, the Committee recognises that identification of torture survivors by the authorities must be an ongoing effort throughout the asylum process and the validity of an initial screening cannot be sufficient. Asylum seekers who are torture survivors might be identified in different settings during the asylum process such as the health system and the legal system and the clinical symptoms after trauma may get worse over time caused by post migration stressors and vulnerability.

Asylum seekers in Denmark have expenditures and necessary healthcare services defrayed by the Danish Immigration Service in accordance with the Aliens act. Since 1984 Red Cross has performed this task on behalf of the Danish Immigration Service including offering all newly entered asylum-seekers a health interview in connection with the first accommodation in the asylum centre system (Medical Reception).

The Operation Contract 2017 between the Danish Immigration Service and Red Cross stipulates that Red Cross must screen *“for consequences of torture according to the Convention against Torture (UNCAT), Article 14 for the purpose of treatment by a psychologist, psychiatrist, physiotherapist or dentist etc. in accordance with the guidelines issued by the Danish Immigration Service for health services and dental treatment”*. Furthermore identification of a torture survivor impose the State Party not to extradite him/her to another State, where there are substantial grounds for believing that he/

she would be in danger of being subjected to torture. (Article 3)

Screening for torture therefore must take place early in the asylum procedure and fulfill both medical and legal purposes.

In a systematic review of research literature, only three studies deal with torture and newcoming asylum-seekers (Sigvardsdotter, E. et al., 2016). One study aimed to validate own testimonies of their possible previous exposure to torture according to the definition of torture in the Declaration of Tokyo (World Medical Association, 1975). This definition does not claim an acting of a public official during torture. A structured interview was conducted by a nurse, including questions about nine frequent types of deliberate violence. A clinical reference thereafter was produced by the conduct of a semi-structured in-depth interview by a trained psychologist. This interview lasted one to two hours. It was found that the sensitivity (true positives) was 81,8% and specificity (true negatives) was 92,3%, and it was concluded that refugees own testimonies of torture appeared fairly valid. (Montgomery, Foldspang, 1994). The second study performed the entry medical assessment of 573 asylum-seekers within the first 15 days of arrival using a short questionnaire recording physical and mental symptoms and a list of traumatic events. There was no reference to the definition of torture. The checklist was easy to administer and it usually required 15 minutes per person. Torture was reported by 18% of the sample (27% of men and 3 % of women) Overall, persons who reported torture had a higher frequency of psychological symptoms than those who did not. (Loutan et al., 1999). The third study was conducted by medical doctors. 142 newly arrived asylum-seekers were examined according to the Torture Convention (UNCAT) and the principles of the Istanbul Protocol (UN Office of the High Commis-

sioner for Human Rights, 2004). (Masmás et al.2008). The examination lasted 1 hour and showed that 45% had been exposed to torture and among these 63 percent fulfilled the criteria for post-traumatic stress disorder, and 30-40 percent were depressed, in anguish, anxious, and tearful. These figures are rather high regarding the extent of mental health among the non-tortured asylum-seekers (5-10%), but at the same time they indicate, that not all torture survivors have clinical symptoms at arrival. Classifying potential torture survivors is of crucial importance in forensic settings and medical staff often are the first among professionals to become aware of post-traumatic symptoms compatible with torture. In situations with large influx of asylum-seekers data collection might be time limited and clinical or anamnestic information about former torture always must be followed up by clinical or legal examinations.

A study used a coding checklist (Torture Screening Checklist) extended with two psychological symptom measures to classify potential clients' history as torture or not torture as specified by WMA, UNCAT and United States' Torture Victims Relief Act (TVRA) (US Torture Victims Relief Act, 1998). (Rasmussen, A. et al., 2011). It was found that there were minor differences classifying torture according to WMA (99,2%), UNCAT (97%) and TVRA (93,9%). Thus the gateway criterion, abuse by an authority, was consistent with the WMA and UNCAT criteria and somewhat less consistent with the TVRA criteria. Adding the criterion from the Torture survivors program (Office of Refugee Resettlement, Torture Survivors Program, 2010), (that the asylum applicant was under the custody of the perpetrator) to the Torture Victims Relief Acts definition reduced the number of identified victims with 24.8 %. It was concluded, that adding an external criterion turns out to

be very powerful, resulting in decisions that appear inconsistent with the definition they refer to. On the other hand no differences were found between tortured and non-tortured cases using the severity of psychological symptoms.

Consequently it might make sense in first line assessment to check for torture and mental health symptoms in separate procedures.

Since 1984 the medical reception of new-coming asylum-seekers in Denmark has been conducted by a nurse using a semistructured questionnaire as a gate to the health service system.. Former exposure to torture has been addressed during an opportunistic screening, but the reference to delimit the concept of torture has not been clarified . An early evaluation of the medical reception showed that 18.5% of men and 3.8% of women stated to have been subjected to torture. (Kjersem, H.J., 1996).

This study reports the results of implementing a screening test for torture based on the UNCAT definition in the reception of newly arrived asylum-seekers in order to

respond the request from the Committee against Torture to put into place procedures for the systematic screening and medical examination of alleged torture victims, and

to assist the asylum seeker in informing the authorities about his or hers subjection to torture as part of the legal asylum procedure

Methods

Since 2017 the medical reception in Denmark has been implemented with a structured health interview by a nurse, and the information is registered in a database with algorithms for different clinical issues.

The questionnaire contains 110 questions, but only relevant questions are used e.g. questions related to cardio-vascular, respiratory or psychological complaints. The questionnaire

includes information on age, gender, schooling and marital status. Mental health complaints are recorded as part of the health interview, but next to the clinical mental symptoms a universal screening test for torture is included (screening checklist).

If medical follow-up is needed in connection with the medical reception, a medical action plan for necessary health professional intervention is automatically drawn up by the algorithm or by the nurse e.g. for pharmacotherapy, diagnostics or therapy.

Newly arrived asylum-seekers are registered by the police in the reception centre and invited for a voluntary medical reception. The invitation is given to all accommodated asylum-seekers, including persons included in the “obviously groundless procedure” (persons from countries which are not supposed to persecute civilians) and those included in the Dublin procedure. The asylum seeker is summoned via call for an interview with a nurse, and an interpreter is ordered for the interview. If the asylum seeker does not show up, he/she is recalled, if the interview can be carried out within 10 days. If medical reception is not implemented in the reception centre, including the torture screening, the medical reception shall be offered at the residence centre.

Time spent at the medical reception is assumed to be 30 minutes including torture screening. This means that a proper balance between open and closed questions is important in order to maintain respect for the interviewee, while respecting the time frame.

The torture screening checklist was introduced in 2017 in the medical reception and presented to the nurses (interviewers) through locally held introductory programmes. This has been followed up through peer to peer training.

The screening checklist for torture builds only on the UNCAT torture definition and does not include clinical variables. (Checklist is posted in full in Annex 1). It is divided into 2 parts: (1) Questions for the interviewee and (2) Coding of the torture criteria. The conclusion as to whether torture or ill treatment has taken place or not are embedded in a clinical computerized algorithm. If torture has taken place, the asylum seeker will be referred to a doctor who may take further action if treatment is needed. The doctor is not expected to write a medical report for the authorities, but instead the asylum seeker is urged to inform the authorities about torture. The authorities bear the responsibility for the final legal decision according to art. 3 (“non-refoulement”)

Evaluation of the whole medical database is outside the scope of this study, but shall be published by another group later on including mental health findings. The present study presents result of screening for torture of asylum-seekers during the period of September 1, 2017 to August 31, 2019.

Ethics

All participants gave written informed consent to participate in the health screening procedure. The study was conducted with reference to the Danish Health Act Article 42d, 2, 2a. According to the Health Act an authorized medical professional may collect health informations and other confidential informations from electronic patient records, if the collection is necessary in connection with quality assurance or development of treatment processes and workflows.

Consequently permission from the Danish Patient Safety Authority according to the Privacy Act was not required in this case.

Results

During the study period, a total of 3081 new

asylum-seekers were registered including 2075 males and 1006 females. The medical reception was offered to 2368, since 713 had previously been screened within a 6 months period. They already had a medical file, and may have been asylum-seekers for a longer period thus belonging to another cohorte.

Of the 2368 asylum-seekers, medical reception was carried out for 2019, 255 did not wish to participate in the medical reception, and 94 were absent for unknown reasons.

The mean participation rate was 85.3% (2019/2368). 3.4% of the torture checklists were filled out in centres outside the reception centre. 34 nurses participated and among these, 4 nurses completed 82.7 % of all questionnaires. Inter-rater reliability data was not collected as the study was retrospective. However the feedback from the nurses confirms, that the simplicity of the questionnaire (Y/N answers) reduces the emotionality of the interview and the help questions are used first

of all in individual cases e.g. language barriers or illiteracy.

Table 1 shows the demographical data of the screened asylum-seekers.

The figures show, that the age of males was higher than the age of females ($p=0,002$), and females more often are married and accompanied by their spouse than males.

Table 2 shows the outcome of screening tests distributed by nationalities with more than 50 asylum-seekers registered and others.

Positive screening tests differed among nationalities, but the mean proportion of positive test for torture was found to be 21.2%, much higher for males (27.8%) than females (11.4%).

In all 429 cases, a public official was involved in the alleged torture. These persons were offered a clinical assessment with a physician and among these 392 persons accepted to inform the Immigrations Service of previous exposure to torture.

Table 1. Demographical data of the screened asylum-seekers.

		Gender	
		Males	Females
Number of screened persons		1218	801
Medium age		33	30
Range		69	71
Number of married persons		480 (39,4%)	491 (61,3%)
Number of accompanying spouse		248 (51,7%)	303 (61,7%)
Education	#		
No schooling	168		
1-5 years (Elementary school)	96		
6-9 years (Middle school)	391		
10-12 years (High school)	596		
13-20 years (Higher Education)	768		
Medium years of schooling; 11 years			

Table 2. Number of screening tests for torture of newcomers asylum-seekers.

Country	Screening tests carried out	Males	Females	Torture positive screening tests	%	Male positive screening tests	%	Females positive screening tests	%
Afghanistan	64	40	24	10	15,6	8	20	2	8,3
Albania	67	41	26	5	7,5	4	9,8	1	3,8
Eitrea	61	35	26	18	29,5	13	36,1	5	19,2
Georgia	232	163	69	49	21,1	43	26,4	6	8,7
Iraq	108	60	48	16	14,8	14	23,3	2	4,2
Iran	188	123	65	60	31,9	47	36,7	13	20
Russia	76	44	32	25	32,9	21	47,7	4	12,5
Stateless Palestinians	64	41	23	10	15,6	7	17,1	3	13
Syria	418	165	253	46	11	38	23	8	3,2
Ukraine	59	40	19	16	27,1	8	20	8	42,1
Others	682	466	216	174	25,5	135	28,8	39	18
Total	2019	1218	801	429	21,2	338	27,8	91	11,4

Discussion

Implementing a screening test for torture based on the UNCAT definition in the reception of newly arrived asylum-seekers partly meets the request from The United Nations Committee against Torture. The simplicity of the questionnaire forming yes- and no-answers was appropriate both to the emotionality caused by questions and time involved. It should be kept in mind, that the interviewees in most cases are interviewed within 10 days after arrival not yet exposed to postmigration stressors. Test positive persons are referred to medical examinations by a doctor and might later display new or insignificant symptoms, but this information is not present in data from medical reception. The doctors

predominately are specialists in general medicine and their primary task is to evaluate the need of treatment of physical and psychological sufferings.

Determining whether the answers indicate torture or other cruel, inhuman or degrading treatment or punishment is of minor importance in relation to need for rehabilitation. Handling of the asylum case on the other hand requires a more definite demarcation of the difference on a case-by-case basis and in a context of a political / legal discourse (e.g. European Court of Human Rights). (Lehtmetts, 2013).

Most studies on the prevalence of torture originate from treatment institutions and statements of torture are therefore from selected

populations. The prevalence rates of torture differs and vary between 1 and 76% (median 27%) (Sigvardsdotter et al. , 2016). Torture rates are higher among men and older persons . This study shows an average life prevalence for torture of 21,2%, and here too the rate is highest in men (27,8%). In this study 118/429 persons (27.5%) have not been imprisoned or detained. This finding is in line with the findings of Rasmussen's study (2011) and would mean that the prevalence of torture among asylum-seekers would be restricted by adding new external criterias (e.g. ORR).

The UNCAT definition of torture does not implicate clinical findings. Therefore the test result from the screening must be validated through a more in-depth clinical investigation either in General Practise, at trained Psychologists/Psychiatrists or Forensic Medicine.

The second goal of this study was to evaluate the legal importance of early identification of victims of torture by systematic screening. 255/2019 did not accept to participate in the medical reception and 37/429 did not want to inform the Immigrations Service of previous exposure to torture. From a medical perspective, information about previous torture often is not surfacing until months or years after arrival, as the patient shows clinical symptoms of PTSD. The reason for this delay may be because the asylum seeker is not even perceiving the authorities' unlawful use of force in the homeland as torture, or because they may dread that the information ends in the wrong hands. Also, asylum-seekers may fail to tell about torture as memory failures as part of cognitive disabilities in the context of post-traumatic stress disorder (Herlihy, Turner, 2006) and finally information about torture may be associated with shame or guilt. In such cases the asylum interview with the Immigration Service must take into consideration that avoidance often is part of the post-

traumatic syndrome. It may therefore be in favor of the asylum seeker that the Immigration Service is informed in advance of possible exposure to torture for the sake of conducting the asylum interview. The result of the torture check is not sent to the authorities, but the asylum seeker is urged to inform the authorities him/herself. The nurse may support this correspondence. The authorities afterwards may request informations from the medical reception which can be released with the consent of the asylum seeker.

