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Investigating Enforced Disappearances



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Introduction

Enforced disappearance is one of the most brutal types of human rights violation. It denies basic humanity to the disappeared person, who is denied every right and protection afforded to all people detained for any reason. People who are forcibly disappeared are denied any contact with the outside world, they do not know what their fate will be or where they are, and they are often subjected to severe torture. At the same time, enforced disappearance causes immense, and often indefinite, suffering to family members.

Victims of enforced disappearance are arrested or abducted by agents of the state, or with the state's acquiescence; the state refuses to acknowledge they are in detention, and their families are denied any information on their fate or whereabouts. Victims are detained without charge, often in secret detention centres or internment camps, and without any contact with lawyers, family or anyone in the outside world. The denial of rights and protections such as judicial oversight, contact and the right to challenge the lawfulness of a detention make them particularly vulnerable to torture and arbitrary killings. Some victims are eventually released, but vast numbers are killed or die in detention as a result of torture or appalling conditions. Their bodies are often buried in unmarked mass graves, or are destroyed or disposed of in ways and locations that make it unlikely they will ever be found.

In many cases, the families of the disappeared never discover their fate. The uncertainty and the lack of information when a loved one is forcibly disappeared cause such severe suffering to family members that they are also categorized as victims of the violation.

During periods of political repression, authoritarian rule and conflict, states use large-scale enforced disappearances to spread fear and intimidation among the family, the community and the wider public in order to silence the opposition and suppress uprisings. Numerous detentions that have taken place in the first two decades of the 21st century in the context of the "war on terror" and counterterrorism responses amount to enforced disappearance, such as those involving rendition (forcible transfer to another country) and prolonged periods of detention without charge. The last decade has also seen an increasing issue of the enforced disappearance of migrants. States have cooperated to forcibly return individuals to countries from which they have fled, and have detained migrants using methods that qualify as enforced disappearance. In addition, individuals have disappeared at the hands of people-smuggling or trafficking networks operating with state acquiescence or involvement.

The nature of enforced disappearance makes it a particularly challenging violation to investigate and collect evidence on. It is characterized by secrecy and a lack of

information for both the disappeared person and their family. In many cases there will be no survivors to provide testimony of their experiences and there may be no eyewitnesses; you may have to prove that detentions took place in secret locations, and to prove killings occurred where there are no bodies.

However, despite the level of secrecy surrounding these cases, a surprising amount of information can often be found, including witnesses, records and other documentation, satellite imagery and on-the-ground photos and footage. By piecing together evidence from multiple sources, you can put together pictures and patterns of what happened, and tear through the shroud of secrecy and silence surrounding these cases.

Purpose of the handbook

This handbook provides guidance to human rights organizations and activists conducting investigations into enforced disappearances. It should be used in conjunction with the Main Book of the *Ukweli* series, *Ukweli: Investigating Human Rights Violations*. The Main Book contains detailed guidance on the different steps involved in conducting investigations, as well as related considerations such as protecting the well-being of the investigators. The information in this handbook contains guidance on specific legal, technical and other considerations related to investigating enforced disappearance.

Structure of the handbook

This handbook is a step-by-step guide to investigating cases of enforced disappearance.

- *Chapter 1* outlines the legal framework and explains the complex aspects of the violation.
- *Chapter 2* provides detailed guidance on how to plan and prepare for your investigation into enforced disappearances.
- *Chapters 3, 4 and 5* guide you on how to identify and gather the three main types of evidence you will collect during your investigation: testimonial evidence (through interviews), physical and documentary evidence.
- *Chapter 6* explains how to verify the information you have collected, analyse and draw conclusions, and identify patterns between cases.
- *Chapter 7* provides guidance on taking action on enforced disappearance cases – both immediate action and actions over the medium and longer term.

Terminology

Abduction – The legal framework refers to “arrest or abduction”. Enforced disappearance cases can begin with either a lawful arrest (with a warrant, according to due process) or the abduction of a person or persons, with no legal basis.

Disappeared or Missing – The broader category of “missing” includes people who have been forcibly disappeared. There is no legal definition of “missing” under international law, but it is widely understood to include people whose whereabouts are unknown to their relatives and/or who have been reported as missing as a result of armed conflict, internal violence, a natural catastrophe, or during migration. These people may be dead, injured, detained or separated from their families but unable to contact them for various reasons. While this handbook does not, therefore, use the terms “missing person” or “the missing”, it sometimes refers to “people who have been reported as missing” – often the starting point of an enforced disappearance investigation.

Killings – This handbook refers to “killings” of victims of enforced disappearance, which constitute extra-judicial executions – that is, execution without previous judgement by a regularly constituted court after a trial that met international standards of fairness.

Survivor – This term refers to people who have been released after a period of enforced disappearance.

Victim – This term is used to refer to people who have been forcibly disappeared and their family members. As discussed in Chapter 1, the international legal framework defines victims of the violation as those subjected to enforced disappearance and any other individuals who have suffered harm as a direct result. For the sake of clarity, the handbook often refers to “the disappeared person” and “family member”.

Chapter 1

What is enforced
disappearance?

To establish a framework for any investigation into enforced disappearances, it is important to understand how it is defined in international human rights law, international humanitarian law, international criminal law, national legislation and with reference to other international human rights standards.

1.1 Defining enforced disappearance and its key elements

The United Nations Convention for the Protection of all Persons from Enforced Disappearance is the primary source of international law prohibiting enforced disappearance and laying out the rights of victims – who include the families of forcibly disappeared persons – to truth, compensation and reparation. Article 2 of the Convention defines enforced disappearance as:

[T]he 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.

Therefore, there are **three essential elements in an enforced disappearance**:

1. Deprivation of liberty;
2. State involvement or acquiescence;
3. State denial or concealment of the fate of the disappeared.

“Placing such a person outside the protection of the law” means the individual is denied the fundamental safeguards enshrined in national and international legal frameworks for any person deprived of their liberty. These safeguards are designed to protect against human rights violations including arbitrary detention, torture and arbitrary killing. These protections require that:

- Everyone has the right to challenge the lawfulness of their detention (see box below).
- No one can be held in secret detention: people deprived of their liberty can only be held in officially recognized places of detention.
- Every detained person has the right to communicate with legal counsel, family and the outside world, and to receive visits.

Enforced disappearance also violates a range of due process-related rights and other human rights, which are discussed below.

The prohibition on enforced disappearance **cannot be derogated from under any circumstances, even in times of emergency**.¹ This means that governments cannot cite

an emergency such as a conflict or civil unrest to detain people without guaranteeing their ability to challenge the lawfulness of their detention, or without confirming their identity and whereabouts. The state maintains at all times the obligation to acknowledge all persons in its custody.

Family members of forcibly disappeared persons are also the victims of the violation, due to the severe suffering caused by the disappearance, the uncertainty and lack of information about the whereabouts or fate of their relative. Article 24(1) of the Convention on Enforced Disappearances defines the victim as “the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.”² The legal recognition of family members as victims of the violation means **they are entitled to remedy and reparation.**

Article 18 of the Convention on Enforced Disappearances details the **right to information:** any persons with a legitimate interest, such as relatives, their representatives or their legal counsel, have the right to obtain information on a person who is deprived of their liberty (such as the date, time and place of the deprivation of liberty, the whereabouts of the person, the authority supervising the deprivation of liberty, and so on).

The right to challenge the lawfulness of detention

Everyone deprived of their liberty has the right to take proceedings to challenge the lawfulness of their detention before a court. The court must rule without delay and order their release if the detention is unlawful.³ This right is guaranteed to all people deprived of their liberty for whatever reason,⁴ and applies to all forms of deprivation of liberty, including house arrest and administrative detention on the grounds of public security or other bases.⁵

Generally, either the detainee or their lawyer would bring such a challenge. However, some standards expressly recognize the right of any person with a legitimate interest, including relatives, their representatives or their lawyers, to bring such a challenge on behalf of the detainee.⁶

The right to challenge the lawfulness of detention differs from the right to be brought before a judge, principally because it is initiated by the detainee or on the detainee’s behalf, rather than by the authorities.

Where an individual is held in secret or unacknowledged detention (such as in enforced disappearance cases), this right serves as a means to establish the whereabouts and well-being of the detainee and who is responsible for their detention.⁷

In many legal systems, the right to challenge the lawfulness of a detention and to seek remedy is invoked by habeas corpus or amparo.

A writ of habeas corpus is a judicial decree ordering the relevant authorities (such as prison officials) to bring a detained person before a judge to determine the lawfulness of the detention, and, if appropriate, to order their release.

A writ of amparo: in many Latin American countries, a writ of amparo is a prompt, procedural remedy designed to give an individual or group recourse to a competent court for protection against acts by officials (legislators, executive officials, judges) that violate the individual's or group's fundamental rights. It is used as an emergency procedure to protect the rights to liberty and security of person when the petitioner is detained.

Enforced disappearance is a complex violation involving the violation of multiple other rights. One case might violate some or all of the following rights protected under the Convention on Enforced Disappearances, the Convention against Torture, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child (as well as other instruments of human rights law):

- the right to recognition as a person before the law;
- the right to liberty and security of person: the right not to be subjected to arbitrary arrest or detention;
- the right to be brought promptly before a judge or authorized judicial officer (to confirm the lawfulness of the detention and safeguard the well-being of the detainee);
- the right of all detained persons to be treated with humanity and with respect for the inherent dignity of the human person;
- the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (relating to the disappeared person and family members);
- the right to be held in humane conditions of detention;
- the right to a fair trial;
- the right to a family life (relating to the disappeared person and family members);
- (at least a grave threat to) the right to life;
- the right to information about a detained person (family members).

If the disappearance involves a child being taken away from their parents, the case may violate further rights of the child under the Convention on the Rights of the Child, including:

- the right to preserve his or her identity, including nationality, name and family relations;
- the right to know and be cared for by his or her parents;
- the right not to be separated from his or her parents against their will.

Related violations

Enforced disappearance cases can also give rise to a number of related violations. For example, family members may be subject to arbitrary arrest, cruel, inhuman or degrading treatment or other violations as a result of trying to request information from the authorities about their relative. Disappearances can result in the violation of a number of economic and social rights of family members including the right to protection and assistance to the family, the right to an adequate standard of living, the right to health and the right to education.

Torture and enforced disappearance

Victims of enforced disappearance are at a high risk of severe physical and psychological torture during detention because they are denied the safeguards designed to protect people who have been deprived of their liberty from torture – for example, being brought before a court where they can report torture, having access to legal representatives and family members to whom they can report torture, and being detained in official places of detention (which maintain official records of detainees, and may have independent monitors overseeing their well-being).

A growing body of international law (through decisions from international courts and human rights bodies) has also defined that **the act of enforced disappearance may itself constitute torture or cruel, inhuman or degrading treatment or punishment** due to the severity of the suffering it causes:⁸

- The degree of suffering involved for the disappeared person in being held indefinitely without contact with the outside world, and without knowing their own fate, may amount to torture.
- The suffering caused to family members by the disappearance may amount to torture or cruel, inhuman or degrading treatment.

The Convention against Torture defines four vital elements of an act of torture:

- It constitutes severe pain or suffering, whether physical or mental.
 - It is inflicted intentionally.
 - It is inflicted for a purpose.
 - It is inflicted by a public official or other person acting in an official capacity, at their instigation or with their consent or acquiescence.
-

The state's duty to investigate, prosecute, punish and provide reparation

- The state has a **duty to undertake a prompt, thorough and impartial investigation** where an allegation of enforced disappearance is made or where there are reasonable grounds to believe an enforced disappearance has taken place (Convention on Enforced Disappearances, Article 12(1-4)). This includes a duty to investigate acts by non-state actors (Convention on Enforced Disappearances, Article 3).
- Investigations are needed to locate the disappeared person, reveal the truth about their whereabouts or fate, combat impunity and reinforce the rule of law by punishing the perpetrators.
- The state must “take all appropriate measures to **search for, locate and release** disappeared persons and, in the event of death, to **locate, respect and return their remains**” (Article 24(3)).
- Victims (including family members) have **the right to the truth** about what happened – the circumstances of and reasons for the disappearances, the identity of the perpetrators, the fate or whereabouts of the disappeared persons, and the progress and results of any investigation.⁹
- The right to the truth also **applies to the fate and whereabouts of children** who were born during their mothers’ enforced disappearances, who were wrongfully removed, adopted or placed through a national system, and whose true identity may have been falsified or concealed. States are obligated to search for and identify such children, restore them to their families, re-establish their identities, and annul any adoption or placement.
- Victims of enforced disappearance have the **right to reparation and compensation**. Reparation covers material and moral damages and other forms of reparation where appropriate, such as restitution, rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition (Convention on Enforced Disappearances, Article 24(4,5)). (Reparations and compensation for family members are covered in detail in Chapter 7.)