It has not retrospectively been possible to trace information on how often torture information is crucial to the outcome of asylum cases. Instead questions have been submitted to the Migration Service and the Forensic Institutes in Denmark

In an email the Immigration Service has announced that case management has not been changed during 2017-18 while Red Cross has informed Danish Immigration Service about asylum-seekers who have been exposed to torture (asylum officer K. Knudsen, personal communication, march 3, 2020). The Immigration Service states, that granting asylum to tortured asylum-seekers depends on their risk of prosecution or violation at repatriation. The immigration Service refers to the Report from the Danish Refugee Appeals Board, 2018, p. 215 concerning assessment of evidence for torture

There are no figures from the authorities documenting the number of tortured asylum-seekers, who spontaneously transmit information about torture to the Immigration Service. Neither are there figures showing the total number of tortured asylum applicants.

The immigration authorities can arrange for a medical examination by forensic institutions in cases, where an applicant claims to have been subjected to torture and if it is assessed that a medical evaluation is needed.

However, a torture investigation will not be initiated in cases where the applicant's explanation must be rejected in its entirety as untrustworthy. Credibility as a subjective concept is inevitable for the verdict in asylum cases, and it has been shown that the likelihood of being granted a residence permit is associated with the asylum-seekers education but not with traumatization or human rights violations (Montgomery, Foldspang, 2005). Another study shows, that presence of physical signs and symptoms and their consistency with the refugee's story was positively associated with being granted asylum, but the presence of psychological symptoms and their consistency with the refugee's story was not. (Aarts et al., 2019)

During the period 1996-2002, 59 investigations were examined at the Department of Forensic Medicine, University of Aarhus. (Leth & Banner 2005). Overall 293 examinations were made including the Universities in Odense and Copenhagen. In the same period, the registration figures for asylum-seekers were 48609 persons.

The professors of the forensic institutes in Copenhagen, Odense and Aarhus state in emails, that they have conducted 2 studies in Copenhagen in 2018 and 1 study in Århus (personal communication from J. Banner, February 16. 2020, P.M.Leth, January 21. 2020 and L. Boel, January 21. 2020). In 2018 the gross number of asylum-seekers entering Denmark was 3559 persons. The Immigration Service has refused access to documents, showing how many asylum-seekers who had been referred to medicolegal examinations in 2018 (email from asylum officer J. Kampmann, personal communication January 16. 2020). The figures above cannot directly be compared without further analysis, but the number of referrals for medicolegal examina-

tions has decreased in 2018 apparently with factor 7,5. (293/48609 – 3/3559).

In other words it has not been possible to gather information about legal case management supported by informations about torture from the medical screening.

The questionnaire has been easy to implement in screening procedures as a initial gate to information about torture and need for further examination and communication. The simplicity of 10 yes/no questions makes the interview short without emotionality, and promotes new staff to learn about torture and UNCAT, but it is not sufficient as a medico-legal report and a documentation tool in asylum cases. Interrater reliability is not known and ought to be determined.

Limitations

Implementing a test for torture in the medical reception of asylum-seekers is a cheap and fast procedure but is not intended to be diagnostic. The medical reception constitutes a so-called mass public health screening i.e. *multiple screening has been offered at ad hoc clinics staffed by auxiliary workers, positive results being notified to general practitioners.* (Wilson & Glover, Jungner, & World Health Organization, p18, 1968) The main object is to detect cases and bring those concerned to further examinations. The weakness of the checklist therefore is, that the proportion of false negatives is not known. All the same an older study showed, that refugees own testimonies of torture appeared fairly valid. (Montgomery & Foldspang 1994). The screening test is a check list referring to the definition of torture established in UNCAT. This definition does not contain clinical variables, but only legal terms. The legal terms of course are variables which should be clarified in the checklist but also the observer (e.g. nurse) is involved in the reliability or efficiency of the test. The inter-

rater reliability is not known., so validation of reliability is needed.

It was shown that 255/2368 (10,7%) refused to participate in the screening. It is not known how many of these are victims of torture but participation in the medical reception and torture screening is voluntary and further identification of victims of torture from this group is expected to emerge from examinations within the medical service and legal case management.

Conclusions

Newcoming asylum-seekers have since 2017 been screened for former torture or degrading treatment using a structured questionnaire designed on the criterias of torture listed in United Nations Convention Against Torture (UNCAT).

According to this checklist and semi-structured interview, there is a mean self-declared prevalence of 21.2%, much higher for males (27.8%) than females (11.4%).

In this programme asylum-seekers subjected to torture or degrading treatment are referred to further medical examination and the asylum seeker is urged to inform the authorities about former torture to ensure both a medical and legal follow up.

Based on feed backs from the nurses the questionnaire has been well accepted by the asylum-seekers., easy to implicate as a screening instrument and used for learning about the Torture Convention. The checklist does not form a medicolegal documentation, but need further validation primarily to exclude false negative conclusions. The study is carried out during 2017-2019 during high migration movements in Europe with high proportion of Syrians with potential war related traumas. Though a growing number of asylum-seekers seems to have been granted asylum during 2017-2019 it has not been possible according

to the Immigration Service to evaluate which proportion of the recognised refugee population who have been subjected to torture. This information is of crucial importance if repatriation is proposed.

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Annex 1

DIGNITY and Danish Red Cross Screening Instrument for Torture

Part 1. Questions for the interviewee

1	Have you ever been arrested, detained, or imprisoned?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2	Have you ever been subjected to severe violence, threats or degrading treatment?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3	Have you witnessed others being subjected to severe violence or degrading (abusive) treatment?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

If the answer is no to all the first three questions, the screening closes with the conclusion that the interviewee has not been subjected to torture. If the answer is yes to just one of the three questions, the interviewee is encouraged to provide a narrative account:

4 Would you mind telling me what happened?

Help questions for the narrative presentation:

- What did they do to you?
- Who exposed you to it?
- Do you know why they did it?

The help questions are intended as inspiration to guide the interviewee's narrative and do not necessarily need to be read out. The answer also serves as a guide to the interviewer as to whether there has been inhuman treatment or punishment. If the interviewee has been subjected to several incidents, he/she is asked to choose the incident that affected him/her the most. After the interview, the interviewer completes Part 2 of the form encoding the torture criteria

Part 2 Coding of Torture Criteria

To be filled in by the interviewer based on the interviewee's narrative statement

1	Was the person exposed to severe pain or suffering, physically or mentally?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2	Was it done intentionally?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3	Was there a purpose to the action?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4	Was it a public official who committed or instigated the action?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Conclusion

Coding result	Screening result
Y Y Y Y	The interviewee has probably been subjected to torture
Y N N Y	The interviewee has probably been subjected to ill-treatment
Any other combination	The interviewee has probably been subjected to other forms of trauma

The Chronic Traumatic Stress Treatment (CTS-T): A resilience-focused, culturally responsive intervention for refugees and survivors of torture - including a mobile mental health application

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Abstract

This manuscript introduces the Chronic Traumatic Stress-Treatment for refugees and survivors of torture (CTS-Treatment; Mazzulla & Fondacaro, 2018). CTS-Treatment aligns with the Chronic Traumatic Stress model (CTS; Fondacaro & Mazulla, 2018), a biopsychosocial-spiritual and culturally responsive theoretical framework designed to guide empirical investigation and intervention for refugees and survivors of torture. CTS-Treatment is intended for use by mental health clinicians working within an individual or group format. The ten modules of CTS-Treatment are in sequence; however, flexibility and cultural adaptations in implementation are strongly encouraged. The ten intervention modules include: 1) Mental Health Discussion, 2) Safety, 3) Values, 4) Behavioral Activation, 5) Coping Skills, 6) Sleep Hygiene, 7) Working with Thoughts, 8) Acceptance and Tolerance of Emotions, 9) Life-Path Exercise and Narrative Exposure, and 10) Celebration of Life. Empirical principles underlying the treatment, along with supporting research, are presented for each module. The final sections of modules one through nine explain a component of a language-free mobile mental health application for refugees. The tenth

module is a celebration and does not include an affiliated mHealth component. Clients are encouraged to practice the mHealth app skills at the end of each session and between sessions.

Over three million refugees resettled in the United States since 1980 when Congress passed the Refugee Act under President Carter (Refugee Processing Center, 2020). Between 20% and 60% of refugees arrive in the U.S. with a history of torture (Steel et al., 2009). Although the majority of refugees and survivors of torture exhibit resilience and strength, they also experience mental health concerns at a higher rate than the general U.S. population, including symptoms related to trauma, anxiety, depression, and somatization (de C Williams & van der Merwe, 2013; Steel et al., 2009). Given that re-settled refugees are increasingly accessing traditional mental health services, a culturally relevant model addressing strengths and challenges is critical to providing effective mental health services to refugees and survivors of torture and trauma.

The Chronic Traumatic Stress model (CTS; Fondacaro & Mazulla, 2018) is a biopsychosocial-spiritual model representing a unifying framework to guide empirical investigation and intervention for refugees and survivors of torture. Chronic Traumatic Stress Treatment (CTS-Treatment; Mazzulla & Fondacaro, 2018), corresponds with the CTS

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model and utilizes empirically based principles addressing the impact of refugee traumatic and stressful events, including pre and post-migration stressors (e.g., trauma experiences, loss of country and family members, and fear of deportation). Additionally, this intervention provides a broad, holistic, multimodal, resilience-focused alternative to an exclusive treatment focus on symptom reduction. In addition to symptom reduction, CTS-Treatment emphasizes culturally responsive skill-building, behavioral activation (Jacobson et al., 1996), sleep hygiene (Lies et al., 2019), coping skills such as relaxation (Borkovec & Sides, 1979), mindfulness (Hinton et al., 2013), grounding (Najavits, 2002), and a culturally sensitive form of exposure (Schauer et al., 2011). Finally, CTS-Treatment addresses acceptance strategies and valued living to enhance well-being and enrich one's existence despite horrific past traumatic experiences and ongoing stress.

Torture is the dehumanizing and systematic destruction of a person's identity through intentional physical or psychological pain and suffering (see formal definition in module 1 footnote). In their review of 40 survivor of torture interventions, McFarlane and Kaplan (2012) articulate the need for innovative treatments utilizing a human rights lens and transdiagnostic approaches across a range of mental health challenges. Any human being subjected to torture or rampant violence in war-torn areas may react in ways consistent with post-traumatic stress symptoms. We believe associated behaviors, thoughts, and emotions are not "disordered" but rather normative under extreme stress. We communicate this sentiment throughout CTS-Treatment by validating client reactions to trauma and torture experiences while offering assistance with managing symptoms. Further, we place importance on addressing simultaneous post-migration stressors through a holistic approach such as coordination of care

with social workers, community centers, attorneys, medical practitioners, and physical therapists.

Individual and group intervention includes ten modules: 1) Mental Health Discussion, 2) Safety, 3) Values, 4) Behavioral Activation, 5) Coping Skills, 6) Sleep Hygiene, 7) Working with Thoughts, 8) Acceptance and Tolerance of Emotions, 9) Life-Path Exercise and Narrative Exposure, and 10) Celebration of Life. Topics are sequential and build upon one another. Each module has theoretical underpinnings, rooted in evidence-based principles from Cognitive Behavioral Therapy (CBT; Beck et al., 2005), Acceptance and Commitment Therapy (ACT; Harris, 2019), or Narrative Exposure Therapy (NET; Schauer et al., 2011). Each module is one to three sessions in practice; however, the individual therapist or group facilitator(s) determines the necessary time in the therapeutic setting to cover each topic.

In addition to in-person services, a United-States torture treatment program, New England Survivors of Torture and Trauma (NESTT),¹ created a language-free mobile mental health application that parallels the CTS-Treatment content. A pilot study assessing the app's utilization by Somali-Bantu and Nepali-Bhutanese refugees found that a brief intervention (a condensed version of CTS-Treatment) decreased symptoms of anxiety and depression and increased coping (Mazzulla et al., 2021).² The app components are specific to CTS-Treatment content (e.g., values, safety, life-path exercise) and intro-

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- 1 New England Survivors of Torture and Trauma (NESTT) is one of over thirty programs currently providing services to survivors of torture. The United Nations Fund for Victims of Torture has funded torture treatment centers since 1981
 - 2 This app is available for free download on any Apple iPhone or iPad device. To download, go to the apple app store and enter NESTT

duced with the accompanying module. Described below is the purpose of each module, the empirically-based principles, and the session content. The final section for each module includes a description of practice to be utilized with the NESTT mobile mental health application (Annex A). Clients are encouraged to use the app to practice skills learned in treatment. Accompanying each module, clients can choose an activity to close each session. In our experience, clients often choose prayer or expression of gratitude. If a closing exercise is not chosen by the client, the facilitator can select from myriad mindfulness activities, breathing exercises, or coping strategies previously practiced in treatment. Closing activities are not described in the current article and are left to the discretion of the facilitators.

Additionally, we encourage programs that utilize this intervention to assess clients' pre-and post-intervention outcomes, including strength-based assessment (e.g., well-being, daily functioning) and symptom reduction as described in the CTS model (Fondacaro & Mazzulla, 2018). CTS-Treatment is implemented flexibly with a broad range of survivors. However, cultural adaptations may be necessary depending on the client's country of origin or religion. For example, individuals who embrace Islam may need to take scheduled prayer breaks.

Finally, it is essential to address facilitators' and interpreters' traumatic reactions to implementing trauma treatment (Pearlman & Ian, 1995). In addition to planning for self-care and support, understanding vicarious trauma, trauma stewardship, and resilience are critical throughout the implementation of trauma interventions (see van Dernoot Lipsky & Burk, 2009). We recommend ongoing supervision for providers and interpreters to support the delivery of intervention and management of the impact of trauma-related work.

Chronic Traumatic Stress Treatment (CTS-Treatment)

Module One: Introductions and Discussion of Mental Health

Treatment begins with a discussion of the meaning of mental health in different cultures. The diagnosis of post-traumatic stress disorder (PTSD) alone does not adequately reflect the potential consequences of long-term and multiple trauma exposures endured by refugees and survivors of torture (e.g., McFarlane & Kaplan, 2012). Further, mental health diagnoses are inconsistent with many cultural beliefs (Kohrt & Hruschka, 2010). For example, Nepali-Bhutanese refugees report that trauma impacts the heart-mind connection, and many believe past life sins are responsible for traumatic events (Kohrt & Hruschka, 2010). In cases of differing beliefs about the etiology of mental health conditions such as anxiety, depression, traumatic responses, and somatic complaints, clinicians must seek to understand the clients' views. When clients explain mental health concerns, clinicians demonstrate appreciation for these alternate interpretations (Lewis-Fernández et al., 2015). Therefore, module one aims to discuss the meaning of mental health, incorporating a respectful discussion of resilience and mental health concerns, and providing an overview of CTS-Treatment in a culturally responsive manner, demonstrating respect for different cultural views.

Content

The facilitator first uses accessible terminology to describe therapy (e.g., "We will be talking about feelings, thoughts, and the things that are important to you in life") and introduces the CTS-Treatment with a "getting to know you" exercise. The facilitator emphasizes that resettling and rebuilding life in a new country

is a display of resilience. When discussing the range of outcomes associated with traumatic experiences (resilience, strength, and impairing symptoms), the facilitator validates human suffering that often occurs in these contexts. Next, the facilitator begins a non-judgmental discussion regarding Western and culture-specific views of mental health and illness. Facilitators ask clients about potential stigma and the meaning of mental health and illness from their culture and country of origin. It is conveyed to clients that a primary goal of torture is to systematically devalue individuals based on their race, ethnicity, religion, political opinion, or affiliation with a social group.³ During the mental health discussion and explanation of PTSD, clients are explicitly told that they are not “disordered” but may be experiencing some of the expected physiological and psychological responses to ongoing traumatic stress. The formal definition states that “CTS is not a disorder but rather the experience of persistent traumatic event(s), both past and continued, that occur at any point across the lifespan, with sequelae that are perceived by the individual as impairing, regardless of symptom constellation or thresholds,” (Fondacaro & Mazzulla, 2018). Facilitators provide this definition in understandable terms.

In a light-hearted manner, the facilitator and client(s) share the numbers one through

ten in their native language. This activity sets the stage for using the concept of Subjective Units of Distress (SUDS) in future modules. Clients rate their SUDS throughout treatment (e.g., during exposures to trauma stories). Facilitators may also choose to learn some words from the client’s native language as this can build rapport and mutual respect.

NESTT Mobile Application

The facilitator introduces the NESTT mHealth application (Mazzulla et al., 2021). The NESTT app, developed by mental health experts, a software development team, and cultural consultants, is language-free and incorporates culturally validated visual cues to guide users through specific therapeutic techniques. Clients begin by creating an avatar representing themselves. Next, the breathing component of the app guides clients through a deep breathing exercise. This function shows clients a colored orb, which starts very small and expands to fill a larger circle. They can inhale and exhale, along with the expanding and contracting orb. Clients are always given a choice to complete exercises provided in CTS-Treatment. Traumatic experiences, including systematic torture, strip survivors of their sense of control. Frequently reminding clients of their choice regarding participation in any activity may assist in rebuilding their perception of control.

Module Two: Safety and Support

A sense of safety within relationships may be compromised for refugee clients, as fellow human beings perpetrate trauma and torture experiences. For example, a Somali-Bantu woman sexually and physically assaulted by a former neighbor in the militia has difficulty feeling safe and trusting others. Establishing trust and safety in the therapeutic environment is foundational and has become a

3 Article 1 of the 1984 United Nations Commission Against Torture states that torture is “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as: obtaining from him or a third person information or a confession, punishing him for an act that he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of a public official acting in an official capacity” (United Nations, 1988).

standard component of many evidence-based treatments shown to reduce trauma symptoms, increase social support, and improve daily functioning (Bunn et al., 2018). Moreover, programs that employ a stage-oriented trauma recovery model include safety as the first intervention phase (Herman, 2015). Discussions of safety occur throughout subsequent modules in the CTS-Treatment. After discussing safety, mindfulness is introduced and incorporated throughout other treatment modules (e.g., closing activities, coping skills). Mindfulness practices may increase joy, establish trust of facilitators and other group members, and may assist with identifying post-traumatic growth and meaning. Mindfulness can also be an effective intervention for reducing traumatic stress and depression symptoms in refugees, as evidenced by Bernstein and colleagues' recent randomized controlled trial. Over half (52%) of participants who received Mindfulness-Based Trauma-Recovery for Refugees recovered from PTSD by the end of treatment compared to only nine percent recovery in the control group (Bernstein, 2019). In addition to the empirical support in favor of conducting mindfulness exercises with refugees, clinicians must be aware of possible dissociation by trauma survivors when participating in mindfulness exercises. Therefore, module two aims to establish safety and cautiously introduces mindfulness skills, while facilitators and clients carefully attend to clients' responses. If dissociation occurs, facilitators may gently stop the mindfulness activity or modify the technique. The facilitator may also engage the client in a grounding strategy (see grounding in Module 5: Coping Skills).

Content

Safety in the therapeutic environment is built over treatment sessions and described explicitly in this module. Clients reflect on individual perceptions of safety through several

in-vivo activities. First, facilitators review the concept of SUDS, and clients assess their current distress levels from zero-ten. Clients imagine a place that feels safe for them (e.g., with their children, in a familiar location), and clients may share descriptions of this place. Next, clients are encouraged to draw a picture of something that makes them feel safe. This picture may be a place (e.g., a river, a home, the therapy room) or an object (e.g., a telephone used to call a friend; a photograph of a loved one; a prayer object). As some refugees do not have experience with creating artwork or drawing, facilitators remain non-judgmental and acknowledge the novelty of the activity. Clients are asked to reassess their SUDS levels after these safety exercises.

At session close, the clients engage in a facilitator guided mindfulness exercise. Mindfulness may include clients and facilitators sitting with eyes opened or closed while quietly noticing the breath or imagining a special place in detail (e.g., colors, smells, taste, and sounds). Alternatively, mindfulness may include non-judgmentally imagining leaves on a stream or clouds in the sky, then simply placing thoughts on the leaves or clouds (Harris, 2019). For mindfulness examples specific to refugee clients, see Hinton, Pich, Hofmann & Otto (2013). Facilitators describe mindfulness as "paying attention on purpose, without judgment." Finally, clients look at or imagine their depictions of safety and recall the images, scents, sounds, and emotions associated with it.

NESTT Mobile Application

The safety exercise within the app requires clients to select or upload an image that represents safety to them. Clients reflect on safety while tapping on different locations on the screen to gradually reveal their chosen picture.

Module Three: Values

The purpose of module three is to identify values that are meaningful or important to clients. The identification of values is a primary focus of intervention, as torture and trauma experiences can present challenges that may interfere with living in ways that align with identified values. For example, the physical consequences of torture may prevent someone from engaging in the workforce, limiting their ability to pursue financial independence and stability. Values are not attainable goals (e.g., getting married; buying a house) but instead represent how an individual strives to live life (e.g., being loving; being independent). The identification of values can guide one's actions in a deliberate way (Harris, 2019). Acceptance and Commitment Therapy (ACT), a third-wave, strength-based behavior therapy (ACT; Harris, 2019; Hayes et al., 2016), heavily influences the concept of values. A meta-analysis of acceptance-based treatments with clients from non-dominant cultural and marginalized backgrounds showed pre-post treatment improvement, albeit with small effect sizes, when clients received acceptance- or mindfulness-based treatment compared to treatment as usual (Fuchs et al., 2013). Symptom reduction is not the primary outcome of ACT; however, increased engagement in valued living may reduce distressing mental health symptoms. For example, ACT studies have found significant decreases in human suffering and increases in quality of life concerning symptoms of depression (Forman et al., 2007) and anxiety (Roemer et al., 2008).

Content

In this module, clients are encouraged to reflect upon the degree to which trauma interrupts living a life guided by identified values, either through avoiding distressing memories

and emotions or focusing heavily on them. Clients identify values through in-session activities. If clients have difficulty grasping the abstract concept of values, therapists encourage clients to list what is important to them to guide active and deliberate decision-making. Facilitators utilize culturally relevant images (e.g., people praying, families dining together, communities gathering, or landmarks from the client's country of origin) for this activity. Clients expand upon aspects of the images that resonate and engage with the therapist to discuss the importance of identified values. Refugee clients often choose family connection as a value (e.g., being a loving mother; being a dependable father). When family members have been killed in war or have been left behind in a refugee camp, the parameters of identified values are expanded upon. For example, it may be effective to assist in strengthening spiritual connections to family members or identifying ways to be loving or dependable without being in close physical proximity to loved ones.

NESTT Mobile Application

A symbol of a tree depicts the app exercise for values. When pressed, the tree has a series of three camera graphics. Clients can use the app to take three pictures of objects that represent their values.

Module Four: Behavioral Activation

Module four assists client(s) in identifying behavioral activities or pleasant events related to their values. For example, a Congolese man who misses his daughter and values family closeness may engage in soothing activities that remind him of his daughter (e.g., listening to songs they sang together or making an overseas phone call to speak with her). If self-reflection is a value, then associated activities may be to prioritize time alone or to take a walk.

Behavioral activation (similar to *committed action* in ACT, (Hayes et al., 2012)) has been effective in the treatment of PTSD and depression (e.g., Ekers et al., 2014). Numerous studies, including meta-analyses, demonstrate positive outcomes (e.g., Cuijpers et al., 2007). CTS-T facilitators may note that some refugee clients fear engagement in activities that remind them of their traumatic experiences. Some may fear re-experiencing symptoms or intrusive memories. Others may be afraid of losing emotional control outside the safety of their homes. Still, others may report feeling guilty for enjoying their lives when loved ones may still be in danger or have died (survivor's guilt). In CTS-T, facilitators validate these feelings and follow the client's preferred pace with these activities. However, substantial avoidance of meaningful or enjoyable activities can maintain or exacerbate mental health symptoms (Hershenberg et al., 2015). Thus, the CTS-Treatment emphasizes resilience-focused functioning, such as increased behavioral activation in which clients engage in more deliberate actions toward living a valued life. Reincorporating these activities into daily life may also reduce symptoms associated with traumatic stress, depression, and anxiety. When necessary, coping skills learned throughout treatment (see module five) may be implemented during valued living activities (e.g., to manage survivor's guilt, to calm the nervous system when a traumatic response is triggered).

Content

The facilitator describes how painful life experiences can get in the way of engaging in meaningful, pleasant activities (e.g., avoiding activities that might remind a client of a traumatic event). The facilitator also explains that although challenging at times, engaging in positive activities can improve one's mood.

The facilitator returns to values identified in module three and collaborates with the client to identify behaviors to engage in that align with those values. These behavioral goals may start extremely small. For example, a Nepali-Bhutanese man sad about his parents remaining in a refugee camp may have difficulty getting out of bed. He may identify spiritual connection as a value and take the action of sitting for a short time and praying immediately after getting up in the morning. Facilitators also discuss pleasurable activities in which clients would like to participate (e.g., taking a relaxing bath, talking to friends, listening to music). This discussion can take the form of a brainstorming session, playful dialogue, or looking through photos or magazines to identify activities. The facilitator and client then schedule daily and weekly activities that align with the client's values. Facilitators help clients identify barriers to engaging in behavioral activation (e.g., motivation, finances, time) and engage in problem-solving to address these barriers.

NESTT Mobile Application

Behavioral activation within the app is a subset of the values component, as mentioned above. Under each larger graphic representing values are four more graphics that are populated by pictures of ways to engage in those values (behavioral activation). For example, if the first picture is of the client's family, the four sub-pictures are of specific valued living activities in which the client can engage as they relate to the family (e.g., playing with children; going to work to earn money; watching a moving together).

Module Five: Coping Skills

Module five introduces coping skills to manage chronic traumatic stress. Refugees face chronic stressors such as fear of deporta-

tion, acute grief of losing a loved one, and the nightly occurrence of waking up distressed from nightmares. Building coping skills may increase resilience such that clients can cope more effectively with both acute and chronic stressful events over time. Studies have shown that learning coping skills can reduce distress in refugees with traumatic experiences (Hinton et al., 2013).

Content

Facilitators first discuss and support clients' current coping resources. Then they introduce and contextualize the following coping activities. Clients carefully test and practice these skills to determine which are the most helpful. Clients choose the coping skills to try, as some strategies may exacerbate client distress.

- **Grounding Skills.** Grounding skills require clients to focus their awareness on any of their five senses (Najavits, 2002). Clients may name everything in the room that is a particular color (sight), hold ice in their hand or drink a cup of cold water (touch), slowly eat a favorite food (taste), light a candle with a pleasant odor or cook a fragrant food (smell), or identify noises occurring in their environment, such as a fan blowing, cars driving on the street, or birds chirping (sound).
- **Breathing Skills.** Breathing skills focus the mind on the natural inhalation and exhalation of the breath. Paced breathing (e.g., four counts in, hold for four counts, exhale for eight counts) teaches clients breath control, which with practice, can slow the parasympathetic nervous system and calm the body.
- **Progressive Muscle Relaxation.** Clients are encouraged to identify and control the degree of muscle tension experienced, gradually focusing awareness on the lower leg,

upper leg, pelvis, torso, upper chest, arms, hands, and face, tensing and releasing the muscle groups in each area.