Understanding enforced disappearance – additional considerations

- Enforced disappearance **can begin with either an unlawful abduction or a lawful arrest** if the arrested person is not charged, tried, given access to family or legal representation, and/or the state subsequently refuses to provide information about their fate or whereabouts.
- There is **no minimum period for an enforced disappearance**. As soon as a person has been arrested or abducted by agents of the state and the state refuses to acknowledge the detention or provide information to family members, the case constitutes an enforced disappearance. In its 2018 annual report, the UN Working

Group on Involuntary or Enforced Disappearance noted the pattern of “short-term” enforced disappearances being used in a number of countries.

- While there are different component stages of an enforced disappearance (arrest/abduction, detention and possibly killing), it should not be seen as a combination of acts, but as a **unique and consolidated act**.¹⁰
- Enforced disappearance is a **continuous – or ongoing – act**. It begins at the time of the abduction and lasts until the state acknowledges the detention, releases the victim, or releases information on the fate or whereabouts of the individual.¹¹ This means, among other implications, cases can be considered (by the UN Committee on Enforced Disappearances or during a prosecution) on the basis of a legal instrument (for example the Convention on Enforced Disappearances, relevant legislation) that was enacted after the enforced disappearance began: the crime cannot be separated, and the conviction should cover the enforced disappearance as a whole.

International Mechanisms on Enforced Disappearance

UN Committee on Enforced Disappearances

The Committee on Enforced Disappearances is a body of independent experts responsible for monitoring the implementation of the Convention for the Protection of All Persons from Enforced Disappearance. States party have to submit reports to the Committee on the measures they have implemented in line with the Convention. The Committee can receive requests for urgent action submitted by the relatives of a disappeared person, their legal representatives or another person authorized by them, or any other person with a legitimate interest. It can also receive individual complaints from alleged victims of enforced disappearance.

The Committee can only consider cases and situations in states that have ratified the convention and cases that occurred after its entry into force. However, because enforced disappearance is considered a consolidated and continuous act, where a disappearance was ongoing at the time the convention entered into force, the Committee can look at the **whole act** and not only the acts or omissions that occurred after the entry into force.

UN Working Group on Enforced or Involuntary Disappearances

The Working Group on Enforced or Involuntary Disappearances (WGEID) was established before the Convention or Committee were created. The WGEID’s main task is to help families determine the fate or whereabouts of their family members. The group receives, examines and transmits to governments reports

of enforced disappearances submitted by relatives of disappeared persons or human rights organizations acting on their behalf, and asks the government in question to investigate and to report the results to the WGEID. At least once a year, the group reminds governments of the total number of cases transmitted that have not yet been clarified.

The WGEID can act on all reported cases of disappearance that have occurred in any country, at any point (before or after the convention's entry into force), and examine the situation in all countries.

► *See Chapter 7 for more information on engaging with these bodies.*

1.2 Enforced disappearance as a war crime

Enforced disappearance is prohibited in international and non-international armed conflict under customary international humanitarian law (IHL) (law governing armed conflict). IHL does not directly refer to enforced disappearance, but disappearances violate a number of other customary international rules, particularly the prohibitions on arbitrary deprivation of liberty, torture and murder, and the requirement to register all those deprived of their liberty. These cumulatively amount to a prohibition on enforced disappearance.

- **Rule 98 of customary IHL:** Enforced disappearance is prohibited. This customary prohibition means that while non-state armed groups are not covered by the UN Convention on Enforced Disappearances, they are accountable for acts of enforced disappearance during a recognized conflict.
► *For its full text see ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rule98*

Other relevant rules of customary IHL:

- **Rule 117:** Accounting for missing persons: “Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.” This relates to people missing under any circumstances relating to the conflict, including (but not limited to) enforced disappearance.
► *For its full text see ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rule117*
- **Rule 105:** Family life must be respected as far as possible.
► *For its full text see ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rule105*

1.3 Enforced disappearance as a crime against humanity

Under the Rome Statute of the International Criminal Court, enforced disappearance constitutes a crime against humanity when it occurs as **part of a widespread** (namely, multiple crimes) or **systematic** (namely, organized/planned) **attack against a civilian population**, and the **perpetrators knew of the attack** on the civilian population.

- “Attack” means “a course of conduct involving the multiple commission of acts... against any civilian population, pursuant to or in furtherance of a state or organizational policy to commit such an attack.”
- The Rome Statute also **includes political groups as potential perpetrators** of enforced disappearance, including those that do not act on behalf of, or with the support (direct or indirect), consent or acquiescence of the state. Members of political groups as well as state officials can therefore be tried by the International Criminal Court for acts of enforced disappearance.
- A single case of enforced disappearance is a crime against humanity when committed as part of a widespread or systematic attack on a civilian population (namely, where other crimes against humanity such as extrajudicial executions and torture are occurring).

1.4 Summary of law and standards

Before you begin your investigation, it is important to determine what legal obligations your government has under national and international law.

- ▶ *Check the national legal framework in your country and the international instruments to which your state is a party.*

1.4.1 International law

International Human Rights Law

- The International Convention for the Protection of All Persons from Enforced Disappearance¹² is the leading international instrument prohibiting enforced disappearance.
 - ▶ *Check if your country is party to the Convention: treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&clang=en*
- The International Covenant on Civil and Political Rights (ICCPR)¹³ includes protections and prohibitions on rights relating to deprivation of liberty, detention, torture, family life. Almost all states are party to the ICCPR.
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)¹⁴ is the leading international instrument focused on prohibiting, preventing and combating torture. Provisions of the CAT may apply to disappeared persons and family members.

- ▶ Check if your country is party to the ICCPR and the CAT: tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx

International Humanitarian Law

- **Rule 98¹⁵** of Customary International Humanitarian Law prohibits enforced disappearance.

International Criminal Law (Rome Statute of the International Criminal Court)¹⁶

- The Crime Against Humanity of Enforced Disappearance (Article 7.1(i), 7.2(i))
- Enforced disappearance cases may also constitute the Crime Against Humanity of Torture (Article 7.1(f))

1.4.2 Regional instruments

- Inter-American Convention on the Forced Disappearance of Persons.¹⁷
- The African Charter on Human and Peoples' Rights, the European Convention on Human Rights and the Arab Charter on Human Rights do not mention enforced disappearance explicitly, but contain protections of the right to liberty and security and prohibitions on torture. The African Commission on Human and Peoples' Rights and the European Court of Human Rights have referenced these provisions in decisions on enforced disappearance cases.¹⁸
- Guidelines on the Protection of all Persons from Enforced Disappearance in Africa.¹⁹

1.4.3 National law

- In some countries, enforced disappearance is defined as a crime or a crime against humanity in national (domestic) law.²⁰ Enforced disappearance cases may also constitute the crime of torture under provisions in national frameworks.
- All states have safeguards in their legal frameworks against arbitrary detention, such as the requirement to be brought before a judicial officer within a specific time period after the deprivation of liberty.
- In some countries, the prohibition on enforced disappearance under customary IHL has been included in military manuals.

1.4.4 International standards

- A number of international standards are relevant to enforced disappearance cases, including the UN Standard Minimum Rules for the Treatment of Prisoners, Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, and the Code of Conduct for Law Enforcement Officials.
- A range of regional standards are also applicable in cases of enforced disappearance.

- Standards relating to the investigation of disappearances include the International Consensus on Principles and Minimum Standards in Search Processes and Forensic Investigations in Cases of Enforced Disappearances, Arbitrary or Extrajudicial Executions; UN Guiding Principles for the Search for Disappeared Persons; and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

1.5 Groups at particular risk of enforced disappearance

Groups that are frequently denied the protections afforded by national and international law – such as terrorism suspects, ethnic or religious minorities and migrants – are particularly vulnerable to being subject to treatment that amounts to enforced disappearance.

1.5.1 *Enforced disappearance and counterterrorism measures*

Numerous enforced disappearances have taken place in the context of counterterrorism responses and the “war on terror”. Prolonged detention without charge, secret detention programmes and “rendition” – wherein detainees are forcibly transferred to other countries – have amounted to enforced disappearance in many cases.

Counterterrorism laws in some countries permit detention without judicial review or charge for extended periods, and deny detainees access to legal counsel or family members. Such provisions increase the risk of detentions that amount to enforced disappearance, and make violations of the prohibition on torture and of the right to life more likely.

- States must ensure that all people who are deprived of their liberty in connection with terrorism offences can exercise their right to challenge the legality of the detention.
- All counterterrorism measures must comply with international law.²¹

Note: If you are working on terrorism-related cases, check what your domestic (national) terrorism legislation provides for (where it exists), particularly how long the state can detain suspects without charge.

1.5.2 *Enforced disappearance and migrants*

The disappearance of migrating individuals, during transit or after arrival in their destination countries, is increasingly being documented. Many of these cases amount to enforced disappearance; they fall broadly into three sets of circumstances:

1. **Abduction for political or other reasons:** Individuals are captured by agents of

their state of origin in the host country, often with the consent or complicity of the latter, or are captured by agents of the host state at the request of their state of origin. In some cases, individuals are secretly detained and tortured in the host country before being handed over to the state of origin, and disappearing.

2. **Enforced disappearances that occur in the context of detention or deportation processes:** Migrants are detained for days or months (or indefinitely), often in unofficial detention centres with few or no registration systems and no independent monitoring mechanisms. Migrants tend to have very limited access to the justice system to challenge this detention. Or where the deportation/ returns or removals of migrants are either outside legal procedures or are in accordance with legal processes and procedures that do not comply with international law, such as violations of the principle of *non-refoulement*. All of these circumstances can constitute or lead to enforced disappearances.
3. Where migrants disappear as a result of **people smuggling and trafficking operations** carried out by private or non-state actors (often as part of organized criminal activities), and where these disappearances are perpetrated *with the support (direct or indirect), consent or acquiescence of state agents*.

Note: If you are working on cases involving enforced disappearances during migration, it may be relevant to refer to International Refugee Law, particularly the 1951 Refugee Convention (1951) and Protocol (1967).²²

1.6 What is not enforced disappearance?

Enforced disappearance is a complex violation consisting of multiple aspects. It might be unclear whether some cases reach the threshold of enforced disappearance. A number of due process and detention-related rights can be violated in a case without it amounting to enforced disappearance; people can go missing in a conflict, during migration or in other circumstances, in cases that do not constitute enforced disappearance.

All three elements must be present for a case to constitute enforced disappearance. These distinctions are important when framing your research and advocacy.

Incidents that do not meet the definition of enforced disappearance because one (or more) of the three elements is not present include the following:

1. **There has not been a deprivation of liberty:**
 - Persons missing in armed conflict as a result of death during combat or desertion;
 - Persons who have gone missing during migration as a result of uncertain migration routes, accidental or intentional loss of contact with family members, or a range of other reasons;

- Forced displacement or forced evictions of individuals, families or communities.

2. The perpetrator is not an official:

- Human trafficking conducted without the involvement or acquiescence of the state;
- People abducted for personal, political, financial or other reasons by individuals, armed groups or other entities, not acting on behalf of (or with the acquiescence of) the state;
- Persons taken hostage for ransom, for example by criminal groups.

The perpetrator must be an official or be acting with the support or acquiescence of an official for enforced disappearance as a human rights violation. The Statute of the International Criminal Court also recognizes enforced disappearances as a crime against humanity perpetrated by “political organizations”.

3. The government has not denied the deprivation of liberty:

- A person is detained without charge and without being taken before a judicial officer to confirm the lawfulness of the detention, but the family knows where the individual is and can contact or visit the detainee. However, if the state acknowledges the detention but neither the family nor legal representatives are permitted contact or visits, this can amount to enforced disappearance. The state’s claim that the individual is in detention is not sufficient guarantee of the detainee’s well-being where no due process rights or oversight are being exercised.
- Incommunicado detention or solitary confinement for certain periods does not necessarily amount to enforced disappearance if the detention is acknowledged and officially documented, and the family member can access information about the detained person. However, prolonged solitary confinement may amount to enforced disappearance.