- **Emotion Regulation.** Clients are encouraged to brainstorm and practice ways to increase or decrease the intensity of emotions. For example, clients may choose to call a friend or go on a walk to reduce the intensity of sadness. They may choose to listen to upbeat music or cook with their family to increase feelings of joy.
- **Seated Yoga.** Seated yoga is a low-impact variation on traditional yoga practiced in a chair with simple upper body movements.
- **Distraction.** Distraction is described as actively giving oneself a break from intense thoughts and emotions by focusing on something engaging, neutral, or pleasurable.

NESTT Mobile Application

Five different app components (grounding, progressive muscle relaxation, deep breathing, seated yoga images, and a distraction) provide practice with these coping skills. Deep breathing was previously described in module one. For grounding, clients can review a series of images representing the senses. For progressive muscle relaxation, clients can select the length of time, whether they would like to be seated or stand, and whether they would like to move from head to foot or foot to head. The image guides clients to focus on the body's highlighted sections, tensing and releasing muscles as they move their attention throughout the body. Seated yoga can be practiced by imitating the positions in the series of images. For distraction, gamification provides an increasingly more challenging and engaging memory game.

Module Six: Sleep Hygiene

In addition to trauma symptoms and general mental health concerns, the CTS-Treatment

emphasizes quality sleep for physical and emotional health. Inadequate sleep is associated with impaired learning and memory (Havekes et al., 2012), depression (Wirz-Justice & Van den Hoofdakker, 1999), and suicide (Porras-Segovia et al., 2019). Similarly, physical concerns can include high blood pressure, heart disease, kidney disease, stroke, diabetes (U.S. Department of Health & Human Services, n.d.). Many refugees experience sleep disturbances (Sandahl et al., 2017). For example, an Iraqi man reported nightmares of bombings and torture, and a Sudanese woman reported dreaming of a witnessed murder scene. Despite findings that the vast majority of refugees report difficulty sleeping (99.1%; Sandahl et al., 2017), research on the treatment of sleep disturbances in refugee populations remains limited (Sandahl et al., 2017). However, sleep hygiene education can be an effective part of multidimensional interventions for sleep problems in the general population (Vgontzas & Kales, 1999). Module six addresses sleep concerns and the relationship between trauma and sleep.

Content

Facilitators lead a non-judgmental discussion of standard sleep hygiene guidelines. For example, engaging in quiet, relaxing activities as bedtime approaches; setting a sleep and wake schedule; avoiding caffeine after noon or alcohol before bed; limiting screen time and activating pastimes (e.g., watching an action movie, reading an exciting book) at night; daily exercising during the day and not close to bedtime; maintaining an orderly sleep room. These guidelines may be depicted pictorially through magazine cutouts or drawings of sleep hygiene examples. Clients create an evening routine that would work for them. Facilitators and clients discuss potential barriers to adhering to these routines.

NESTT Mobile Application

The seven animated cards of this app exercise include images of the sleep hygiene steps described above. The client can change pictures by sliding their finger across the screen.

Module Seven: Working with Thoughts (Cognitive Restructuring and Defusion)

Survivors of traumatic events, including refugees, often express traumatic and challenging thoughts that interfere with daily existence (e.g., self-blame, survivors' guilt). Assisting clients with altering their thoughts (Beck et al., 2005), or their relationship to thoughts (cognitive defusion; Harris, 2019) may play a mediating protective role between chronic stress, and adverse psychological outcomes. Facilitators should have experience with these techniques prior to utilizing them (see Harris, 2019; and Beck et al., 2005 for detailed manuals of each treatment, respectively).

Cognitive restructuring and cognitive defusion are similar in that both involve working with challenging thoughts. However, during restructuring, the clinician assists the client in changing thoughts by pointing out evidence for, and against, the thoughts. For example, a very loving Syrian father left his home country with the intention of bringing his family to safety, and during the journey his wife was murdered. He reported having intrusive thoughts that he ruined his children's lives and that he *is a terrible father*. Cognitive restructuring techniques involve assisting him to see the evidence for and against these thoughts and, when appropriate, create more accurate statements about himself.

Cognitive defusion is relied upon in CTS-Treatment as this approach can be useful for trauma survivors when thoughts are judgmental and not likely to change (Harris, 2019). Further, attempting to suppress distressing thoughts can paradoxically increase

their frequency and intensity (Abramowitz et al., 2001). For example, after experiencing sexual assault and forced separation from her child, who was ultimately shot and killed, a survivor of torture from Rwanda reported having persistent thoughts that she is *a horrible mother who does not deserve to live*. Her thoughts impacted her ability to engage with her remaining children. She unsuccessfully tried to ignore these distressing thoughts or restructure them, and they continued to increase. Clients can learn to notice and label these cognitions as thoughts, learn that thoughts may be hard to change, and understand that distressing thoughts may re-surface at times. Importantly, clients learn that they can continue to engage in valued living even with distressing thoughts.

In module seven, clients engage in “thought work” to reduce the impact of distressing thoughts by either changing the unhelpful thoughts or changing their relationship to the thoughts.

Content

To promote cognitive defusion, we use an experiential exercise (Hand Exercise), a slightly modified version of the ACT hand exercise (Harris, 2019). First, the facilitator places one hand fully covering her face to represent fused trauma/torture experiences and associated thoughts, and the other hand out straight in front of her to represent values. The facilitator then struggles to view her outstretched hand while one hand is covering her face. The clinician discusses how trauma experiences and thoughts get in the way of focusing on what matters (values). Next, the facilitator places her hand in the back of her head, representing avoidance. Here, the facilitator may demonstrate how traumatic memories and thoughts can sneak up on the observer, without warning. The facilitator reiterates that avoidance can paradoxically increase chal-

lenging thoughts. Lastly, the facilitator gradually moves her hand until it is at the head’s side, representing a different relationship with thoughts. Specifically, clients may choose to focus on their values while living with traumatic thoughts and memories. Clients are asked about their thoughts and given a chance to respond in as little or as much detail as they feel comfortable. Facilitators emphasize the usefulness of practicing thought exercises.

NESTT Mobile Application

On the app, an image of a tree with different birds symbolizes working with thoughts. The birds make various noises representing pleasurable and challenging thoughts. The user touches the birds, and the birds get louder and slowly quiet down. Clients can imagine sitting under the tree and listening to the associated thoughts. Clients are encouraged to practice tolerating or diffusing from unhelpful thoughts. If clients have any negative associations with birds due to their torture or traumatic experiences, this exercise may be modified.

Module Eight: Acceptance and Tolerance of Emotions

Given the numerous traumatic experiences refugees endure, it is unsurprising that they often report intense emotional reactions, including extreme anxious and depressed feelings. Thus, the purpose of this module is to practice tolerating these emotions.

Efforts made to avoid or *not* accept emotions are associated with seemingly contradictory increases in challenging emotions (Clifton et al., 2019). Additionally, the negative impact of avoidance or attempts to reject one’s emotions can activate a cycle in which further avoidance occurs, ultimately leading to higher distress (Campbell-Sills et al., 2006). For example, a mother who survived the war

and physical assault in Iraq experiences nightly nightmares. As a result, she loses sleep and often avoids going to bed. Subsequently, she is tired, anxious, and feeling sad. She starts to disengage from her family and friends because her sadness is very intense. Her sadness increases over time as she increasingly withdraws.

Content

Facilitators discuss the paradoxical nature of non-acceptance or avoidance and encourage acknowledging difficult feelings without trying to change their feelings or make them go away. Clients learn to approach feelings with curiosity, allowing the feeling to intensify or dissipate naturally. Facilitators can use songs from clients' cultures for this exercise to induce a specific emotion (e.g., sadness, anxiety, joy). Clients' responses to musical mood induction range from dancing to crying, depending upon the song (Geethanjali et al., 2018). SUDS levels are assessed before and after the exercise. Facilitators ask members to recall when they felt sad, anxious, or worried in the last week. Facilitators discuss the fact that feelings come and go like waves in an ocean or clouds in the sky and emphasize that "no feeling is final" (Najavits, 2002). Neither pleasurable nor challenging feelings last forever. Clients are carefully encouraged to engage in valued living activities even if they experience a challenging emotion (e.g., taking a walk even though you are lonely, calling a friend even though you feel unlovable).

NESTT Mobile Application

On the app, the image of a tree with different birds can symbolize tolerance of emotions. Clients can imagine sitting under the tree and feeling the associated emotions (the birds' calls). Clients are encouraged to practice tolerating these emotions. The app component of leaves floating on a stream can allow

the client to practice having thoughts and emotions move along the stream gradually as a form of mindfully noticing and tolerating those emotions without trying to change them. It is important to first assess if birds or water are triggering for clients (e.g., vultures looming over dead bodies or loved ones drowning) and adapt or choose to discard this app component.

Module Nine: Narrative Exposure and Life-Path Exercise

This module is similar to the lifeline activity from Narrative Exposure Therapy (Schauer et al., 2011) and utilizes timelines to contextualize past life events. Numerous studies have shown the effectiveness of narrative exposure techniques when treating refugee trauma (e.g., Neuner et al., 2004). Meta-analyses have demonstrated that Narrative Exposure Therapy effectively treats trauma in refugees from diverse countries of origin (Gwozdziwycs, 2013; Tribe et al., 2019). CTS-Treatment emphasizes client control over the degree of detail narrated (exposure technique) and the disclosure timing.

Content

The facilitator provides large pieces of paper, and materials such as yarn, stickers, markers, and glue. Group members have the opportunity to create a visual representation of their life-paths beginning with birth and ending with a coiled string representing the future. Stickers of different sized smiling faces and images of the sun represent memorable or pleasurable events (e.g., marriage, the birth of a child, religious celebration, reunification with family members). In contrast, stickers of different sized sad faces and storm clouds represent difficult or challenging events (e.g., war, death of a child or family member, sexual assault). In our experience, clients have

gained significant personal insight as a result of this activity. For example, a client remarked that due to the overwhelming impact of the war events, he forgot he had sunshine in his life. Clients have also stated that smiling and sad faces can sometimes occur at the same time. For example, one woman stated that although it was hard to leave her best friend in the refugee camp, the opportunity to resettle in the U.S. and provide her children with an American education was ultimately a happy one. The creation of the life-path is a form of non-verbal, visual exposure. After creating the life path, clients are given the option to verbally expand upon identified pleasurable and challenging events. As systematic torture deliberately strips individuals of their sense of safety and control, clinicians frequently check in with clients and display empathy while assessing clients' level of comfort with the timing and content of the exercise. Clients may choose to opt-out of the narrative exposure component or, if in a group setting, review individually with a facilitator. The clinician may return to the client at a later session to gauge readiness for narrative exposure.

In a group setting, many group members share similar torture/trauma stories, which may trigger others' memories of past traumas and subsequent re-experiencing symptoms. In advance, clients in groups are aware that they do not have to listen to other stories and are given alternatives during the session (e.g., to practice a mindfulness activity in another room). According to many of our clients, sharing of their story with others in a safe, non-judgmental space is a valuable component of therapy.

NESTT Mobile Application

Clients can replicate their life stories on their app if they so choose. The sun and clouds symbols represent the life path component

and allow clients to place suns and clouds along a lifeline.

Module Ten: Celebration of Life

Celebration and support within communities is a protective factor for refugees (Schweitzer et al., 2006). Module ten celebrates the lives of refugees and survivors of torture, the work they have completed, and the supportive connections made during treatment. Social support has been shown to improve mental health outcomes in refugee populations (e.g., Schweitzer et al., 2006), increase refugees' reports of life fulfillment and sense of belonging (Stewart et al., 2011), as well as to decrease refugees' sense of isolation and loneliness (Stewart et al., 2011). The final session aims to foster social support through celebration and reflection as a cohesive group.

Content

The client(s) and facilitators develop a celebratory experience that may include food, dance, and prayer. With the client's consent, a celebration may also be conducted at the end of individual therapy. Although there is no application component, clients may review app components and prepare to use the skills learned post-treatment.

Conclusion

The treatment described in this manuscript is based on the holistic and culturally responsive CTS model, in which past and current stressors, as well as risk and protective factors, contribute to a diverse array of outcomes for refugees. It integrates empirically supported techniques previously demonstrated to increase refugee resilience and decrease trauma symptoms. These discussions are conducted with cultural humility and intended to be mutually informative for the facilitator and clients. Cultural humility is a life-long com-

mitment to self-reflection and examination of one's own biases while gaining knowledge of other cultures.

CTS-Treatment begins with discussions of mental health, safety, and values. CTS-T includes education about, and exploration of, behavioral activation, coping skills, sleep hygiene, and cognitive restructuring and defusion. These skill-based modules provide clients with a multitude of techniques they may employ to manage symptoms and increase resilience. Following skill-based modules, the narrative exposure exercise and acceptance and tolerance modules provide opportunities to increase tolerance of thoughts and emotions. Lastly, a celebration allows clients to reflect on their experience in therapy and share a joyful moment with others.

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Annex A



Adapted from Mazzulla, E. C., Fondacaro, K. M., Weldon, H., Dibble, M., & Price, M. (2021). Addressing the Disparity in Refugee Mental Health Services: a Pilot Study of a Traumatic Stress Intervention Utilizing a Language-Free mHealth Application. *Journal of Technology in Behavioral Science*, 1-10. See original figure for more detailed explanation of each app component.