Chapter 2

Planning your investigation

Enforced disappearance is an extremely challenging violation to investigate: secrecy and the suppression of information are integral to the nature of the violation. The perpetrators often withhold information in order to create intimidation and fear, and the missing person seemingly disappears without a trace.

However, in many cases it is possible to find evidence. There are always witnesses to parts of the process – sometimes only the perpetrators, but often others as well. For example, there are frequently witnesses to arrests and abductions. Perpetrators create documentation and records, and informers from the military, police or prisons might provide vital information. People who live near detention centres or other sites of enforced disappearances witness or hear things; if a mass grave has been created, the local community will likely know about it (unless it is on land with restricted access, such as military land); satellite imagery can provide information on inaccessible places, or show the location of newly dug graves. In addition, some victims of enforced disappearance are eventually released, and they can provide hugely important information about the practice.

Yet given the nature of enforced disappearances, in some cases there is simply little or no evidence or information available; in many cases it will not be possible to establish a full picture of events.

Where multiple cases are occurring, you may not be able to establish the exact details of individual cases, but you might be able to document significant evidence of the wider practice of enforced disappearance – the way it is being used – by piecing together details from a range of cases and identifying patterns between them. This might be done without necessarily being able to link reported incidents to specific disappeared individuals. For example, witnesses to abductions, transportations, detentions, killings or burials may report the details of incidents without being able to identify the victims.

Remember: Some cases may be reported as enforced disappearances that do not amount to the violation; others may constitute enforced disappearance but be reported as something else. You will need to try to determine if the three elements of enforced disappearance discussed in Chapter 1 are present in each case.

Proper planning of any human rights investigation is essential to its effectiveness. This is key to obtaining as much evidence as you can and establishing reliable findings, while protecting the safety and security of everyone involved. Such preparation

involves the following eight steps, which are discussed in more detail in the remainder of this chapter:

1. Define the scope of your investigation.
2. Check the applicable legal framework.
3. Identify what information you need (including integrating a gender perspective).
4. Determine the possible sources of that information.
5. Identify how you will collect the information.
6. Plan for requesting official information (if relevant).
7. Conduct security planning.
8. Prepare for referrals.

► *See Ukweli Main Book, Chapter 3 for further guidance on planning investigations.*

2.1 Define the scope of your investigation

First you need to define what you will try to cover in your investigation. You will need to remain flexible to information and situations that arise during the investigation, but you should have a good idea at the beginning of what you aim to achieve.

Consider the following questions:

- Are you investigating an individual case or multiple cases?
- Geographic focus: What area are you looking at – one region/the whole country?
- Timeframe: What time period does your investigation cover? If enforced disappearances have been ongoing/reported over a prolonged period, are you looking at the whole period or incidents in the last six months/one year/five years? Or should you select cases from early/late in the period or from different time points to examine if there has been any change in the patterns?
- If large numbers of cases are occurring:
 - How many cases will you try to document/investigate in detail?
 - How will you select which cases to focus on? What demographics do you need to ensure are represented based on the profile of missing persons: men and women, boys and girls? Members of certain ethnic or political groups, protest movements, or members of multiple different groups? Make sure the cases you select to investigate in more detail include all the different profiles represented among the disappeared.
 - How will you handle cases that you do not investigate in detail? Will you try to conduct basic documentation of all cases that have been reported? This would help you (and other human rights organizations) approximate the total number of cases and create a basic record of all alleged victims. How would you do this? (See the guidance box below.)

- What can you realistically achieve with the time and resources you have?
- What will you do with the information? This will inform the scope and depth of your investigation.
 - Do you plan to take immediate action to try to locate disappeared persons, request information about cases, or try to force the authorities to acknowledge the detention? Do you plan to publish a report on cases? Do you want to help family members seek reparation? Do you want to advocate for prosecutions of the perpetrators? Are you considering advocacy, media work, or a submission to the Committee on Enforced Disappearances?
- What context will your investigation take place in? This might influence what you are able to do or focus on, or where you will be able to investigate in person. For example, are disappearances, conflict or repression still ongoing? Has the period of conflict or authoritarian rule ended? Do threats remain?

If you are investigating multiple cases, it is very important to examine whether there are any patterns between them (see Chapter 6).

Guidance: Recording large numbers of reported cases

Where thousands of cases are being reported, could you collaborate with other human rights organizations (national and international) to gather information in order to establish a basic record of all cases?

For example, human rights organizations believe that since the beginning of the conflict in Syria in 2011 until late 2019, 98,000 people have been forcibly disappeared. Multiple organizations have collaborated in tabulating data on the disappeared. See, for example, icmp.int/where-we-work/middle-east-and-north-africa/syria/.

If so, you should consider:

- What information should be collected/recorded? (This could be limited to basic details on each case, such as the names of people reported disappeared and the date of disappearance, possibly also their age and profession/affiliation.)
- How will the information be collected, verified and stored? If a communal database is created to record cases (online or offline), who is responsible for data entry and verifying the submitted information?
- How will you safeguard the security and confidentiality of the information?
- Do you need to obtain consent from families for their relative to be recorded in the data? If so, how will this be done? (The details of consent required will depend on what you plan to do with the information.)

- Would you like other people (such as family members) to be able to submit suspected disappearance cases into the system? If so, how will this be managed?
- ▶ *See Section 6.2 (Analysing your findings) for more information on recording and storing your information.*

2.2 Check the applicable legal framework

Review what laws apply, and your government's obligations:

- Has your government ratified the Convention on Enforced Disappearances? The Convention against Torture? The International Covenant on Civil and Political Rights?
- Does your national legislation address enforced disappearance and torture?
- Does your legal system have a habeas corpus process or similar extraordinary process through which a detention can be challenged?
- If the case is related to an accusation of terrorism, check whether your national legislation allows detention without charge in terrorism cases, administrative detention, and so on. (Remember: these provisions may violate international law and standards.)

2.3 Identify what information you need

The aim of your investigation is to establish a full picture of exactly what happened in one or more cases, and to ascertain whether or not a human rights violation has occurred. Due to the nature of enforced disappearances, in many cases it will not be possible to establish a complete picture of events, but you should collect as much information as possible.

Enforced disappearance is a complex violation: it comprises three elements, and can involve violations of multiple rights. You need to collect information on:

- All stages of the disappearance (arrest/abduction, detention, killing, and so on);
- The three elements of the violation (deprivation of liberty, state involvement or acquiescence, and state denial or concealment of the fate of the disappeared);
- Its impact on both the disappeared person and the family members as victims.

Your investigative framework should cover the following core details:

- identity of the disappeared (individual identity and group identity)
- identity of the perpetrators
- arrest(s)/abduction(s)

- reason for arrest/abduction (why targeted)
- detention
- treatment in detention (torture, conditions, deaths in detention)
- killings, mass burials/graves (where relevant)
- authorities' denial/refusal to provide information
- impact on family members
- release of the disappeared (where relevant)

Consider what information you need in order to establish as clear a picture as possible of what happened, and whether an enforced disappearance has taken place. Consider the core questions **who did what to whom, when, where, how and why?**

Because there are several cumulative components in disappearance cases, there will be multiple answers for some of these questions (see below).

You will *not* be able to obtain *all* details about *all* cases.

If you are investigating multiple cases, it is very important to identify **patterns between the details of the cases** (see Chapter 6 on establishing patterns).

2.3.1 Who

- Who are the perpetrators (police, military, paramilitaries), and who are they acting on behalf of? Are different perpetrators responsible for different stages/aspects of the violation?
- Who are the disappeared victims?
 - Individual identity – name, age, sex, marital status, and any identifier of the reason for targeting, such as political affiliation or activism (protestors, students, trade unionists), profession (for example journalists, medical professionals), ethnicity, members of an armed group, suspects accused of terrorism offences, members of an (ethnic or other) group allegedly associated with certain acts (see the box below on locating and identifying disappeared persons).
 - Group identity – what identifying factors do victims have in common that may indicate the reason the group is targeted?
 - Were female victims pregnant at the time of the abduction? What happened to the children born in detention?
 - Were children abducted along with their parents? What happened to them? Are their fate or whereabouts known? (See the box below on considerations relating to children in enforced disappearance investigations.)
- Who are the family members who are (also) the victims (parents, spouses, children)? (Remember the “who did what to whom” includes family members who are victims of the violation and to whom the denial of information about their relative can amount to torture.)

- Were children present (witnesses) at the abduction of parents?
- Who denied information to the family members? Which branch of the authorities did the relatives request information from?

Guidance: Cases involving children

Children may feature in enforced disappearance cases and investigations in a number of ways. Where they were abducted with their parents, or where a pregnant woman was disappeared, their fate should be investigated as an interconnected violation. Children are also victims as family members, and may have been witnesses.

Children of victims of disappearance might be left at the location where their parents were abducted; taken to relatives or neighbours (by the perpetrators, sometimes in the same vehicle used to abduct their parents); sent to children's homes that might return the children to relatives, or arrange adoptions; abducted and disappeared along with their parents, in some cases forced to witness the torture of their parents, or tortured in front of their parents; or abducted along with their parents and adopted by a member of the government, armed forces or others.

Children born to women who are pregnant when disappeared might also be placed in social care institutions (orphanages, children's homes) or foster homes, adopted by members of the military, put up for adoption, or subjected to an unknown fate.

In the event of these occurrences, there is a high likelihood that the children's identity (documents) will be modified. In such cases, a DNA test may be the only way to determine the real identity of children (or adults who were children at the time of an enforced disappearance).

Children as victims (disappeared)

- If a disappeared woman was pregnant at the time of her arrest or abduction, or if children were abducted along with their parents, what happened to the children? Are their current whereabouts known? If they have been released, what violations did they experience or witness? If they have not been released, has the family received any information about them?
- Cases of children born during their parents' enforced disappearance fall under the government's responsibility to release information on their whereabouts or disclose their fate, or to investigate the same. Where relevant, the fate or whereabouts of those children should be included in requests for information from the authorities, appeals to international bodies, and so on.

Children as victims (family members)

- Interviews with family members, or with the children themselves, should discuss the impact of the disappearance of their parent(s) on the children as evidence of the harm done. If asking the children directly, this should be approached with extreme sensitivity.

Children as witnesses

- If children witnessed the abduction of their parents or another family member, they may have important information (see Section 3.3.3 on interviewing children).

Guidance: Locating and identifying disappeared persons**Locating victims**

Despite the suppression of information surrounding enforced disappearances, in some cases perpetrators maintain written records of detentions and killings. Some of these records may be more accessible than others.

People who die during enforced disappearance may be recorded in death registration systems or graveyard records. These records can be cross-referenced with information on disappeared persons. However, be aware that these victims are often recorded as “unidentified persons”.

Testimony from survivors of enforced disappearance and other detainees held alongside enforced disappearance victims might be the only way to discover the whereabouts of a disappeared individual. However, accessing information in this way will likely occur only in a small minority of cases.

Identifying victims

Identifying a recently deceased victim might be possible based on appearance, clothing, jewellery, tattoos, or other distinguishing features (explained in *Chapter 4: Physical evidence*). *Chapter 3* discusses collecting these details from family members for the purpose of identifying victims. Wherever possible, a family member should confirm the identification of a victim. Only forensics experts can identify skeletal remains.

In the absence of verifiable identity documents, the identity of (possible) children of the disappeared is established through DNA/histocompatibility (tissue) testing against samples from other family members. This can only be conducted by qualified medical personnel with the requisite facilities.

2.3.2 What

- Arrest/abduction: were the victims arrested (with a warrant?) or abducted? In what circumstances (for example during a protest, from home/work? In daylight/during the night)? Was violence used? Were multiple people arrested/abducted at the same time?
- Detention: were the victims detained? If so, where? For how long?
- Treatment and conditions in detention:
 - Were the victims tortured? If so, what methods were used? Are there allegations of rape or other forms of sexual violence and humiliation? What was the frequency, duration and timing of torture sessions? (See the handbook *Ukweli: Investigating Torture*, for more detail on collecting information on torture cases.)
 - What was the impact on the victim (suffering caused) – from the enforced disappearance (such as having no information about their own fate, no ability to challenge the detention, no access to family) and/or from treatment in detention?
 - What were the conditions in detention (such as the number of people in a cell/ place of detention, size of the cell, provision of food, clean water, access to medical care, washing facilities, natural light, exercise)?
- Killings (extrajudicial executions): were victims killed? If so, where, when, by whom, and using what method? What happened to their bodies? Was a body found or burial site known/suspected?
- Deaths of victims: did victims die as a result of treatment (torture), conditions or denial of medical attention in detention?
- Were children of victims unlawfully removed/unlawfully adopted?
- Denial of information: have the family asked for information? Who did they ask, and how (for example via a legal challenge)? Did the authorities respond? What was the response (such as denied knowledge/offered alternative explanation/ conducted investigation (sufficient?), did not respond)?
- Impact on family members (level of suffering caused): psychological suffering and other forms of impact – economic, social, and so on (see box below).

Guidance: Impact on family members

Documenting the impact on family members is an essential part of your investigation, as they are also victims of the violation. The effects on families can be multifaceted, including psychological, physical, economic and social impacts. It is important to document all the ways the violation has impacted the family.

Disappearances can cause severe psychological suffering to family members. As explained in Chapter 1, this suffering can amount to torture or cruel, inhuman or degrading treatment. As with all cases of torture or ill-treatment, demonstrating the severity of the suffering is part of establishing that torture has taken place. Therefore, you need to ask family members about the impact the disappearance has had on them. This is covered further in *Chapter 3: Interviewing*.

The disappearance might jeopardize the safety and security of family members when they try to find out information about the disappeared person. Family members suffer repercussions from these efforts including intimidation, violence, and possible arrest or disappearance. The vast majority of people subjected to enforced disappearance are men; women most often lead the struggle to find out what happened to them.

Disappearances also have significant economic and social impacts on families, for example if the disappeared person is the breadwinner, cultivates the crops or runs the business; if the family uses all its financial resources to search for the victim/launch legal challenges; or if legal systems prevent women from accessing or retaining ownership of the family bank account or other assets if the male head of household disappears. This can have knock-on effects on families' enjoyment of the rights to shelter, education, healthcare and other rights.

The disappearance of male family members can impact the family's actual or perceived security, and can introduce practical obstacles to obtaining access to services and resources (by affecting civil identification). Families may also be stigmatized based on allegations against the disappeared person; women and girls might face repercussions for transgressing societal norms while trying to access justice for themselves or family members. The social and economic impacts on family members can be particularly severe for women and girls.

2.3.3 When

- When was the arrest/abduction? If multiple cases are happening, when did the disappearances begin? How many cases (approximately) are occurring per week/month?
- If victim(s) released – when? (How long after initial disappearance?)
- If victim(s) known to have been killed – when? If a body or suspected (mass) grave was found: when was it found? When was it created?
- When did the family ask the authorities for information?

2.3.4 Where

- Where did the arrest/abduction take place – from the victim's home, workplace, in a public place, and so on?
- Where are/were the victim(s) detained – official detention centres, secret detention centres, other locations?
- Where did the killing(s) take place?
- Where are the bodies/graves?
- Where are any children who were taken away from parents/victims?

Guidance: Identifying places of detention

Victims of enforced disappearance are often held in secret detention centres, namely places of detention not officially acknowledged as such by the state. Survivors may not know where they were detained, but there are ways you can discover the location of these places.

People living or working in the vicinity of a secret detention centre might report seeing trucks arriving and leaving, hearing sounds of torture, or observing other signs that suggest the uses of the building/compound. These witnesses may have photos of the building.

Former detainees might be able to describe how long the journey took to arrive at the detention centre from the place where they were abducted, and describe the condition of the road (tarmac, murrum, and so on). This could give an approximate indication of the location. They may have seen glimpses of the interior or exterior of the building or compound that they could describe. They might also be able to remember noises they could hear from outside the building/compound – urban/rural noises (such as traffic, livestock), the proximity of a mosque/church, and so on, which can help you identify possible locations.

Comparing testimonial information and possibly ground-level photos with satellite images on websites like Google Maps and Google Earth Pro²³ can sometimes help investigators locate buildings or compounds they believe are being used as secret detention centres (see Chapter 6 for more detail).

2.3.5 How

- How did the arrest/abduction take place? What were the circumstances/details (was there an arrest warrant? Was violence involved? What methods were used? At what time of day did it take place)?
- How were the victims transported to (and from) detention?
- How were they killed (if relevant/known)?

Guidance: Establishing the cause of death and manner of death

Where a victim or victims have been killed/died, it is important to try to establish how they died. This involves investigating the cause of death and the circumstances (manner) of death.

- The **cause of death** is the injury or disease that led to the death (such as gunshot to the head).
- The **manner of death** is how the death occurred. The basic categories are natural, accidental, suicidal and homicidal; some legal systems have more specific categories.

Where a victim has died, your investigation should seek evidence to establish whether or not the death was homicidal – the victim was intentionally killed or died as a result of intentional neglect – and the specific details of what occurred.

For example, a victim of enforced disappearance might die as a result of:

- Gunshot to the head (cause of death) by execution with their hands cuffed behind their body (manner/circumstances of death);
- Organ failure (cause of death) as a result of severe torture (circumstances/manner of death);
- Disease (cause of death) as a result of the denial of clean water, food and medical assistance in detention (manner of death).

Where multiple victims in the same case or separate cases exhibit the same cause of death (such as a gunshot to the back of the head), this can indicate systematic (organized) killing.

Establishing the manner/circumstances of death is important in order to document how victims are killed, and might be necessary to counter state claims about the circumstances of the death. For example, a government might claim the victim was killed during combat, rather than executed. But if the body of the victim was blindfolded or had their hands tied, they could not have been fighting at the time of their death.

2.3.6 *Why*

- What is/was the motivation behind the enforced disappearance(s)? What is the wider context of the arrest/abduction? (Such as conflict, protests/uprising against the authorities, counterterrorism operations, repression of a certain community/demographic, people smuggling/trafficking activities, and so on?)
- Why are these categories of people being disappeared? (Identity, political involvement of the victim(s) and so on.)
- Were there any indications of the reason (such as previous incidents targeting the victim)? Any warning given? Anything said by perpetrators about the reason for arrest, anything said to the family while asking about the whereabouts of their relative?

2.3.7 *Integrating a gender analysis*

A crucial aspect of identifying what information you need in order to find out what happened in a case and establish the impact of an enforced disappearance on the disappeared person and his or her family is to consider any differences in how women and girls are affected by the violation compared to men and boys. Around the world, men make up the majority of cases of enforced disappearance; women and girls make up the majority of those affected as family members.

The who, what, when, where, how and why questions all have gender dimensions:

- Are women and girls being disappeared? If so, why – is it for the same reasons men and boys are disappeared?
- Do the experiences of women and girls during disappearances differ from those of men and boys? Are women more likely to be subjected to different violations in the context of disappearance, such as rape, murder? If so, why?
 - Do women and girls experience sexual violence and gendered abuse while in detention?
 - Have female victims been subjected to torture or ill-treatment related to their biological functions or their roles as mothers (for example the needs of women and girls who are pregnant at the time of disappearance, women being separated from their babies at birth)?

- Do women and girls face social stigmatization as survivors of enforced disappearances?
- Do the experiences of people left behind when someone disappears differ according to gender?
 - Do women and girls face gender-specific challenges when trying to obtain justice for their own experiences or truth about disappeared relatives? For example, are they able to access legal assistance?
 - Economically, does the enforced disappearance of a family member affect women and girls differently (for example if the disappeared person was the family breadwinner or head of household)? Are female relatives able to access/retain ownership of family assets, inherit property and access documentation?
 - Do women and girls face social stigmatization as the relatives of disappeared people, for example based on the accusation against the disappeared person or because they challenge social norms in trying to seek truth and justice for their relatives, or for other reasons?

Think about these questions when planning and carrying out your information collection to ensure you capture any information about the gendered experiences of both disappeared persons and family members in your interviews, documentation of physical evidence and review of documentary evidence.

2.4 Determine the possible sources of information

Multiple sources and types of information might provide evidence to prove a violation has taken place and to establish a picture of what happened/is happening in one or more cases. Identify what types/sources of evidence might be available in your investigation.

There are three main types of evidence, each of which is discussed in detail below:

- testimonial evidence
- physical evidence
- documentary evidence

Note: Due to the suppression of information, you are unlikely to be able to access all types of evidence in each case.

2.4.1 Testimonial evidence

The most important sources of testimonial evidence are people who have first-hand information of one or more aspects of what occurred – namely those who directly experienced, were involved in or witnessed violations, or who experienced, were

involved in or witnessed incidents in the run-up to or aftermath of a violation. In many cases of enforced disappearance, testimonial sources may be the only available evidence.

Examples of people who might have first-hand evidence of a violation might include:

- Survivors of enforced disappearance – victims who have been released.
- Family members of disappeared people.
- Eyewitnesses – people who witnessed arrests/abductions, arrivals at detention centres, executions, transportation of disappeared persons or bodies, digging of graves, disposal of bodies, accidental discovery of remains (for example during other activities such as construction or agriculture). These witnesses might include neighbours, local people, truck drivers, former or current prison/detention centre guards, former or current members of military, police, militia/paramilitaries.
- Perpetrators – officials who were involved in or ordered arrests/abductions, transportation to/from detention centres, detentions, executions, transportation/burials/disposal of bodies.
- Former detainees (not enforced disappearance cases, but others detained in known or suspected sites of enforced disappearance).
- Doctors, coroners, morgue attendants (for example examined victims while in detention, witnessed/examined victims' bodies).
- Lawyers or other actors (such as civil society organizations) who requested information from authorities on the whereabouts of victims, or filed habeas corpus petitions, and so on.
- Graveyard attendants.

People who did not personally experience or witness certain aspects of the case may still have relevant information. Other testimonial sources can include technical and professional experts who can provide important specialist information, interpret or confirm details of cases such as injuries or cause of death (such as medical staff, forensics experts), types of weapons used (such as ballistics/weapons experts), and so on.

Other individuals may be able to provide relevant testimony to the case or context:

- Members of the same group as disappeared persons (such as political party/movement, protest movement, ethnic group, religious group) – might have information about related cases / cases of other group members.
- Activists/solidarity movement members (campaigning on disappearances) – might have information on other cases or the wider situation.
- Civil society organizations, journalists, UN agencies who have investigated/reported on cases.

- Lawyers who have acted in other cases of disappearance.
- Technical expert witnesses (forensics experts, weapons experts, environmental scientists, medical experts, and so on).

2.4.2 *Physical evidence*

The nature of enforced disappearance means that in many cases investigators do not have access to physical evidence. For example, secret detention centres are inaccessible and bodies are destroyed (for example incinerated) or disposed of in ways that make it hard or impossible for them to be found. The two main areas of physical evidence in enforced disappearance cases are bodies and graves and other locations where aspects of the violation occurred:

- *Bodies and graves:* physical evidence of torture, killings or burials of the disappeared. This might include evidence of the identity of victims (bodies), identity of perpetrators (such as evidence at a gravesite), cause of death and circumstances (manner) of death:
 - signs of torture – on the bodies of survivors or recently deceased (fleshed) remains (for example injuries, burns, wounds, lacerations, bruising, broken bones);
 - one or more bodies – fleshed (recently deceased/not yet decomposed), partially decomposed or skeletal remains;
 - signs of (possible) cause of death – such as damaged skulls, bullet wounds;
 - signs of manner of death – such as blindfolds, ligatures (namely these can show death by execution rather than death during fighting, and so on);
 - items identifying victims (on bodies) – such as ID cards, clothing, jewellery, watches; tattoos, moles, birthmarks (on fleshed remains);
 - suspected or confirmed graves including mass graves, covered or uncovered (human remains fleshed or skeletal, complete or incomplete);
 - evidence at grave sites – such as equipment used to dig graves, evidence of executions at grave site (for example ammunition casings, wrappings), evidence of perpetrators' identity (such as clothing or personal items);
 - evidence of means used to destroy bodies – such as furnaces/incinerators/machinery and so on.
- *Other locations:* physical evidence of/at places of detention, sites of execution, and other locations where elements of the violation occurred. This might also include evidence of the identity of perpetrators, and possibly of victims.
 - buildings/compounds used as places of detention – size, location, nature of the building/location (if not an official place of detention), surroundings;
 - if the location is accessible (usually when no longer in use) – size, number of sections, rooms/cells, outside space for detainees;

- insignia/signs (indications of who owns/occupies the location);
- places of execution – ammunition casings, wrappings or boxes, bullet holes in walls/furniture, gallows, evidence of other methods of killing.