Efficacy of pharmacotherapy for MDD and PTSD from torture

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Key points of interest

- Antidepressants are the most frequently studied pharmacotherapy in the management of Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder (MDD) in torture survivors.
- There is lack of strong evidence that antidepressants improve symptoms of any of them in torture survivors.

Abstract

Introduction: The large numbers of torture survivors suffering from Post-Traumatic Stress Disorder (PTSD) and other psychological trauma in the United States suggest that healthcare professionals should be aware of, and attentive to, the efficacy of drug therapies for this population.

Method: To this end, we systematically review the literature on pharmacotherapy for survivors of torture. Published literature assessing the use of pharmacotherapy in torture victims were sought from MEDLINE, Cochrane Library, PsychInfo and CINAHL.

Search terms “torture,” “pharmacotherapy,” “depression OR PTSD,” “refugee OR asylum seekers” and “treatment or rehabilitation” were utilized.

Results: Review of controlled and uncontrolled studies reveals that antidepressants are the most widely studied medications, particularly sertraline, a selective-serotonin reuptake inhibitor, in the torture survivor populations, expanding to refugees and asylum seekers. Anti-adrenergic medications were used as adjunctive treatment in some uncontrolled studies. In randomized controlled trials, pharmacotherapy did not differentiate from placebo in reducing symptoms. Uncontrolled trials had yielded variable outcomes from pharmacotherapy.

Discussion: There is lack of strong evidence in supporting the use of pharmacotherapy for the treatment of PTSD and Major Depressive Disorder (MDD). Heterogeneity in the study design, patient ethnicity and the social and political status at the time of the study may have contributed in the varied clinical responses to pharmacotherapy.

Keywords: torture, PTSD, MDD, antidepressant, pharmacotherapy, antiadrenergic medication.

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Table 1. Summary of all reviewed literature

Author	Type of Study	Partici- pants	Outcome Assess- ment	Intervention	Outcome
Sandahl (2020)	Prospective, randomized, controlled study	N=230 (79% torture survivors)	Pittsburgh Sleep Quality Index (PSQI), Harvard Trauma Questionnaire (HTQ), Hopkins Symptom Check List (HSCL-25)	Imagery Rehearsal Therapy and/ or mianserin	No significant difference in sleep, PTSD and depressive symptoms
Buhmann et al. (2016/18)	Prospective, randomized, controlled study	N=280 (43% torture survivors)	Harvard Trauma Questionnaire's (HTQ)	Sertraline and/ or psychotherapy	No significant difference in PTSD symptoms; a small reduction in depressive symptoms with sertraline (secondary outcome)
Sonne et al. (2016)	Prospective, active-controlled randomized study	N=207 (42% torture survivors)	HTQ	Venlafaxine and Sertraline	No significant symptom improvement
Smajkic et al. (2001)	Prospective, randomized study	N=32 (Bosnian refugees)	PTSD Symptoms Scale Beck Depression Inventory (BDI) Global Assessment of Functioning (GAF)	Sertraline, paroxetine and venlafaxine	Overall improvement (venlafaxine did not reach statistical significance in depressive symptoms)
Hinton et al. (2012)	Prospective study	N=56 (Cambodian refugees)	Cambodian Somatic Symptoms and Syndrome Inventory (SSI)	Paroxetine	Overall improvement in somatic and cultural symptoms
Kinzie et al. (2012)	Prospective study	N=33 (torture survivors)	Harvard Trauma Scale, Sheehan Disability Scale and WHOQOL-Bref	SSRI, Tricyclic antidepressant (TCA), bupropion, duloxetine, clonidine and prazosin	Overall improvement of Symptoms

Table 1. Summary of all reviewed literature

Author	Type of Study	Participants	Outcome Assessment	Intervention	Outcome
Carlsson et al. (2010)	Prospective study	N=70 (45 tortured refugees)	HTQ, Hopkins Symptoms Checklist-25 (HSCL), Hamilton Depression Scale and WHOQOL-Bref	Psychotherapy, physiotherapy, medical assistance, social counseling and psychopharmacotherapy	Overall improvement of symptoms (no association found with pharmacotherapy)
Boynton et al. (2009)	Retrospective chart review	N=23 (8 torture refugees)	Clinician-administered PTSD Scale (CAPS)	Prazosin	Reduction in nightmares
Boehnlein et al. (2004)	Retrospective cohort study	N=23 (Cambodian refugees)	CAPS, Hamilton Depression Scale and Sheehan Disability Scale	SSRI, TCA along with psychotherapy	Inconclusive between good outcome and poor outcome group
Drozdek et al. (1997)	Observational study	N=120 (Bosnia-Herzegovina concentration camp survivors)	Watson Questionnaire for PTSD	TCA (amitriptyline and clomipramine) and anxiolytic (diazepam, oxazepam), psychotherapy or combination	No association between drug therapy with PTSD diagnosis
Mollica et al. (1990)	Observational Study	N=52 (Cambodian, Hmong/Laotian, Vietnamese (5 torture victims))	HSCL-25	Fluoxetine, counseling, and social work support	Improvement in specific groups

Efficacy of pharmacotherapy for MDD and PTSD from torture

Article 1 of the United Nations Convention Against Torture, signed by the United States in 1988 and ratified in 1994, defines torture as “any act by which severe pain or suffer-

ing, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimi-

dating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".(United Nations Convention against Torture, 1984)

The American Medical Association Code of Medical Ethics is more explicit about including punishment as a context for torture: "the deliberate, systematic, or wanton administration of cruel, inhuman, and degrading treatments or punishments during imprisonment or detainment"(American Medical Association, 2016).

This review focuses on the two most disabling major mental health problems faced by torture victims, Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder (MDD) (May et al., 2014). Published records of psychopharmacological treatments in torture victims were searched in MEDLINE, Cochrane Library, PsychInfo and CINAHL. In order to maximize search results, there was no filter applied to the search. The articles that described outcomes of psychopharmacological intervention and written in English were included. The literature search was conducted using the following search terms through March 2021: "torture," "pharmacotherapy," "depression OR PTSD," "refugee OR asylum seekers" and "treatment OR rehabilitation." After abstract review, 24 documents were selected for a full-text review from the search. Following full-text review, 5 items were excluded from this review because either i) the study sought to assess benefits of psychotherapeutic interventions or ii) the case study included comorbid diagnosis of schizophrenia. Five documents were identified through other resources. Ultimately, 24 publications were included for review in this article.

Randomized controlled trials

Sandahl and colleagues conducted a prospective, randomized study assessing the effect of mianserin and psychotherapy (image rehearsal therapy) on PTSD-associated sleep disturbances in 240 refugees, of whom a significant number had torture history (Sandahl et al., 2021). The aim of this study was to examine add-on treatment with imagery rehearsal therapy (IRT). The control arm, treatment-as-usual, had a multidisciplinary approach with standard medicine, physiotherapy, psychoeducation, and cognitive-behavioral therapy components. Mianserin (average dose of 13 mg) was given in 101 subjects over a period of 8-12 months. The difference in sleep quality, post-traumatic or depressive symptoms was insignificant after the treatment. This may be due to the poor adherence to the treatment protocol, supported by a positive drug serum in only 20% of the participants.

Buhmann and colleagues conducted a six-month prospective, placebo-controlled randomized trial comparing psychotherapy alone, pharmacotherapy alone and pharmacotherapy combined with psychotherapy (sertraline, dose range 25-200 mg, and mianserin as needed for sleep) (Buhmann et al., 2016). Two hundred and eighty patients were randomized into one of the four groups: pharmacotherapy and psychotherapy (n=71), pharmacotherapy (n=71), psychotherapy (n=70) and waiting list as the control group (n=68). Ninety-two patients (43%) were torture survivors. After six months of treatment, no statistically significant difference was found among all groups in PTSD symptoms, yet a small reduction in depressive symptoms was associated with pharmacotherapy. Eleven percent of patients receiving sertraline discontinued treatment due to adverse effect. In a follow-up study of the original trial, 145 (67%; 69 of these patients received antidepressants) and 118 (54%;

39 of these patients received antidepressants) patients completed the follow-up interviews at 6-months and 18-months post-treatment, respectively (Buhmann et al., 2018). No significant association was found with pharmacotherapy for any of the outcome measures, including self-rated PTSD severity, self-rated and clinician-rated depression and anxiety severity, self-rated functioning, self-rated quality of life, pain scores, and self-rated somatization. A small, statistically significant reduction in symptoms were seen across all measures except for pain scores (Visual Analog Scale) independent of the intervention.

Sonne and colleagues conducted a randomized, active-controlled trial of venlafaxine combined with psychotherapy in refugee population (Sonne et al., 2016). Its active comparator was sertraline combined with psychotherapy. A total of 207 patients were randomized to the venlafaxine (n=98, 55% torture history) and sertraline groups (n=109, 42% torture history). Neither the patient nor the physician was blinded to the randomization due to patient comfort and trust; only the raters were blinded to the timing of the interview (pre-treatment vs post-treatment). Medication compliance was measured by pill count at every visit. Both medications were initiated at the low dose and subsequently titrated to the maximally tolerated dose (mean dose of venlafaxine 125.41 mg/day, mean dose of sertraline 96.21 mg/day) by the end of 8 weeks. An adjunctive antipsychotic was administered for PTSD-associated psychotic symptoms in 21% and 22% of patients in venlafaxine and sertraline groups, respectively. A total of 17 patients dropped out of the study prematurely, 10 due to adverse effects of medication. Most of the primary and secondary outcomes that assessed trauma, depression, pain, and functioning did not reach statistical significance between the groups, with the exception of the

Sheehan Disability Scale, which suggested that sertraline was superior to venlafaxine. It is noteworthy that many patients were not able to receive a higher dose of venlafaxine due to tolerability. Venlafaxine's dual antidepressant action occurs only at doses greater 225 mg/day.

Smajkic and colleagues conducted a 6-week, prospective, randomized clinical trial of 3 newer antidepressants (sertraline, paroxetine, and venlafaxine) in 32 Bosnian refugees who had been diagnosed with PTSD (Smajkic et al., 2001). Sertraline (n=15) was dosed to maximum 100 mg daily, paroxetine (n=12) 20 mg daily and venlafaxine (n=13) 75 mg twice daily. Six patients received clonazepam 0.5 mg at bedtime for sleep. Eight patients in the venlafaxine group, which included all the women of the group, dropped out due to medication adverse effect (abdominal pain, agitation, dizziness, diaphoresis, headache, nausea and palpitation). All three antidepressants resulted in statistically significant improvement in PTSD symptom severity and Global Assessment Functioning. While sertraline and paroxetine yielded statistically significant reduction in depressive symptoms, venlafaxine did not reach statistical significance. All patients still met the criteria for PTSD after 6 weeks.

Summary and discussion

Antidepressants have been studied in all randomized controlled trials of PTSD and MDD in torture survivors and refugee population. Adjunctive medications were allowed, and psychosocial interventions were employed in various forms. Though an earlier study by Smajkic showed favorable response to antidepressants, namely sertraline, paroxetine and venlafaxine, later studies failed to show a similarly robust response from antidepressants. (Buhmann et al., 2016, 2018; Smajkic et al., 2001; Sonne et al., 2016) One reason may be the difference in patient population; the study

by Smajkic and colleagues recruited Bosnian patients while studies by Sonne and Buhmann had their majority of patients from Arab countries (Buhmann et al., 2016; Smajkic et al., 2001; Sonne et al., 2016). Sertraline may be more tolerable in torture survivors as venlafaxine had overall higher rate of treatment discontinuation due to adverse effects in two studies even at low dose range (Smajkic et al., 2001; Sonne et al., 2016).

Uncontrolled Studies

Hinton and colleagues conducted a prospective trial with antidepressant pharmacotherapy in Cambodian refugees with PTSD (Hinton et al., 2012). The authors used a culturally sensitive outcome measure that assessed somatic symptoms (e.g. dizziness, cold hands and feet, neck soreness) and cultural syndromes (e.g. excessive inner hotness, sleep paralysis, thinking too much), known as the Cambodian Somatic Symptoms and Syndrome Inventory (SSI). Fifty-six patients received treatment that included paroxetine at maximally tolerated dose, with add-on bupropion or mirtazapine as needed, and brief psychoeducation during clinic visits. A statistically significant reduction was seen in the somatic subscale and cultural syndrome subscale of the SSI, and these findings correlated with PTSD Check List scores.

Kinzie and colleagues report a result of a prospective, one-year treatment of torture survivors at a U.S.-based specialty clinic (Kinzie et al., 2012). Thirty-three patients participated in the treatment that involved multidisciplinary professions and therapies, including medications. The medication choices were made by psychiatrists, and included antidepressants, anti-adrenergics and antipsychotics. After one year, most patients (20/22) reported improvement in symptoms of post-traumatic stress and the quality of life.

In a prospective, longitudinal study, Carlsson and colleagues assessed the change of mental state and quality of life in tortured refugees after a multidisciplinary treatment that included psychotherapy, physiotherapy, medical assistance, social counseling and psychopharmacotherapy (Carlsson, Olsen, Kastrup, & Mortensen, 2010). Of the 70 patients who were enrolled in this study, 45 completed both follow-up exams at 9 and 23 months after the treatment. There was a trend toward regression of symptoms of PTSD, depression, and anxiety at the follow-up, and majority of the patients remained symptomatic. Psychopharmacotherapy was not shown to be associated with the improvement in mental health.