2.4.3 Documentary evidence

There can often be a surprising amount of documentary evidence in enforced disappearance cases, though some is likely to be inaccessible. This could include:

- photos and video footage – of arrests/abductions, transfers to places of detention, killings/extrajudicial executions, bodies, physical signs of torture, actual or suspected mass graves;
- satellite imagery of places of detention or burial sites;
- doctors' reports, autopsy and hospital records;
- death certificates;
- legal documents – petitions for habeas corpus writs, and so on;
- detention centre records;
- cemetery records;
- military/police orders – for example ordering disappearances/abductions/arrests, transportation to/between detention sites, burials or movement of bodies;
- military logistics requests – for weapons, vehicles, and so on;
- other records/lists/logs – such as of those detained or killed, transportation logs;
- internal police/military records/reporting;
- documents relating to any government response, any investigation, and so on;
- records of admissions to social protection institutions/adoption documentation for children of the disappeared;
- official information – for example about military units from official websites or Facebook pages (including photos of insignia, standard-issue weapon, personnel, and so on).

Example: Physical and documentary evidence used in prosecutions years later

Under Argentina's military regime between 1976 and 1983, an estimated 30,000 people were disappeared. Many of these were killed in "death flights" – military flights that flew at night and dropped the victims of disappearances, usually drugged and stripped naked, into the Atlantic Ocean or the Rio de la Plata. Sometimes the bodies washed ashore but were unidentified, so were buried in unmarked graves.

Decades later, some of these remains were successfully identified through DNA testing. The military flight logs were also discovered years later and used in

prosecutions. Some of the pilots of those flights were convicted for their involvement.

In Chad, investigators found tens of thousands of documents in the abandoned offices of dictator Hissen Habré's Documentation and Security Directorate, who were responsible for enforced disappearances and multiple other violations. The documents included detailed lists of victims who died in prison, which formed an important part of the indictment against Habré, who was subsequently prosecuted in Senegal and convicted of crimes against humanity.

2.5 Identify how you will collect the information

When you have identified what information you need, and what the sources of that information might be, you can put together a broad plan of how you will collect the information. This will also enable you to plan any logistical arrangements needed.

Your information collection plan should consider the following questions:

- Where are the survivors, witnesses, former detainees and victims' graves located?
- How will you identify and approach potential interviewees? How will you arrange interviews? Where will they take place? Will you need interpreters?
- Is there a possibility there may be physical evidence?
- Are field visits possible? Is it safe to travel to the relevant areas? Will you need to request permission to access certain regions, areas or specific locations? What equipment might you need to take with you?
- If field visits are not possible, are there ways you can access the information remotely? Can you ask a trusted contact to collect certain evidence for you or conduct certain interviews?
- Do you need to obtain or commission satellite imagery?
- Are there channels through which you can access military or police records?
- If a family or families want you to approach the authorities to request information about the disappeared persons, is this within your mandate? Will you be able/willing to do so? Do you need to plan in advance what assistance you can offer families in that regard?
- Who are other contacts who might have information and/or might be able to connect you with survivors or witnesses?

2.6 Plan for requesting official information (if relevant)

The authorities' refusal to provide information on the disappeared person is one of the three elements of the violation. Details of this must therefore be part of any investigation to establish whether an enforced disappearance has taken place or not.

If the family, or someone acting on their behalf, has tried to seek information or establish the whereabouts or fate of the disappeared, documenting this will be part of your investigation. This will form part of the testimonial evidence collected in interviews with family members, and may also be part of the documentary evidence if there is any written record of the request for information or legal challenge, and of any response from the authorities.

If the family have not tried to request information from the authorities, they might want your assistance in doing so, or in identifying someone who can do this on their behalf (such as a lawyer or non-governmental organization, NGO). The authorities' response to these efforts might subsequently form part of your evidence.

Seeking information directly may consist of:

- Approaching various institutions to request information;
- Filing a legal challenge to the detention;
- Submitting a name or list of names (where multiple cases are being reported) to the authorities to demand an investigation.

Consider:

- Are you mandated/able/willing to approach the authorities directly on behalf of the families of the disappeared?
 - If not, try to identify a partner organization or lawyer who would be willing to do so, as part of your preparations for your investigations and interviews.
 - Activities related to asking the authorities for information must be included in your security planning.
- *See Chapter 7: Taking Action for guidance on supporting the family to request information from the authorities or initiating legal steps to locate or secure the release of the disappeared person. In some situations, it might be appropriate to take steps immediately.*

2.7 Conduct security planning

When you have identified the information you want to collect and how you will collect it, you must then conduct a risk assessment and plan the security measures for the investigation, in order to ensure that your work does no harm to anyone involved in, or affected by, the investigation and to protect the information gathered.

Risk assessments and security planning should consider and identify mitigation measures for possible threats to the safety and security of:

- the disappeared person;
- their family members, other witnesses and sources;
- the investigators (you);
- the information you collect.

► *See Ukweli Main Book, Chapter 4 and Annex 1 for additional guidance on security planning. Use this in conjunction with the information below on the specific risks involved when investigating enforced disappearances to put together your risk assessment, mitigation measures and security plan.*

2.7.1 Security of the disappeared person

When a disappearance is ongoing (namely while the fate of the victim remains unknown), consider:

- Could the disappeared person be alive?
- Could your investigation and/or public action on the case put the disappeared person at further risk?

Discuss these risks thoroughly with the disappeared person's family when deciding whether to publicize the case/name the victim. Family members must give informed consent to publishing the name of a disappeared person.

When interviewing survivors of enforced disappearance (who have been released), they might remain under intense surveillance if they are still in the country of their disappearance. They are also very likely to be suffering from severe trauma and stress. Your plan must address these risks.

- Ensure maximum precautions are taken in communications, interview planning (location, and so on) and storage of information to avoid surveillance and interception of information.
- Be extremely sensitive to possible trauma during your interviews with survivors.
- Remain vigilant throughout interviews with survivors for any indications of surveillance/changes in the surroundings.
- As with all human rights interviews, survivors must give informed consent to participate and agree on how you will use the information. Robustly consider the security of the survivor before publicizing the case/name. Even where the survivor wants their name to be publicized, it might be safer not to do so.
- You may want to contact the survivor at least once after the interview – if it is safe to do so – to check they have not experienced any repercussions. Survivors may be at high risk of being threatened, questioned or arrested by the authorities for talking to human rights organizations.

2.7.2 Security of family members of the disappeared person, eyewitnesses and other sources

Relatives of people subjected to enforced disappearance are at risk of intimidation, ill-treatment, arrest and enforced disappearance themselves because of their efforts to find their loved one, seek information or obtain justice.

Family members (as victims of the violation) are highly likely to be suffering from severe stress or trauma. They may be at risk of further traumatization or re-traumatization through their involvement in the investigation.

Consider:

- Consider whether there is any risk of repercussions to family members and other witnesses from talking to you or other human rights organizations. “Insider” sources from government and security institutions will be at high risk of repercussions for providing information.
- Pay very close attention to security considerations when arranging and conducting interviews with family members and other sources. Is there an active risk of surveillance during your interviews/investigation? Thoroughly plan and prepare for secure information storage.
- If conducting interviews directly with the family/sources puts them at too much risk, identify alternative methods – can trusted local contacts conduct the interviews for you? Can the family/witnesses travel to you?
- Consider the risks to family members as well as to the disappeared person when deciding (and obtaining consent from the family) to publicize the case/name of the disappeared.
- Be extremely sensitive to possible trauma during interviews and in all other contacts with family members, to avoid further traumatization or re-traumatization. Be cautious in how you refer to the missing person to avoid causing further distress to the family member.
- Plan and put in place response measures in case family members or other witnesses and sources suffer repercussions as a result of their involvement in the investigation.
- Be very careful when using photos or footage provided by eyewitnesses and other sources to remove all identifying data from the images and files before publicizing them.

2.7.3 Security of the investigators

Investigators may be subject to harassment, assault or arrest, and may even become at risk of being disappeared themselves as a result of their work to document other disappearances. Security planning and preparation must therefore adequately

consider and address risks to the investigators. Remember that being careless about your own security, or that of your information, can directly affect the security of others.

Officials may try to intercept or seize your information, notes, phone or computer to obstruct the investigation, destroy your information, or find out what you know and who is talking to you. This may place you at risk of harm. Requesting information from the authorities on behalf of the families of the disappeared may carry further risk to your security.

The nature of some of the contexts in which enforced disappearances take place also pose a range of physical risks to the collection of physical evidence/investigating at the scene.

Consider:

- Are hostile entities present in the area where the investigation will take place (government soldiers, armed groups, local community)? Is there a risk of surveillance, harassment or arrest by government agents, security forces, armed groups or other actors?
- Do residents of the community where you would (need to) collect physical evidence support the investigation? (This might depend on the context, ongoing conflict/tensions and community allegiances, but a sympathetic community might also oppose an investigation for a range of reasons.)
- Would the investigation take you to conflict-affected areas? Is there a possibility of ongoing fighting in the area, the presence of loaded firearms/explosives/minefields?
- Can you access locations where there may be physical evidence? (Such as burial/mass grave sites, detention centres, morgues.) Is it safe to do so? Would you have to pass through any checkpoints? Do you need to request permission to access these locations?
- Could buildings, bodies and mass graves have been booby trapped (with improvised explosive devices, grenades, firearms left/planted among bodies and so on) by perpetrators/retreating fighters?
- How you can confirm the safety of a location before documenting physical evidence?
- If you need permission/support from one party to a conflict to access documentation sites, how can you guard against bias and possible manipulation of the “evidence”?

2.7.4 Security of your information

As enforced disappearance investigations often take place in high-risk contexts, strict information security measures, including digital security measures, are needed. This is

especially vital if you might have to pass through checkpoints/territory controlled by hostile entities, where there may be a risk of confiscation, loss or destruction of your equipment, notes, photos, and so on.

- Prepare for secure storage and encryption of your information.
- Ensure encrypted channels/software are installed that allow you to immediately and securely send notes and photos to a trusted colleague (and then delete from your devices) before passing through any high-risk areas.
- Have specific plans in place for higher-risk activities such as passing through checkpoints – agree on a set of answers that will be given in response to any questions asked (why you are there, what you are doing, and so on), who will talk, protocols for getting out of the car if the vehicle is searched, and so on.

Important reminders on digital and information security

- Never leave hard copies of any notes or documents where they are accessible to others.
- Wherever possible, encrypt e-mail communications: use a free e-mail account that automatically encrypts all messages such as Proton mail or Tutanota. This is only secure when the people with whom you communicate have an account with the same provider.
- Do not keep any record of witnesses or contacts' names and details anywhere accessible to others. Do not store numbers in your phone. Save these in an encrypted folder and access only when necessary. In your notes, use a number or code for each testimony, and save the name and details corresponding to each number in a separate, secure location.
- Keep electronic/soft copies of notes, documents, photos and videos in encrypted folders on your computer.
- Never leave your phone unattended, even for a few minutes. Delete SMS, WhatsApp, Signal or other messages to and from survivors, family members and other witnesses as soon as you have sent or received them so there is no visible trace of these communications on your phone.
- Tell your contacts to delete all messages to and from you as soon as they have read or sent them. Keep reminding them to do this, as they may forget.
- Store information from WhatsApp or SMS messages in a secure place before deleting it.
- Photograph or scan hard copies of documents and save these in a secure (encrypted) location on your computer. Afterwards, destroy the hard copies unless they are original copies, for example of official or legal documents; these should be stored in a secure location. Depending on the level of

surveillance and risk of interception in your country, you may want to send original documents and other materials out of the country with a trusted colleague or friend to store them elsewhere – for example in the office of a human rights organization in a safer country.

2.8 Prepare for referrals

Before meeting or interviewing survivors of enforced disappearance, family members of the disappeared or eyewitnesses of traumatic events, identify services to which you can refer interviewees if they are in need of support. This might include medical care, counselling, legal or financial support.

Find out which NGOs or other service providers in the area offer free medical treatment or counselling or can support survivors in other ways. If possible, agree in advance with these service providers that you can make referrals to them if needed.

Key areas for referrals are discussed below.

2.8.1 *Legal assistance*

If families are likely to request your help to approach the authorities for information or to launch a legal challenge to the detention and you will not be able to do so, before your interviews you might want to establish contact with lawyers or organizations that are willing to make legal petitions on behalf of families of the disappeared. This is discussed further in Chapter 7.

2.8.2 *Medical care and psycho-social support*

Survivors of enforced disappearances might need medical assistance for severe injuries or health problems resulting from torture or inhuman conditions of detention, or both. These can last years after the individual's release from detention.

The required psycho-social support might include counselling to help survivors and family members come to terms with the trauma, grief or ambiguity of the loss of the disappeared person. Individual therapy is an alien concept to many people/cultures, who are likely to prefer a community-level response. Victims' groups and local organizations working on enforced disappearances can provide significant support and solidarity to victims and family members.

Psycho-social support might also include financial support – if any is available – for those left without an income as a result of a disappearance, or to help with medical or legal bills.

2.8.3 Reconnecting families

The International Committee of the Red Cross and Red Crescent Societies runs a service to try to locate missing persons and restore contact between family members who have been separated by political unrest, conflict, displacement or natural disasters. They use a number of approaches including broadcasting messages via radio programmes, distributing messages among communities and circulating photo books of persons separated from their families among affected communities. This might be relevant where people have fled into exile, with refugee/diaspora communities, or after the end of a conflict or period of authoritarian rule.

- *If this might be relevant in your context, check whether (and how) people can access the family tracing service from your country/the diaspora community. The first stage of assistance is usually through the national Red Cross or Red Crescent Society in your country. See familylinks.icrc.org/en/Pages/home.aspx for more information.*

After periods of authoritarian rule or conflict end, as well as after natural disasters, governments often establish national-level processes to locate and identify missing persons and reconnect them with their families. If any such process is happening in your country, find out how victims can engage with it.

2.8.4 Identifying the dead

After the end of periods of conflict or authoritarian rule, national processes may also be established to document the disappeared (where there have been widespread disappearances) and identify the dead. These may include specialist processes of forensic investigation and identification of human remains. Some countries have established DNA databases to store “reference samples” from family members of the disappeared (or other missing persons), which forensic experts can use to help identify human remains. Be aware if any such process is taking place, and how families can engage with it.

2.8.5 Submitting cases to international mechanisms

Before conducting interviews, consider familiarizing yourself with methods of submitting cases to international mechanisms, so that you can discuss this with families and advise them on this or other actions they can take (see *Chapter 7: Taking action*).

Tool 1: Investigation planning checklist

Before you begin collecting information, use this checklist to ensure you have undertaken all the necessary preparatory steps for your investigation:

- Have decided on the scope of your investigation.
- Have confirmed the applicable legal framework/your government's national and international legal obligations.
- Have prepared an investigation methodology – identified the information you need to establish what happened and whether it constituted one or more cases of enforced disappearance, identified sources of information/types of evidence and collection methods you will use.
- Have integrated a gender perspective into the investigation's focus and methodology.
- Have decided if you will approach the authorities for information on behalf of affected families (and if so, who and how) or identified a local lawyer who would be willing to act.
- Have identified organizations for referrals and established contact/an agreement to make referrals.
- Have identified if support might be required from technical experts and arranged for their involvement (such as weapons experts, satellite imagery analysts, medical forensics experts).
- Have completed a risk assessment and security plan.
- Have organized the necessary logistics (accommodation, transport, insurance, interpreters).
- Have decided whether to inform the authorities of the visit/obtained the necessary permissions.
- Have provided a detailed itinerary and agreed a communications protocol with colleagues.
- Have the necessary equipment.
- Have installed the necessary encryption software(s) on smartphones, USB sticks, laptops.
- Have prepared responses to questions about the team's presence and activities.
- Have up-to-date information on the security situation – if it is not safe, do not go!

Chapter 3

Interviewing (testimonial
evidence)

Interviewing first-hand sources of information who have directly experienced or witnessed violations is one of the most important and effective approaches human rights investigators can use to collect information.

During enforced disappearance investigations, there will be wide variation between interviews because the violation comprises multiple stages, the violation occurs in varied contexts, and there are many different interviewees in enforced disappearance cases – survivors, family members, eyewitnesses to different parts/stages of the violation. You must think in advance about what you need to cover in each interview; and must be flexible during the interview to ensure you adequately follow up on and document any details that might come up.

Interviewing requires thorough preparation and good analytical and communication skills – knowing what information you need, how to ask questions that elicit the details you need, how to pick up on details that are mentioned during the interview and follow them up to ensure an accurate and detailed version of events, and how to engage with someone who may have experienced or witnessed a traumatic event.

3.1 Preparing for interviews

Chapter 7 on interviewing in the *Ukweli* Main Book contains further detailed guidance on all the steps necessary for preparing for your interviews. These include:

- Identifying your interviewees;
- Planning for the logistics – location, means of documenting/recording the interviews, interpreters (if needed);
- Preparing an interview checklist (optional);
- Security planning and preparing for referrals (which should have formed part of your investigation preparations).

3.1.1 Identifying interviewees

Based on your identification of the possible sources of information when preparing your investigation (as laid out in Chapter 2):

- Make sure your interviewees include representatives of all groups affected by the violation, including adequate representation of different genders.
- Build your network of contacts carefully in high-risk contexts. Be mindful of security risks when approaching possible interviewees. In some contexts, it might be preferable to use an intermediary to request an interview and make the arrangements.
- Ask your interviewees if they know anyone else you should interview: in trying to find out information about their missing loved ones, families often find out a lot of

information about the wider practice of disappearances (where they are occurring on a widespread basis) and meet other families/people affected by disappearances.

3.1.2 Location of the interviews

Interview locations – and the possible risks associated with them – must be included in your security assessment and planning.

Never put witnesses at risk. If the interview setting is not safe, for example if there are too many people in sight or within earshot, or if you notice people staring or following you, change the location or postpone the interview. If you proceed, remind the interviewee that they should remain vigilant and not mention the interview to other people after they leave.

In some situations, such as refugee camps, it may be impossible to interview people in complete privacy. In that case, try to find a location that is as discreet as possible (for example where people may see you come and go but will not be able to hear the conversation) and make sure the interviewee is as comfortable as possible with the setting.

3.1.3 Interview guide (optional)

Before each interview, you might want to create a brief interview guide to remind you of what topics you need to cover during the interview, based on the aspects identified during the planning stage. Allowing the interviewee to talk freely as much as possible means events will not necessarily be discussed in chronological order; you will need to ask follow-up questions to clarify a number of details. This guide is not, and must not be used as, a questionnaire. Your guide will be different for each interviewee: not all areas you are covering in your investigation will be relevant to every interviewee.

Tool 2: Sample interview guide for a survivor of enforced disappearance

- Identity of the survivor, including name, age, sex, any political activity/affiliation/activism, profession, ethnicity (if relevant), previous accusations against them, and so on.
- Perpetrator(s) – who they were or who they were acting on behalf of; uniform/clothing, weapons, vehicles, insignia, rank markings, statements.
- Arrest/abduction (who, when, where, how, why, others abducted at same time? Children?).
- Place of detention – location, size, number of detainees per cell/room.
- Treatment in detention (including torture).
- Conditions in detention – detainees per cell/room, windows/access to

daylight, beds or bedding, food, water, access to healthcare.

- Release (when, why, how, any conditions? Others released at the same time).
- Any further information on other detainees in situations of enforced disappearance (how many, names, fate (released/killed)).
- Executions, deaths (of other detainees/victims) – who, how (method of execution/cause of death/method of death), when, where.
- Burials (of other detainees/victims) – who (victims), how many bodies, where, when, who (perpetrators/carried out the burials).

3.2 Informed consent and confidentiality

As with all human rights interviews, you must obtain the informed consent of every interviewee to conduct the interview and agree on how you can use the information. The informed consent of the family must be obtained before naming any victims in your reporting. Documenting disappearance cases often involves naming the disappeared persons to bring attention to their cases and demand the authorities release them or provide information on their whereabouts or fate. This decision should be taken with the family members based on a thorough consideration of the risks.

A number of considerations should be taken into account for all interviews:

- Remember: the well-being of the interviewee is the primary consideration. Forcing people to talk about experiences they do not want to revisit can re-traumatise them. Respect the interviewees' wishes on this. Inform the interviewee that they can decide to stop and withdraw their consent at any time during the interview.
- Thoroughly explain to interviewees how the information will be used and how their identity will be protected.
- Interviewees may need reassurance about the confidentiality of the interview, and it may take time to build sufficient trust. Survivors of enforced disappearance might only be willing to speak to you if they are outside the country, as well as speaking on the basis of strict confidentiality.
- Experiences of enforced disappearance, torture and sexual violence are likely to have been highly traumatic, may be socially stigmatized, and survivors might have a very valid fear of reprisals for speaking out. All of these factors might make people reluctant to talk to you.
- Except where families consent to naming disappeared persons, strict confidentiality must be guaranteed for all enforced disappearance-related interviews (as explained in the *Ukweli* Main Book). Names should be changed for any public reporting, and all identifying details of people or cases should be disguised or omitted.

- Where the family does want the victim to be named, clearly agree with them what information from their testimony can be used publicly and any details that should remain confidential.
 - If relevant, ask interviewees whether their information can be shared with third parties such as investigative teams, particularly where a period of authoritarian rule or conflict is over. Do not assume that families will be keen to have their relative's case highlighted in these circumstances. Ensure that survivors, family members and other witnesses fully understand the purpose of sharing information with third parties.
- *See Ukweli Main Book, Chapter 7 on interviewing for more detailed guidance on informed consent and confidentiality and avoiding re-traumatization.*

3.3 Conducting interviews

Given the nature and complexity of enforced disappearance cases – comprising three components and encompassing multiple different violations – a number of specific considerations relate to particular groups of witnesses/interviewees. The following sections discuss aspects that are relevant to some types of interviewees based on the nature of enforced disappearance as a violation. These include questions to ask and considerations to be mindful of when interviewing individuals from these categories.

3.3.1 Interviewing survivors of enforced disappearance, torture and sexual violence

Because the purpose of enforced disappearance is generally to intimidate and punish, and because victims are placed outside the protection of the law designed to safeguard against torture and other violations, **enforced disappearance cases often involve very high levels of torture, including high levels of rape and other sexual violence against women and men.**

Most survivors of enforced disappearance have undergone extreme physical and psychological suffering, the effects of which can last for many years. Some survivors may want to talk about what happened to them: testifying can be a cathartic form of release. Other survivors may not want to talk about what happened because it is too painful, due to fear of reprisals or social stigmatization, or for other reasons. Trauma can also affect whether (and how) people remember events and details.

When interviewing survivors of enforced disappearance, remember that in addition to sharing detailed information about their own experiences, they may be able to provide information about other victims who were arrested/abducted or detained alongside them and may be able to name specific individuals detained in the same place, and thereby confirm the location of some victims of disappearance.

- See *Ukweli Main Book, Section 7.6.3 on interviewing people with trauma, survivors of sexual violence and avoiding re-traumatization. See also Ukweli: Investigating Torture.*

Key reminders when interviewing survivors of violence and trauma:

- Never force people to talk about experiences they do not want to revisit: this can trigger re-traumatization.
- When interviewing someone about sexual violence, the interviewer (and interpreter if using one) should preferably be of the same sex as the interviewee.
- Remember that rape and sexual violence can be highly stigmatized in some societies, especially for male victims. The strictest protections of confidentiality are necessary in these situations. You may need to spend more time at the beginning of the interview explaining to interviewees about the sorts of details you need to ask and why, and reassuring them about confidentiality.
- The secrecy and withholding of information during disappearances affects not only the family members, but also the disappeared persons. Survivors who have been released may know very little about where they were detained, who the perpetrators were and other details. Victims of enforced disappearances may have been detained blindfolded or hooded, detained in the dark and prohibited from looking at guards. Nevertheless, **small details can provide huge clues** about locations, the identity of perpetrators and other aspects of cases.
- Be aware that survivors may have been given false information during their disappearance which they believe(d) to be true, such as where they were being detained.
- Survivors may have difficulty remembering some details of their ordeal as a result of trauma.