Boynton and colleagues conducted a retrospective chart review of prazosin for the treatment of PTSD-associated nightmares (Boynton et al., 2009) (mean dose 2.3 mg/day). Of the 23 patients who were included, eight patients had a record of torture. Of the 23 patients, 22 were concomitantly on one or more psychotropic medications (e.g. SSRI, TCA, benzodiazepine, antipsychotic, valproate, and trazodone). At the end of eight weeks, there was a decrease in reported distressing dream frequency. The overall PTSD scores based on CGI-C improved in 6 patients, “moderately improved” in 11 patients and “minimally approved” in 6 patients.

Boehnlein and his colleagues reported the therapeutic outcomes of 23 traumatized Cambodian refugees who had been in voluntary treatment for mean 13.5 years (Boehnlein et al., 2004). All patients received consistent medication therapy, including antidepressants (SSRI or a tricyclic), some combined with anti-adrenergic medication (prazosin or clonidine) for the management of nightmares. The authors divided the cohort into two groups, “good outcome (n=13)” and “poor outcome (n=10)” based on current symptoms and func-

tional disability, comparing the treatment between the groups. No significant difference was noted in the past treatment patterns of these two groups, except a slightly higher rate of TCA use in the 'good outcome' group.

Drozdek reported the result of a three-year observational study of 120 Bosnia-Herzegovina concentration camp survivors who received treatment for PTSD (either psychotherapy alone, medication alone, or a combination) versus no treatment for six months (Drozdek, 1997). For the medication group, amitriptyline or clomipramine was used along with as-needed benzodiazepine for anxiety. At the end of 6 months, 73% of those who received treatment met the criteria for PTSD, while 90% of those who did not receive treatment met the criteria for PTSD. At the three-year follow up, 83% of those who received treatment met the criteria for PTSD while 60% of those who did not receive treatment retained the diagnosis. There was no difference in the outcomes among the psychotherapy group, the medication group, and the combination group.

Mollica and colleagues conducted a preliminary study with Cambodian (n=21, of whom 3 were torture victims), Hmong/Laotian (n=13, of whom 2 were torture victims) and Vietnamese (n=18) refugees (Mollica et al., 1990). Treatment included fluoxetine, counseling, and social service support. After a six-month treatment, anxious and depressive symptoms were reduced in the Cambodian and Vietnamese population, whereas the Hmong/Laotian population experienced worsening of anxious and depressive symptoms. The authors attributed the lack of response in the Hmong/Laotian population to their general reluctance to agree to Western medical care, as well as chronic substance misuse problems that were prevalent during treatment. It

was not reported whether torture victims had a different outcome or a course of treatment.

Summary and Discussion

Results from the uncontrolled studies that attempted to assess the efficacy of pharmacotherapy in torture victims and refugee population were variable. While clinical responses were seen in some, a number of studies had worsening of depressive and post-traumatic symptoms among those who took the medication (Drozdek, 1997; Mollica et al., 1990). Antidepressants remain to be the most widely studied class of medications in these uncontrolled trials, while several studies allowed patients to receive clonidine, an anti-adrenergic medication, for additional reduction in hyperadrenergic state of PTSD (Boehnlein et al., 2004; Kinzie et al., 2012).

Summary of Case Series and Reports

Experience with SSRI

Liu-Barbaro and Stein report the successful treatment of PTSD, depression, and dissociative fugue with sertraline (maximum 150 mg daily) and prazosin (maximum 4 mg daily) in a 63-year old Ethiopian refugee (Liu-Barbaro & Stein, 2015). Schwarz-Langer and colleagues described their experience of treating 13 civil war refugees with diagnoses of MDD, somatization disorder, and anxiety disorder (Schwarz-Langer et al., 2006). All patients but one were treated with SSRIs (citalopram, sertraline, or fluvoxamine), one patient with mirtazapine, six patients with as-needed benzodiazepine or zopiclone, and eight patients with concomitant antipsychotic (olanzapine and/or flupentixol). All patients reported subjective improvement in sleep with a shortened time to fall asleep and lessening of nightmares. Most patients reported reduction in intrusive symptoms and hyperarousal. Fernandez and

colleagues published a case report on the normalization of cerebral blood flow after fluoxetine treatment in a torture-survivor (Fernandez et al., 2001).

Mixed Experience with SSRI and TCA

Bouwer published a case series of 14 torture victims with PTSD and MDD (Bouwer & Stein, 1998). After eight weeks of treatment with antidepressants (nine patients with sertraline, dose range 50-200 mg daily; two with fluoxetine, dose range 20-30 mg daily; two with imipramine, dose range 125-150 mg daily; and one with clomipramine, dose 125 mg daily), statistically significant reductions in both PTSD and MDD symptoms were observed. The two patients who took imipramine had minimal improvement.

Experience with TCA and Monoamine Oxidase Inhibitor

Cheung reported positive treatment responses from doxepin in three Cambodian refugees who were diagnosed with PTSD and depression (Cheung, 1993). Basoglu and colleagues report a successful treatment outcome in a 29-year-old torture-survivor with a diagnosis of PTSD and MDD who received amitriptyline (150 mg per day) (Basoglu et al., 1992). Frances and Kroll reported a case of a 57-year-old Hmong woman who was treated with amitriptyline and had improvement in depressive symptoms (Frances, 1989). DeMartino and colleagues described five female refugees from Cambodia/Laos who were treated with monoamine oxidase inhibitors and experienced symptom improvement (DeMartino et al., 1995). Kinzie and Leung report a 1-year treatment of imipramine and adjunctive clonidine combination in nine Cambodian refugees with PTSD and MDD (Kinzie & Leung, 1989). Five patients no longer met the criteria for MDD, and two patients for PTSD. Boehnlein and his col-

leagues reported the result of a 1-year treatment of their 12 Cambodian concentration camp survivor patients with PTSD (Boehnlein et al., 1985). Patients reported medications that were most effective in reducing symptoms were imipramine (n=5), amitriptyline (n=2), doxepin (n=6), phenelzine (n=3), beta-blockers (unknown number of patients) and benzodiazepines (unknown number of patients). The authors noted much improvement in symptoms of hypervigilance and intrusive thoughts, but little improvement in avoidance symptoms of PTSD.

Other Medications

Rijnders and colleagues report on the use of cyproheptadine for PTSD-associated nightmares in a 29-year-old asylum seeker who failed to respond to psychotherapy (Rijnders et al., 2000). Polysomnography affirmed near normalization of sleep architecture after cyproheptadine was started. Kinzie and his colleagues reported on four Cambodian women with subjective feeling of better sleep, less daytime irritability and fewer nightmares after clonidine treatment (clonidine dose 0.3 mg divided morning and bedtime) (Kinzie et al., 1994).

Summary and Discussion

A number of the case reports and series are dated in the era where non-SSRI antidepressants were readily available. Fluoxetine, the first SSRI to be introduced to US market, was available in 1988 (Hillhouse, Porter, Clin, & Author, 2015). TCA and monoamine oxidase inhibitors were widely used as first-line medications preceding this date. It is interesting to note that when SSRI and TCA were used alongside each other, the efficacy of TCA compared to SSRIs was variable (Boehnlein et al., 2004; Bouwer & Stein, 1998). A head-to-head study would be extremely informative to as-

certain the relative efficacy of TCA and SSRI. Review of case reports and series also suggests that avoidance cluster of symptoms of PTSD may be more resistant to antidepressants than other clusters of symptoms (Boehnlein et al., 1985; Kinzie & Leung, 1989).

Discussion

Presently, the US Food and Drug Administration has approved sertraline and paroxetine for the management of PTSD. Not surprisingly, sertraline is the most frequently studied SSRI for the reviewed studies here. One head-to-head trial comparing sertraline and venlafaxine, a serotonin-norepinephrine reuptake inhibitor, showed that venlafaxine may have a poorer tolerability than sertraline, often prohibiting dose titration. (Sonne et al., 2016) TCAs were reported in a number of older case reports with clinically significant improvement in symptoms (Basoglu et al., 1992; Boehnlein et al., 1985; Frances, 1989; Kinzie & Leung, 1989). TCAs and venlafaxine have the same pharmacological mechanism, namely serotonin-norepinephrine reuptake inhibition, differing only slightly in their affinity to serotonin transporter (O'Donnell et al., 2017). Controlled studies conducted to date have not yielded sufficient evidence to recommend pharmacotherapy, specifically antidepressants, for the treatment of PTSD and MDD in torture survivors. In clinical practice, antidepressants are often utilized for symptom management in this population.

Use of anti-adrenergic medication was seen in combination with SSRI. As a note, in combat-related PTSD, anti-adrenergic agent prazosin has superior efficacy over SSRIs (VA/DOD, 2017). In torture victims, however, the evidence for use of anti-adrenergic medication is weak due to lack of placebo-controlled trial or a head-to-head comparison with an antidepressant.

Limitations

This review of literature concerning the evidence of pharmacotherapy in the treatment of PTSD and MDD in torture victims has several limitations. First, because of the paucity of studies that recruited torture victims exclusively, the search was broadened to include refugees and asylum seeker population. Though a large percentage of refugees and asylum seekers often had trauma experience and have fled from violent environments, torture victims may experience possibly more intense symptoms of psychiatric sequelae due to the nature of their trauma. Another limitation is the lack of control group in many of the reviewed studies. Control groups are often eliminated from the study design for ethical reasons, though some authors were able to recruit a control group by getting consent from patients who were either waiting for treatment or refusing treatment (Buhmann et al., 2018). Great heterogeneity is evident in the study design, patient ethnicity and the type of outcome measures. The political and social status at the time of study may also impact the patients' symptoms, potentially altering the clinical response to treatment. Furthermore, traumatic events will impact each individual differently, resulting in variable triggers, symptoms, and behavioral responses.

Conclusion and Future Direction

Efficacy of pharmacotherapy for the treatment of PTSD and MDD in torture survivors is inconclusive based on this review. With the increase in traumatic events occurring worldwide in recent years, the incidence of PTSD is increasing and becoming a significant public health concern. It is imperative to identify an effective treatment to help the growing number of torture survivors.

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Torture Journal Forensic Case Series

Welcome to the Torture Journal Forensic Case Series, a new section of the Torture Journal. Through this Series, we aim to provide a source of information and continuing education for health and legal practitioners involved in the forensic evaluation of survivors of torture.

Case 1: Chronic Pain and Functional Impairment as Evidence – Case of JN

Ben McVane¹

Introduction to the Reader:

In this inaugural case study, a survivor of torture presents with a syndrome of chronic pain and functional impairment of their right arm following blunt trauma. Many torture survivors bear no permanent physical signs of abuse, others show marks that would be apparent to any clinician, while some have evidence of abuse only discernable with medical knowledge that may be outside the practice scope of a given examiner's specialty. In this case, the physical record of the individual's torture was not so apparent as a scar or burn, but an observant clinician could establish a clear causative pathway from the torture she experienced to her current symptoms, thus bolstering her asylum claim. However, her specific diagnosis may not be familiar to many forensic medical examiners.

Background:

Patient JN is an approximately 40-year-old female seeking asylum in the United States. In her home country in South Asia, JN worked as a journalist and reported on issues of crime and corruption in the country. Because of her

reporting, she was targeted by political operatives who attempted to intimidate her from continuing her work. JN was physically attacked on multiple occasions and threatened with further violence, sexual assault and death against her and her family. During one attack, JN was yanked forcefully from a rickshaw and hit repeatedly with a field hockey stick to her right supra-clavicular area (the area between the neck and shoulder). Immediately following this attack, she struggled to move or feel her right arm. With time and physical therapy in her home country, she recovered use of her arm over the course of several weeks, although she still reports decreased strength, range of motion, and sensation in specific parts of her arm. She later left the country to seek asylum in the United States. She was examined by a physician in the United States several years later as a part of her legal case for asylum.

Ethical considerations:

Verbal informed consent was obtained from the patient for the publication of this case report.

Psychological Signs and Symptoms

On examination, JN was bright and engaging, with a linear thought process and appropriate

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affect for the subject matter discussed. She reported multiple psychological symptoms as a result of her trauma, including intrusive thoughts, distressing nightmares, difficulty with concentration, disrupted sleep, and a general decrease in her enjoyment of life. These symptoms are consistent with the diagnoses of both post-traumatic stress disorder (PTSD) and major depressive disorder given to her by her regular therapist.

Physical Signs and Symptoms

Physical examination of JN found that the right shoulder, right arm, and neck lacked any gross deformity or focal tenderness to palpation, although manipulation of the shoulder in any direction elicited pain. She had decreased strength (4/5) in flexion and extension of the wrist (C5/C6), elbow (C5-C8) and shoulder and decreased strength (4/5) in abduction of the shoulder (C5/C6). She had a limited range of motion in flexion, abduction, and external rotation of her right shoulder. Her left arm had full strength in all movement and a full range of motion. There was a decreased sensation to light touch in the lateral aspect of the right arm, from the shoulder to the hand, in an area consistent with the anatomical distribution of the C5/C6 nerve roots. Performing a Spurling's test of her neck (applying downward pressure to the top of her head while the neck is tilted in one direction) induced pain in the right arm.

Interpretation and Conclusion:

The history and physical examination of JN are diagnostic of a traumatic brachial plexopathy resulting from a high-impact injury to the neck or shoulder, commonly called "Burner and Stinger Syndrome" (BSS). This diagnosis is supported by the initial mechanism of the injury, the description of the initial presentation of pain, and the examination showing

decreased sensation and motor functioning in the C5/C6 nerve distributions and a positive Spurling's test. Moreover, her history and physical exam are highly consistent with her described abuse, as is the presence of symptoms of PTSD and major depressive disorder.