3.3.2 Interviewing family members

When interviewing family members in enforced disappearance cases there are a number of important considerations, and a number of specific details that need to be covered.

1. Family members are themselves victims of enforced disappearance and suffering that could amount to torture or cruel, inhuman or degrading treatment

As discussed in Chapter 1, the Convention on Enforced Disappearances recognizes that family members of a disappeared person are also the victims of the violation, and various judgements and commentary under international law recognize that the suffering caused by the uncertainty and lack of information about their loved one can amount to a form of torture.

Remember: In the case of enforced disappearance as a crime against humanity committed by a non-state group, this cannot amount to torture as according to the legal definition of torture, it can only be perpetrated by state actors.

The suffering of family members of people who have been forcibly disappeared has been termed “ambiguous loss”. Because they have no information on whether their loved one is alive or dead, there is no closure or confirmation of the loss. This ambiguity causes open-ended and long-term grief. This has been described as the most stressful form of loss; the prolonged uncertainty can have severe psychological and emotional effects.

- When interviewing family members in enforced disappearance cases, you must apply the same considerations as when interviewing other victims of torture.
- Be sensitive to the fact that the ambiguity of the loss means that relatives of disappeared persons often continue to hope that their loved one might still be alive, sometimes for decades.
- Be sensitive to the way the family talks about the disappeared person and use similar language to refer to them.

2. Attempts to request information from the authorities/seek justice

One of the three elements of an enforced disappearance is the state’s (or political organization’s) refusal to acknowledge the deprivation of liberty or provide information on the fate or whereabouts of the disappeared person.

Therefore, it is important to ask about this during your interviews with family members as part of the evidence of the violation. This discussion may also reveal related violations: family members who try to find out the fate of a disappeared person may be subject to harassment or arrest themselves.

Ask family members:

- Has anyone (a relative, lawyer or other person acting on behalf of the family) requested information from the authorities on the whereabouts or fate of the disappeared person or initiated a legal procedure to attempt to obtain information or secure their release (such as a habeas corpus procedure)?
- If so, to whom/where did they direct their efforts (such as police, prison, court, governor’s office)? Who did they speak to? Was the request and/or any response in writing? If so, can you make a copy?
- Did anyone suffer any repercussions for attempting to ask (such as threats, harassment, arrest)?

If the family have not sought information from the authorities, ask why not. This may reveal important information about fear or mistrust of the authorities, details of repercussions experienced in comparable cases, or other details.

If the family have not approached the authorities to request information on the whereabouts or fate of the disappeared, they may want your assistance to do so on their behalf or to identify a lawyer who can act on their behalf, as discussed in step 6 of planning your investigation.

- If you have identified lawyers willing to assist in these cases, refer families to them at this point. If it is within your mandate and plan you might do this yourself, as discussed in *Chapter 7: Taking action*.

In some contexts, it will not be safe for the family (or another representative, including you) to ask the authorities for information. In such cases, document the reasons families are too scared to ask, and any details of repercussions experienced by family members in other cases. Where there is a wider pattern of disappearances, you can conclude that an enforced disappearance is likely to have occurred if other details in the case are consistent. If there is no wider pattern and/or where a family has not asked for information or the case is unclear, you may decide there is not sufficient evidence to conclude that an enforced disappearance has occurred.

If your investigation is occurring after some time has passed, have any justice and reparations processes occurred, for either individual or multiple cases?

- If so, what was the family's experience of the process? Were they able to access it? Were there limitations or obstacles to being able to benefit from it?

3. The impact on family members as evidence

Because family members are victims of the violation of enforced disappearance, and possibly victims of torture, finding out about their experiences is part of documenting the violation. Determining the degree of suffering caused is part of establishing if the treatment amounts to torture or cruel, inhuman or degrading treatment or punishment.

When interviewing family members, ask about the impact of the disappearance on them. You can simply ask "How does this make you feel?" "How did you feel at the time?" and "How do you feel now?" Also ask about other impacts: "Have you experienced any difficulties or had to make any changes in your lives because of this?"

Harm to family members encompasses emotional/psychological harm as well as forms of social or economic harm, as discussed in Chapter 2. This might include:

- Economic impact, for example if the disappeared person was the main breadwinner of the family; if wives of victims have been unable to access family

assets, or if all resources have been spent on trying to access justice; and if this has had knock-on impacts on other aspects of life such as access to shelter, education or healthcare.

- Social harm such as stigmatization: if the disappeared person was the head of the family (for example, leaving a wife/widow with unclear status); if the disappeared was accused of a particular crime (for example terrorism); or if women and girls are considered to have transgressed traditional gender roles in efforts to find the disappeared or seek justice.

4. Identifying details of the disappeared

During interviews with family members, you will want to collect detailed information about the identity of the disappeared and their work/profession, political activities or affiliations, membership of organizations or movements, and so on – to try to discern the reason for their disappearance.

It might also be relevant to ask the family for ante-mortem data – information that could help to identify the disappeared person in case a body is found. Do not ask for this information unless it is relevant (for example if you can compare this data with information about bodies found).

This might include:

- physical details (height, weight, hair and eye colour);
- unique characteristics such as scars, birthmarks or tattoos;
- clothes, jewellery, a watch or other personal items the person regularly wore or was known to be wearing or carrying when they were last seen;
- medical and dental history (fractures, diseases, missing teeth, dental crowns, fillings, and so on).

Guidance: When forensics experts are involved in identification processes, ante-mortem reference samples (blood) might be collected from family members to facilitate DNA identification.

People without specialized forensic skills can collect DNA samples from family members, but they **must be trained** in advance, **follow standardized procedures**, have **proper facilities to store and transport samples**, and have **forensic experts ready to receive the samples** for analysis.

5. Other cases/information

In their efforts to find out information about their disappeared relative, family members often discover a lot of details about other enforced disappearance cases or emerging/

established patterns in the way disappearances are carried out. For instance, they may have identified eyewitnesses to the arrest/abduction or other aspects of the case, heard information or rumours about the location of unofficial detention centres, and other important details.

- When interviewing family members, ask if they know any details about the wider practice of enforced disappearance.
- Make sure to confirm how they know particular details/where they got the information from.
- At the end of interview, ask if they know any eyewitnesses relevant to their relative's case, and if they know of other cases/relatives of other disappeared persons. Ask if they could put you in contact with any of these people.

6. Taking action

You might also want to discuss with family members other action they want to take themselves or see taken on the case (see *Chapter 7: Taking action*).

3.3.3 Interviewing children

Children may themselves have been victims of enforced disappearance. Children may also have been born in detention during their mother's enforced disappearance and returned to the family, given to the care of another, put up for adoption or placed in an institution. They may also have been left behind when one or both parents were abducted, and/or been eyewitnesses to abductions, transportations, torture or executions – of their own family members or of other people. Therefore, there is a high likelihood that children associated with enforced disappearance cases are likely to have suffered severe trauma.

Interviewing children must be handled with extreme care. It is advisable to seek guidance from professionals experienced in working with vulnerable children. Children, especially younger children, should only be interviewed when absolutely necessary. All under 18 year-olds should generally be interviewed in the presence of a parent or caregiver, though some may prefer not to be. The child should choose who – if anyone – they want to be present (such as a parent, care giver, sibling, friend or teacher).

If interviewing children:

- Whenever possible, ensure that someone with the requisite experience conducts the interview(s). This may be a colleague or trusted contact.
- Make sure the child has a formal or informal support structure in place before you begin, especially if you are interviewing them about a traumatic event they experienced or witnessed.
- Before you begin, ask the child's primary carer (parent, grandparent, aunt/uncle,

older siblings) what the child already knows about the case, and – if relevant to the case – what the child knows or believes about their own identity.

- Never mention something to a child about their case or their parent's case that they are not already aware of.

► See *Ukweli Main Book, Section 7.6.2 for further guidance on interviewing children.*

3.3.4 Interviewing other former detainees (non-enforced disappearance cases)

Forcibly disappeared persons, victims of other forms of arbitrary detention and lawfully detained persons might be held together. Therefore, former detainees held in official or unofficial detention centres – including places known or suspected to hold victims of disappearance – may be able to provide important details about detentions in enforced disappearance cases.

These details might include:

- Other people the interviewee was detained with whose circumstances appear to amount to enforced disappearance; the number of such cases; names of individuals (if known). This can be one of the only ways to discover the whereabouts of specific individuals, or to confirm the fate of that person if they were killed or died in detention.
- Details on torture practices in that detention centre, other treatment of concern, conditions in the detention centre, transfers and executions.

Remember: When interviewing former detainees, remember that they may have witnessed or heard the torture and death of other detainees, even if they did not experience it themselves, and may be deeply affected by these experiences.

3.3.5 General points for all interviews

- Interviews should be conducted on a one-on-one basis (plus an interpreter if necessary), unless the interviewee requests the presence of another person (friend, relative, NGO representative).
- Explain that you will ask detailed and sensitive questions. Reassure interviewees that if there are any questions they do not want to answer, they do not have to do so. If they feel distressed, they can pause at any stage of the interview to take a break or a walk outside.
- Begin by using a broad, open question that allows the interviewee to start wherever they want to in their story of what they experienced or witnessed. For example, “Tell me what happened when...”

- Continue to use open questions during the interview, so the interviewee can shape the narrative and include details they think are important. Let respondents talk in a narrative as much as possible to ensure the flow of the interview. Make notes of points/details you want to come back to in follow-up questions.
- Remember that because enforced disappearance is a complex violation with multiple stages, not all of the components will be relevant to ask every interviewee about. Even survivors may not know all the details, as they may not be aware of – and will not have first-hand information about – their family’s efforts to get information during their disappearance, or of the impact their disappearance had on them.
- You therefore need to remain particularly alert throughout these interviews to ensure you adapt each interview to cover all the areas of the violation relevant to each interviewee, and be flexible to any information that comes up during the interview.
- Interviews with survivors of enforced disappearance are likely to take a long time as there are so many elements to cover. It may be necessary to conduct such interviews over two or three (or more) sessions.
- Survivors of enforced disappearance, family members of the disappeared and eyewitnesses of violent events are all highly likely to experience some form of trauma. This can influence how they remember details and relay narratives. It is essential to be patient and sensitive to these considerations.
- Make sure the interviewee is telling you facts, not assumptions: clarify how they know certain details.
- Interviewees may show signs of distress during the interview. Refer to the *Ukweli* Main Book on using grounding techniques, taking breaks and avoiding re-traumatization.
- While survivors or eyewitnesses might not be able to identify perpetrators or victims or where they were detained, they will be able to provide small details and descriptions that might be vital clues.

Collecting highly detailed information on different aspects of cases may help establish patterns between cases and may demonstrate that disappearances are being conducted on a systematic (namely organized or coordinated) basis.

► *Ukweli Main Book, Chapter 7 provides detailed general guidance on all aspects of conducting interviews.*

DETAILS!

The aim of all interviews is to obtain as much detail as possible.

Small details can be essential to identifying aspects of what happened, including the identities of victims and perpetrators, and can reveal information you have not even considered. For example:

- Small details of a uniform can identify which branch of the security services or which company/unit was involved – for example a badge (insignia) on uniforms, epaulettes or other insignia of rank may show who was in command.
- Identifying a weapon might help confirm the identity of the perpetrators – for example, national armies often use only one or two types of standard-issue weapons.
- Details of vehicles might be relevant to tracking perpetrators – such as the type of vehicle, colour, anything written/marked on it, if it had number plates or not.
- Small details can help to identify secret detention centre locations: for example approximate distances/time spent in vehicle on way to location, type of terrain crossed during the journey (tarmac, murram and so on), noises heard in the vicinity while detained – traffic, industrial noises, rural noises (cows, cockerels and so on), muezzin/church bells.
- Small things that perpetrators said at the time of abductions or during detention can give evidence about the motivations of the violation.

Example: Documenting one of Syria's most notorious secret detention centres and sites of enforced disappearance

From 2011 to late 2019, almost 100,000 people were subjected to enforced disappearance in Syria. Thousands were detained in Saydnaya prison, and thousands have been extrajudicially executed or died there as a result of torture and appalling conditions, and buried in mass graves.