Discussion:

Burners and Stinger Syndrome is a diagnosis frequently encountered among athletes in high-contact sports. These injuries result from trauma to the brachial plexus or cervical nerves via either (1) *traction* (when the shoulder is depressed while neck is forced the opposite direction), (2) *compression* (when the neck is simultaneously extended and rotated), or in JN's case, (3) *direct blunt trauma* to the supraclavicular fossa (Ahearn, 2019). The duration and severity of the injury depends on the extent of the injury to the nerve, as classified by Seddon's criteria (Feinberg, 2000). In most cases, symptoms last only moments or resolve within 24-48 hours. However, in 5-10% of cases, symptoms can take several weeks to resolve or persist for a lifetime (Levitz et al, 1997; Speer and Basse, 1999).

Diagnosis of burners and stingers primarily relies on a clinical history and physical examination (Kuhlman, 2004). As is often the case in evaluating survivors of torture, reconstructing the mechanism of the injury in detail will be helpful. The history typically includes trauma leading to the sudden onset of burning pain in the supraclavicular area with associated pain radiating down the ipsilateral arm in a circumferential, non-dermatomal pattern, potentially with associated numbness and weakness (Feinberg, 2000). These symptoms may immediately self-resolve or persist as previously mentioned. Some patients may not develop symptoms of weakness until several days after the injury (Hershman, 1990).

The physical examination should include a thorough neurological assessment of the sensory and motor function of the C5-T1 nerves. Most burner-related deficits are related to C5-C6. A Spurling or Tinel test (direct percussion of a nerve to illicit neuropathic symptoms) may be helpful. While not necessary for diagnosis of shorter-term symptoms, an MRI should be utilized in the evaluation of patients with persistent or recurring symptoms, as anatomical abnormalities of the cervical spine may predispose an individual to prolonged symptoms (Levitz et al, 1997; Standaert and Herring, 2009). Additionally, the presence of cervical spine tenderness, altered mental status, bilateral neurological symptoms or decreased range of motion of the neck should raise concern for more serious brain or cervical spine injury, warranting further imaging and evaluation.

Management of burners focuses on rest, pain control and physical therapy of the cervical spine and upper extremity with the aim of improving flexibility, strength and posture to decrease symptoms (Ahearn et al, 2019; Weinstein, 1998). In severe cases with permanent complete motor or sensory deficits, surgical interventions may be considered.

As is commonly the case with survivors of torture or physical violence, JN's trauma left no visible scar. However, in this instance a detailed neurological exam identified a specific neurological deficit highly consistent her account of prior blunt trauma, helping to corroborate her asylum claim. After initial evaluation by her primary care doctor, JN was referred to a neurologist for further imaging and treatment.

Case 2: Legal Persecution as Torture in Non-Custodial Settings – Case of AC

Berta Soley¹ and James Lin²

Introduction to the Reader:

In this case, a torture survivor who is released from prison to house arrest due to COVID-19 mitigation measures continues to suffer in house arrest from serious physical and psychological symptoms as a consequence of her previous experiences of torture and ill-treatment during prolonged confinement (Amir and Lucas, 2021; Richards and Gelleny, 2021). While release from the custodial setting to house arrest may alleviate a survivor's acute psychological distress, the continued restriction of liberty and attendant challenges in accessing appropriate medical and mental health care may continue to perpetuate the survivor's pain and suffering and pose substantial obstacles to healing. For victims of ongoing legal persecution, legal threat and uncertainty may continue to impart significant psychological distress that may manifest as somatic or psychological symptom, and altogether may qualify as torture or ill-treatment.

Background:

Patient AC is an approximately 40-year-old female living abroad. While visiting her family home in the Middle East and North Africa region, she was detained, accused of espionage, forced to sign a "confession," and was sentenced to several years' imprisonment.

During her incarceration, AC spent many months in solitary confinement. She endured sometimes daily interrogation lasting all day while handcuffed and often blindfolded, repeatedly told that her husband had left her or was unfaithful, that her family would be imprisoned, and that she would never see her infant child again. Interrogators threatened to dig a grave for AC if she did not cooperate or become an informant for them or to launch a new legal case against her. During this period, AC was kept in a small unhygienic cell without windows, where she had to sleep on a mat on the ground with the light continuously on.

After several years in detention, due to Covid-19, AC was released with an ankle monitor to her family's home under house arrest and forbidden from being more than a few hundred meters away. This limited range prevented her from accessing any medical treatment. AC lived under constant fear of being returned to prison or having a new legal case launched against her. A medico-legal evaluation of AC was conducted using remote communication technology by a physician and a psychiatrist while she was in house arrest (Cohen et al, 2021).

Ethical considerations:

Written or verbal informed consent was obtained from the patient for the publication of this case report.

Physical Signs and Symptoms

AC reported that she was healthy before her

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arrest with no physical disabilities except for occasional back and shoulder pain. During her imprisonment, AC developed severe neck stiffness and neck and shoulder pain, which was exacerbated by lying on a hard floor to sleep and being handcuffed for extended periods of time. Her neck pain became so severe she was unable to stand up. Her right hand also became numb and weak to the extent that she would drop things when she was trying to hold them.

During house arrest, AC sought to hide her symptoms from her family. However, she continued to experience physical pain and impairment from her neck, right shoulder and arm, as well as numbness that were not able to be adequately evaluated and treated and was at high risk of becoming chronic and worsening. AC also experienced anxiety from having breast tumors that could be cancer but being unable to access appropriate evaluation despite the growing possibility of metastatic spread.

During the video examination, AC was unable to bend or rotate her head to the right without pain and had limited movement. When AC palpated her right neck, she reported tenderness all along the sternocleidomastoid muscle and some pain to the right trapezius muscle, but no pain on the left side. These symptoms raised concerns about a cervical radiculopathy with nerve compression that required further evaluation. AC also reported a history of breast cancer and the development of painful lumps in her breasts that were growing.

Psychological Signs and Symptoms

Before arrest, AC reported that she lived a balanced and happy life with many social contacts and friends. While she displayed some obsessive manifestations like making the bed a bit more often than average and experienced claustrophobia following a trau-

matic experience, these symptoms decreased and faded over time and did not require any special treatment. During her imprisonment, she developed serious symptoms of claustrophobia, such as a feeling of being suffocated behind closed cell doors and heart palpitations, and obsessive-compulsive thinking and behaviour. AC also had insomnia and extreme hair-loss due to high levels of anxiety and depressed mood.

While AC did not feel as acute stress as she did when she was in prison, she continued to relive and suffer from the serious and long-lasting traumatising issues that she experienced during her confinement. She continued to experience anguish and fear about the threat of a new trial and the constant danger of being taken back to prison. AC's inability to cope with the previously manifested post-traumatic issues kept her under permanent stress. The ankle monitor also served as a constant reminder of her prison experiences and being deprived from liberty and constantly triggered her traumatic memories and experiences, exacerbating her psychological/psychiatric symptoms.

During the video examination, AC reported frequent headaches and problems with concentration and memory, including an inability to evoke memories from before prison. Her prison experiences were evoked in fragments instead of a linear way. She also reported experiencing mood swings, being easily irritated and becoming angry, losing her religious faith and feeling hopeless about the future. AC's symptoms are altogether characteristic for serious and chronic post-traumatic stress disorder (PTSD) and major depression.

Interpretation and Conclusion:

These physical and psychological findings are highly consistent with the experiences AC

recounted during her time spent imprisoned and under house arrest. AC suffered from serious and chronic PTSD, major depression and obsessive-compulsive disorder due to her years of extremely stressful, traumatising experiences in the prison and her continuous uncertainty about her fate. In addition, she suffered from neurological and skeleto-muscular symptoms from prolonged confinement with inability to move freely, engage in necessary physical activity, have adequate sleeping conditions, and being required to remain in restricted physical conditions for long periods.

Discussion

During the last two years, many survivors of torture who are prisoners or detainees have been released from prison to house arrest as part of COVID-19 mitigation measures. Yet, as in the example of AC, they may continue to suffer from serious physical and psychological trauma even while released to a non-custodial setting such as home.

While house arrest and the presence of family may provide some psychological relief, survivors may continue to experience serious psychological symptoms due to the continued restriction of their liberty and inability to access appropriate medical and mental health treatment. As in the case of AC, their lack of freedom and symbols of this, such as their ankle monitor, may serve as a constant reminder of their torture and prison experience and trigger traumatic memories as well as exacerbate their psychological symptoms. Continued legal uncertainty, including the fear of being sent back to prison, and any legal persecution, such as threats of new legal cases against them, creates a permanent sense of threat leading to constant pain and suffering.

In addition, where the place of house arrest or 'home' is unable to present a safe and non-threatening environment, survivors'

physical and psychological conditions may risk becoming chronic and potentially deteriorate. As in the case of AC, she continued to be in need of urgent psychiatric and psychotherapeutic support as well as evaluation and treatment of her physical symptoms. AC's psychological conditions were unable to resolve themselves and risked becoming chronic and worsen. Inadequate evaluation and treatment of her physical conditions also created a high risk that she would experience chronic pain and impairment in the medium to long-term.

AC's case demonstrates how torture and ill-treatment can extend to the non-custodial setting and should be explored as an integral part of the clinical evaluation. Additionally, the deprivation of access to appropriate medical care as well as legal persecution have both been recognised as acts that may qualify as or contribute to situations of torture and ill-treatment whether in custodial or non-custodial settings.

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Protecting LGBT+ persons in Africa from torture: Challenges, opportunities, and comparative experiences

Chris Esdaile¹ and Renata Politi²

In many parts of the world, LGBT+ persons are subjected to torture and ill-treatment because of who they are. Litigation on these issues has been brought before various regional and international human rights courts and adjudicatory bodies, and whilst the contexts of these bodies differ, synergies between them can be explored which may help to advance the protection of LGBT+ persons. Based on this premise, on 1 July 2021, REDRESS held a webinar on the protection of LGBT+ persons in Africa from torture, as part of a new initiative to increase accountability for such discriminatory violence in African jurisdictions.³

The event followed the first decision of torture based on discrimination on grounds of sexual orientation and gender identity by any human rights court: the judgement in *Azul Rojas Marín v. Peru* issued in 2020 by the Inter-American Court of Human Rights

(IACtHR).⁴ The webinar explored the potential impact of the case of *Azul* in Africa, how the rights of the LGBT+ community have developed in the Inter-American system, the role of the African Commission (and African regional human rights system more broadly) in relation to the protection of LGBT+ persons from violence, and factors affecting advocacy and litigation on LGBT+ rights in Africa.

The experts Victor Madrigal-Borloz,⁵ Sibongile Ndashe,⁶ Ayodele Sogunro,⁷ and Gabriela Oporto⁸ were invited by REDRESS to answer these questions as part of the webinar, and valuable contributions were

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3 REDRESS, *Protecting LGBT+ Persons in Africa from Torture: Challenges, Opportunities and Comparative Experiences* [Video], available at <https://youtu.be/UF6g1Esl8Y>. See also, REDRESS, *Justice for LGBT+ Torture in Africa*, available at <https://redress.org/justice-for-lgbt-torture-in-africa/>.

- 4 IACtHR, *Azul Rojas Marín & another v Perú*, Preliminary objections, merits, reparations and costs, Judgment of 12 March 2020, Series C No. 402. See also: REDRESS, *Briefing Note: Azul Rojas Marín v Perú*, available at <https://redress.org/publication/briefing-note-azul-rojas-marin-v-peru/>
- 5 United Nations (UN) Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.
- 6 Founder and Executive Director of the Initiative for Strategic Litigation in Africa (ISLA), based in South Africa.
- 7 Manager of the Sexual Orientation, Gender identity and Sex Characteristics Unit at the Centre for Human Rights of the University of Pretoria, South Africa.
- 8 Strategic Litigation Coordinator of Promsex, Peru, until July 2021.

made by other participants in the form of input and questions.

The case of *Azul Rojas Marín v. Peru* and its relevance to Africa

In the *Azul* case, the IACtHR found Peru responsible for torture and sexual violence against Azul by Peruvian police officers, treatment inflicted because of her sexual orientation and gender identity.⁹ In addition to the violence, which included anal rape using a police baton, and the homophobic insults against Azul, the IACtHR considered the context of discrimination and violence against the LGTB+ community in Peru,¹⁰ and concluded that the torture inflicted on her was motivated by stigma and discrimination against LGBT+ persons.¹¹ Indeed, the overall situation of LGBT+ persons in a certain jurisdiction is an important factor in the examination of the discriminatory purpose behind acts of violence (Oporto, 2021), and the lack of due process and inadequate investigation into cases of violence perpetrated against this community in general, were also taken into account by the IACtHR.¹²

Furthermore, the IACtHR made a connection between social stigma, violence, and impunity for violence practiced against the LGBT+ community in order to address systemic flaws (Madrigal, 2021). It stressed that discriminatory violence is made possible when there is impunity, an absence of public policy, and an exclusion of victims from the legal system (Madrigal, 2021). The Court included various non-repetition measures as part of its reparations, including data collection, the training

of law enforcement officials, prosecutors and members of the judiciary, and the adoption of a protocol to guide investigations into cases of violence against LGBT+ persons.¹³

The direct connection which the IACtHR makes between stigma, violence and impunity could be of particular importance and inspiration to activists and practitioners in Africa (Madrigal, 2021). The link drawn by the IACtHR between LGBT+ lives and human dignity is also extremely useful (Madrigal, 2021) since, as in Latin America, the African context calls for a strategy that uses the concept of human dignity to protect people, such as the LGBT+ community, which is often excluded from the protection which the legal system affords to the rest of society (Sogunro, 2021).

Despite varying circumstances within the African continent, certain factors can be identified which help or hinder domestic and regional advocacy (Sogunro, 2021). “Political homophobia” and the retention of patriarchal colonial legal systems feed the criminalisation and persecution of the LGBT+ community, leading to discrimination and violence, and impacting the way that judicial systems deal with these issues (Sogunro, 2021). In circumstances in which political homophobia controls legal and governmental systems, the police become a monitoring tool, repressing any form of expression of sexuality that is not heteronormative, and increasing the likelihood of torture and other abuses (Sogunro, 2021).

Building the momentum for successful litigation

In Latin America, as elsewhere, the interest and willingness of regional political and human rights bodies to address LGBT+ vio-

9 *Azul Rojas Marín & another v Perú*, paras. 158-167.

10 *Ibid.*, paras. 46-51.

11 *Ibid.*, paras. 164-165.

12 *Ibid.*, para. 50.

13 *Ibid.*, paras. 238-255.

lence has been the result of significant work of civil society organisations, which have raised awareness and made this kind of violence more visible (Madrigal, 2021). It was only after the issue had reached the agenda of the Organisation of American States (OAS), that the Inter-American Commission on Human Rights (IACHR) created a strategic plan of action, and the first cases of litigation started to emerge (in the last decade). In fact, the *Azul* case was the first in which the IACtHR had considered discriminatory torture (Madrigal, 2021).

In terms of regional litigation in Africa, “there will never be a time to litigate those issues unless the people who are vested in creating change create the conditions for the time to be right” (Ndashe, 2021). A strategy must be developed to engage the organs of the African human rights system (Ndashe, 2021), strengthen national human rights institutions, and build further the capacity of civil society (Sogunro, 2021). Whilst one cannot control how States will respond, civil society can advocate for a narrative that is based on State accountability (Ndashe, 2021). For this purpose, practitioners can take advantage of African Commission Resolution 275/2014, which is the first African regional instrument to tackle violence and other forms of discrimination against LGBT+ persons (Ndashe, 2021). Whilst the resolution is non-binding on States, it is built on provisions of the African Charter on Human and Peoples’ Rights and does provide support for litigation on LGBT+ violence. It aims to address discriminatory violence based on real or imputed sexual orientation and gender identity, and calls upon States to establish legislative frameworks and judicial procedures capable of protecting and responding to violence against LGBT+ persons (Ndashe, 2021).

Conclusion

The *Azul* case was the result of more than a decade of significant efforts made by different stakeholders in Latin America, with its origin in a resilient civil society that created the momentum for the successful litigation. The decision of the IACtHR has clear impact beyond Latin America, not just for being the first judgement by any human rights court on the issue of discriminatory torture based on sexual orientation and gender identity, but also because of the Court’s systemic approach and its comprehensive set of reparations intended to tackle the various root causes of this kind of violence and impunity. The experts’ discussion summarised above suggests that similar strategies could be adopted in Africa, despite the different context and variations between jurisdictions within the continent. The webinar confirmed the premise that there is space for cross fertilisation between regional human rights systems in terms of litigation, and that such a dialogue can be valuable to increase the protection of LGBT+ persons in different contexts.

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We need to teach human rights in medical schools

Daniel J N Weishut¹, Lucy R Aitchison² and Bettina Steiner-Birmanns³

Dear Editor,

Recently, we read the protocols of the questioning of a young military physician in the Israeli Defence Forces, who performed a vaginal examination on a Palestinian woman under arrest, against the latter's expressed will and without a medical indication (Breiner, 2021).

The examination was, according to the investigation, performed after an order the physician received from a non-medical superior. The incident happened in 2015 and reached the news in Israel again in 2021, when the investigation was closed with no indictment, because it was impossible to ascertain who gave the order. According to the investigation protocol, which was available to the public following publication by a journalist (Breiner, 2021), the physician expressed the discomfort she felt when performing this invasive examination. She did not, however, mention any attempt to refuse to carry out the order.

The physician was in a difficult situation, a situation of dual loyalties, torn between responsibilities toward her superiors and her profession, between her duty to obey and her obligation to respect the rights of the person under her care. The internationally accepted ethical guidelines are clear that in a case of dual loyalty, the primary duty of the physician is to the patient (Møller, Stöver, Jürgens, Gatherer, & Nikogosian, 2007). However, one may be more willing to participate in a de-humanizing act if the other is considered the enemy.

The fact that the detention was by the Israeli army and the person being examined was a Palestinian woman, who was probably presented to the doctor as a security threat, may have helped to facilitate an erroneous understanding that somehow the examination was permissible. This is reflected in a recent research study, which found that 29% of Israeli physicians considered it permissible to verify the health of detainees so that torture can begin or continue (Benninga, Steiner-Birmanns, Arbel, Abu Akar, & Aboo Dia, 2017).

The physician in this case probably did not realise that gendered violence is commonly used in Israeli prisons to humiliate and punish Palestinians. Note the reports of sexual and other gendered forms of violence being used against Palestinian women and men in Israeli detention (Francis, 2017; Weishut, 2015).

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In principle, no physician should use their medical skills in the service of a non-medical request, no matter who it comes from. With respect to body cavity searches there are guidelines published by the World Medical Association (WMA), which stress that no such search should ever be undertaken without consent, or under coercion; that if a search is considered absolutely necessary and informed consent is given by the prisoner, it should be undertaken by someone with appropriate training (not necessarily a physician). If the patient requests, the body cavity search may also be undertaken by a physician (World Medical Association, 2016). In this case the individual was able to provide consent and did not.

We assert that the inability of the physician to see the ethical implications of forcing an internal examination on a person is a failure of the system which educated her. We, as clinical teachers, should have taught these guidelines, ensuring that this young physician, and others in similar circumstances, would have been equipped with the necessary background to understand the situation and act accordingly. Physicians working in security forces and other physicians too are likely to encounter prisoners and people under arrest. But are they provided the relevant knowledge? Israeli medical schools give little attention to human rights issues, and this may be the case in other countries as well. If we do not teach medical students human rights, the relevant guidelines and ethics then who is supposed to do that?

In support of the WMA guidelines on including human rights courses in medical schools that were adopted in 1999 and reaffirmed recently (World Medical Association, 2021), we call on medical schools to integrate a human rights perspective and introduce sufficient material on human rights, prisoners' rights and medical ethics to help physicians make the right decisions in challenging sit-

uations such as the one described. Recommendations on how to incorporate the study of human rights into medical education have been provided elsewhere (McKenzie, Mishori & Ferdowsian, 2020).

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Call for papers. Special section of Torture Journal: Journal on Rehabilitation of Torture Victims and Prevention of Torture

Racism, ethnocentrism and torture by police and security services

Guest Editor: John Schiemann, Professor of Government and Politics, Fairleigh Dickinson University

Pau Pérez-Sales - Editor-in-Chief, Torture Journal

Background

Since the early summer of 2020, the world has seen a wave of protests against shootings and brutality by police and other law enforcement and security services across the world. As the focus of many of those protests make clear, it is an unfortunate truism that racism and ethnocentrism often play an important but complicated role in violence and torture, including at demonstrations and in other non-custodial settings. What connections between racism on the one hand and torture and inhumane treatment on the other have endured. What are new or dramatically changed and transformed relationships? What are the implications of these developments?

Objective

The UN Convention against Torture specifically identifies “discrimination of any kind” as one of the examples it prohibits. In the spirit of a 2020 resolution of the UN Human Rights Council calling attention to excessive use of force and other human rights violations by law enforcement officers against Africans and of people of African descent against and the Journal’s own recent special section on migration and torture, the Torture Journal seeks to gather and disseminate legal, social scientific, psychological, and historical perspectives on the relationship between racism and ethnocentrism broadly defined and torture and inhumane treatment by police and other law enforcement and security services in order to better understand and reduce their prevalence.

Call for papers

Torture Journal encourages international and national studies with a social scientific, historical, psychological, or legal orientation, particularly those that are interdisciplinary with other fields of knowledge. We particularly encourage submissions from the Global South. We welcome papers taking a variety of perspectives and approaches, including, but not limited to, the following:

- a. Identification of the conditions under which police and other law enforcement and security agencies are more likely to selectively target members of specific racial or ethnic groups for

- torture and inhumane treatment;
- b. Study of the social psychological links between prejudice, racism and torture generally, as well as the influence of prejudice and racism on the criminal interviewing methods and coercive interrogations;
 - c. Exploration of how racism and ethnocentrism affects the type or nature or supposed purpose of torture and inhumane treatment by police and other law enforcement and security service units who engage in torture;
 - d. Investigation of how the above patterns have changed over time within and across regions, countries, political regimes, socio-economic conditions, and other sources of variation;
 - e. Examination of the relationship, if any, between social protest movements and reform efforts, and the effectiveness of torture prevention in contexts of racialized and ethnicised torture and inhumane treatment;
 - f. Analysis of the broader social effects, widely construed, of systematic racialized and ethnicised torture and inhumane treatment by police and other law enforcement and security services;
 - g. Inquiry into whether there are physical and/or psychological sequelae specific to racialized and ethnicised torture and inhumane treatment by police and security services on torture victims and what, if any, implications they have for victim rehabilitation treatment.

Deadline for submissions

30th January 2022

For more information

Contact Editor-in-chief (pauperez@runbox.com) and Guest-Editor (jws@fdu.edu) if you wish to explore the suitability of a paper to the Special Section.

Submission guidelines and links

- To make a submission, navigate here: <https://tidsskrift.dk/torture-journal/about/submissions>
- Author guidelines can be found here: <https://irct.org/uploads/media/2eefc4b785f87c7c3028a1c59ccd06ed.pdf>
- Read more about the Torture Journal here: <https://irct.org/global-resources/torture-journal>

For general submission guidelines, please see the Torture Journal website (<https://tidsskrift.dk/index.php/torture-journal/index>). Papers will be selected on their relevance to the field, applicability, methodological rigor, and level of innovation.

About the Torture Journal

Please go to <https://tidsskrift.dk/torture-journal> - a site devoted to Torture Journal readers and contributors - to access the latest and archived issues.

CTI Prize for the Torture Journal best paper

On the 30th Anniversary of the scientific Torture Journal – a journal hosted by the International Rehabilitation Council for Victims of Torture (IRCT) – an annual prize for the Torture Journal has been established for the next consecutive three years with the generous donation of the Convention against Torture Initiative (CTI).

About the Prize

The CTI Prize – Torture Journal (1,000 USD) will be awarded in 2021, 2022 and 2023 under different formats:

2021 Prize

In commemoration of the 30th Anniversary of the Torture Journal, the 2021 Prize will be awarded to the article which has been considered to be the most impactful for the prevention and rehabilitation of torture survivors. Readership and subscribers will be invited to vote for the article which they consider has made the biggest difference to survivors' prevention and rehabilitation processes from among the articles published in the Torture Journal. The Editor in Chief will select 40 papers. The Editorial Advisory Board will short list 10 of them and the readers will vote for the winner.

ELIGIBILITY: All papers published in the Torture Journal from 1991 to 2021 are eligi-

ble to receive the Prize. There is no need for authors to apply for the Prize, and there is therefore no application process.

Authors not wishing to be considered for the Prize are to inform the Torture Journal.

JUDGMENT CRITERIA:

The interdisciplinary and international Editorial Advisory Board will judge the papers. Any Board member with an article published in the year under review will be deemed ineligible for the Prize, or to exclude themselves from the selection process.

The Prize will be awarded taking into account the following non-exhaustive factors:

- impact on policy or practice and the lives of torture survivors and victims,
- the strength, logic and depth of the analysis,
- originality and importance of intervention,
- thoroughness and soundness of the research,
- quality of writing (clarity and organization).

Articles can be on any topic that has been published. The best article will be selected irrespective of nationality, age or any other characteristics of the author.

PROCESS:

The Editorial Board will come up with a list of the 10 articles, based on the established criteria, which will then be submitted to vote among the membership, readership and subscribers. A link will be sent where people will be able to vote for the most impactful article. The results will indicate the final article awarded, which will be announced at the 30th Anniversary virtual event (17th and 18th November 2021).

THE PRIZE: The Prize will be \$1,000 USD.

If there are two articles that are considered equally deserving, the Prize will be split

1 While the Torture Journal has existed as an academic journal since 1991, the publication started in 1989 as a newsletter.

between the two winners. No more than two articles can be selected.

The Torture Journal takes no responsibility for any taxation issues arising out of the receipt of the Prize by the recipient.

It may also be decided by the Board to award a non-remunerated Certificate of Merit to any article deserving of recognition.

A posthumous award can be granted, though the cash prize will not be paid. In such case, the Prize will be in name only. In such circumstances, the cash prize will be transferred to the following year.

PUBLICITY: The winner of the Prize will be announced on the 30th Anniversary event (17th and 18th of November 2021), on the Torture Journal website and other social media. A certificate will accompany the cash prize.

PERIOD COVERED: The article will be selected from articles published from 1991 to 2021, and awarded by end November 2021.

2022 and 2023 Prize

The CTI Best Article Prize – Torture Journal will be awarded to the best – most original and innovative – article in a given year. The best article will be selected by the Editorial Advisory Board and the readers of the Journal from among the articles published in the given year, following the same criteria as the 2021 prize.

DONATION: Funding has been provided by CTI for the first three years of the Prize.

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Current debates, development and challenges regarding enforced disappearance as torture

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The Torture Journal is published by the International Rehabilitation Council for Torture Victims which is an independent, international organisation that promotes and supports the rehabilitation of torture victims and the prevention of torture through its over 150 member centres around the world. The objective of the organisation is to support and promote the provision of specialised treatment and rehabilitation services for victims of torture.

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