Survivors of Saydnaya have said they were held in the dark and in brutally enforced silence, and were forced to put their hands over their eyes whenever a guard was nearby on pain of being severely beaten or killed. Nevertheless, Amnesty International and Forensic Architecture worked with survivors, in conjunction with other sources, to construct a detailed account of the practices at Saydnaya and of the detention centre itself.

Detailed interviews were conducted with survivors and other witnesses including former guards. The two organizations also used sound recognition with former detainees: because they were held in the dark, their memories of the prison depend on the acute experience of sound. While in Saydnaya, they could hear sounds of footsteps, doors opening and locking, dripping water, trucks bringing new arrivals, sounds of torture (hitting, whipping, beating, preparation of weapons), and for some, sounds of executions by hanging. Detainees could also hear sounds coming from outside the prison, including the call to prayer, guns, artillery, bombs and planes.

Based on the testimonies collected and the sound recognition exercises, comprehensive digital models were made of the entire Saydnaya facility. This process exposed a full and detailed account of practices inside one of Syria's most notorious secret detention centres.

For more information, and to hear survivors' accounts and to see the digital modelling, visit: saydnaya.amnesty.org/.

3.4 Case study: Interviewing a family member

You have arranged an interview with a woman who says her son has disappeared. You were put in contact with the interviewee by a community leader who was aware of the case.

You are ready to begin the interview: you have confirmed that the interviewee is comfortable with the location and does not have any security concerns. She has given her informed consent to participate, based on a full understanding of the purpose of the interview and what you will do with the information. She has stated that she would like her son's case to be publicized to try to force the government to tell her where he is. You agree to discuss this in more detail at the end of the interview.

You ask an open question to begin the interview: What happened to your son?

The interviewee makes the following statement:

Some people came to the house and took him away. He was a good boy and never committed any crime, but they said, "He is a criminal, like all of the others", and pushed him into a van and then they left. And now I have no idea where he is or even if he is alive. I went to the police station to ask where he is, but the policemen said I have no right to ask and they abused me. I hear awful stories about those places where they take people and do terrible things to them. I just want to know if my son is alive.

What follow-up questions do you need to ask?

The disappeared victim

- Details about her son: Age? Employment/student? Marital status? Children? Was he a member of or affiliated with a political group or movement? Ethnicity (if relevant)? Has he been accused of any crime in the past?
- Why does the interviewee think her son was targeted? Was any further reason given, other than that he was a “criminal”? What does she think her son’s abductors meant when they said “like the others”? Why does she think that? [Asking an interviewee why they hold a certain opinion can reveal important details, background about the incident, or detail about the context that might be relevant to how and why the violation occurred.]

The abduction

- How does she know about the abduction – did she witness it herself?
 - If yes:
 - Who were the people who carried out the abduction?
 - How many were they? Men/women?
 - What were they wearing? (If uniforms: details – colour, badges, rank signs, hats and so on. If plain-clothed: what clothing were they wearing? Were they all dressed the same?)
 - What were they driving? (Type of vehicle, colour, markings, insignia, number plates?) How many vehicles were involved? How many people in each vehicle?
 - Were they carrying any weapons? (Guns? (small/large – describe), other formal or improvised weapons?)
 - Did they say anything else during the abduction?
 - Was violence used during the abduction? If yes, explain the details – what form the violence took, against whom (just the victim, or others present?), were weapons used?
 - Were any other people taken at the same time as her son? (If so, details and relationship to her son.)
 - If no:
 - How does she know what happened?
 - Were there any witnesses? (Other family members, neighbours? If her son has any children, were they present?) [If others saw the abduction, ask at the end of the interview if you can be put in contact to interview the witnesses.]
 - When did the abduction occur (date and time of day)? Did anything occur beforehand that might help explain why her son was targeted?
 - Where did the abduction occur? Where is the house – in a city (which area), town, rural area? Who lives in the house?

Requesting information from the authorities

- How long after the abduction did the interviewee go to the police station to ask about her son? To which police station? Why did she go to that police station? Who did she speak to? What exactly did they say?
- Can she explain what she means by “they abused me” – what form did this abuse take (physical/verbal)? What happened exactly?

Impact on family as victims

- How does she feel about her son’s disappearance? In addition to the emotional distress, has it had any other effects on her life or situation? Has she had to make any changes in her life because of it? [You can also make observations about the emotional impact based on the interviewee’s behaviour and responses during the interview, though this is not an indication in every case: people exhibit different behaviour in response to trauma.]

Detention

- What has the interviewee heard about the places of detention? Where did she hear this information from? [The interviewee’s statement about “hearing terrible things” was hearsay – second-hand information – and is not reliable evidence. But, asking about this might reveal important details. For example, the stories about detention centres might come from people who have been released from detention/enforced disappearance who would be important to interview, or from people who live near detention centres, who could reveal information including the location of the centres.]

Closing the interview:

- Discuss what action the interviewee would like to see on her son’s case. Within the parameters of your mandate, resources and plans for the work (for example, what you will do with the findings of your investigation), talk about the options for taking action – such as media work, public activism, referral to national or international mechanisms to draw attention to the case and try to force a government response. Discuss the risks of the different options and agree on an approach, or for a follow-up discussion (and exchange contact information).
- Check how the interviewee feels. Does she have a support network? Does she want or need referral to other forms of support or assistance?
- Does she know any other people/families who have had a relative disappeared? Would she be able to put you in contact with them, or with any other witnesses mentioned during her account who it would be relevant to interview?

Follow up and other points to consider:

- Are there any inconsistencies in the account?
- Do the three elements of an enforced disappearance appear to be present in the case?
- What further information do you need to collect if you want to verify the account, confirm the details and fill in further specifics of the case? For example, who would you want to interview? What other sources of evidence might exist? How can you find out more information about these rumoured detention centres? If you gather further details from former detainees or people in the vicinity, can you establish the location? Can you try to identify other former detainees, or establish who is stationed in or administers the location, and so on?
- Are other cases of enforced disappearance happening? Does this account seem consistent with what you know of the context and other cases? (For example, do the perpetrators appear to be the same? Have other cases asked at the same/ other police stations and been given the same response?)

Chapter 4

Physical evidence

As explained in Chapter 2, there are two main areas of physical evidence related to documenting enforced disappearances:

- Evidence of torture, killings and burials (bodies and graves);
- Evidence of places of detention and other locations where different constituent parts of the enforced disappearances occurred (secret detention centres, internment camps, execution sites and other locations).

There may be no (known) physical evidence or eyewitness testimony about physical evidence, or you may not be able to access the evidence, particularly in relation to places of detention. But in some cases, victims' bodies are found and might be reported to the family (if the victim is identified), to a human rights organization or to another actor. In other cases, local residents may report areas of disturbed ground suspected to be newly dug graves in locations where disappearances are occurring, or eyewitnesses may see graves being dug or executions or burials happening.

TIP: Where you cannot access enforced disappearance-related locations (mass-graves, detention centres and other locations), either because you are denied access or because it is too dangerous to do so, you may be able to obtain images of some locations by using satellite imagery. See *Chapter 5: Documentary evidence* for more detail on using satellite images in your investigation.

4.1 Evidence of torture, killings and burials (graves and bodies)

When documenting a body or grave site, look for information to help answer the key questions: who did what to whom, when, where, how and why?

- **Who** were the perpetrators?
- **Who** is the victim/who is represented among the remains/victims (number of victims, demographic make-up of group, group identity/affiliation (meaning a common identifying feature shared by all which indicates why they were killed as a group))?
- **What** happened (to the victims, including torture and killings)?
- **When** did they die/when were they buried?
- **Where** is the site (details)? Were the victims killed there or were the bodies brought from somewhere else?
- **How** did they die?
- **Why** were they killed?

You will not be able to fully answer these questions just from examining a body, bodies or a grave site. This will require additional information, exhumation if a grave is enclosed (though exhumation on its own may not provide all the answers), and specialist forensic analysis of human remains and other evidence. However, there may be important clues that you can document in your investigation.

If multiple grave sites are reported to you and/or you investigate multiple sites, look for linkages and patterns between incidents, sites, victims and perpetrators.

Look out for signs that the evidence may have been moved or handled (either by hostile or supportive entities).

4.1.1 Mass graves

The UN defines a mass grave as “a location where three or more victims of extra-judicial, summary or arbitrary executions, not having died in combat or armed confrontations, are buried.”²⁴ Other entities set the minimum number of bodies at six or more. Some mass graves contain hundreds or thousands of bodies.

Reports of a known or suspected mass grave might come from eyewitnesses – for example, local residents who saw the grave being dug or burials taking place, or noticed an area of newly disturbed ground. Reports of the existence and/or location of a mass grave might also come confidentially from an informer (such as from a member of the military, prison guard).

You may be able to use satellite imagery to identify or confirm the location of a grave based on testimony from sources on the ground (see Section 5.5 on satellite imagery for more detail).

Be aware that the perpetrators sometimes move mass graves to avoid detection. Secondary graves may contain the contents of one or more primary grave sites. In some cases, forensic archaeologists and other experts can determine whether a site is a primary or secondary grave. Specialist knowledge and equipment is needed to do this.

If you are able to access the location of a suspected grave:

- Determine the safest approach to the site;
- Remember, some evidence may be found on your approach to the site – be alert;
- Take note of things like possible access routes to and from the scene, and the proximity of any buildings or other features. For example, are there any military posts in the vicinity?

What to look for: Graves

You can look for several signs without specialist equipment.

- Disturbed ground is the principle sign of a mass grave. Even if compressed back to

ground level, earth where burials have taken place will look different than the earth around it.

- The earth over a mass grave might be mounded compared to the area around it.
- Areas where the grass or low-growing foliage is missing, shorter or growing differently from the land around it.
- Any signs of digging, manually or with machinery: where larger graves have been dug with machinery, it can leave marks on the ground around the edge of the grave.

Remember:

- You cannot be certain that freshly mounded or disturbed earth contains bodies unless it is properly excavated and analysed. Without proper exhumation of the grave, it also will not be possible to confirm the identity of buried remains or match them with the identity of missing persons.
- A mass grave is not, in itself, evidence of enforced disappearances. It is a strong indication that violations/crimes have occurred, but these could be other violations (for example, murder and extrajudicial executions can take place without disappearances occurring). Mass graves might also be the result of an earlier conflict, outbreak of disease or other situation.
- Grave sites might be at risk of being disturbed, moved or destroyed by perpetrators after your visit.

What to look for: Around a grave or exposed body

Look for evidence near a mass grave or where an exposed body is found – such as evidence of how the grave was created, by whom, who left the body in that location, or further details on the identity of the victims:

- Items left behind by perpetrators such as ammunition casings, digging tools or machinery, ration packs or items of clothing.
- Items that may have belonged to the victims – clothing, personal items, ID cards.
- Evidence that killings/extrajudicial executions took place at the site where the bodies are found: for example, multiple ammunition casings together in one place can indicate that executions occurred at the location/graveside.

Key points for documenting at the scene

Be alert at all times to who or what is around the location, particularly where armed groups are present, or there is ongoing conflict.

Beware! Graves, including mass graves, can be booby-trapped: explosive devices and live ammunition are often left in graves during the digging/burial.

Do not approach a grave where there is a risk of explosives unless it has been given the all clear by military/explosives experts.

Consider the local community: Local residents are likely be very emotionally invested in a mass grave site. Will they object to your presence? Will they be hostile to the investigation? Be prepared to deal with members of the community/media who might turn up while you are documenting the scene.

Wherever possible (when safe to do so), involve/consult the local community in advance about accessing and documenting the site, explain your work and what you will do with the information, and explain the importance of documenting the evidence. Be clear about the limitations of what you can do/achieve.

Consider the families of the victims: If you are documenting a suspected grave site where the identity of the individual victims is suspected or known, inform the families of the steps you are taking and why, and what you will do with the information. You may also need to explain why you cannot exhume the grave.

Note that the presence of too many people can endanger the evidence.

4.1.2 *Human remains*

You may witness human remains during your investigation – such as one or more bodies at a morgue, hospital, home or other location, or grave site. The grave may be partially or fully exposed (has been exhumed by other persons, disturbed by agricultural, construction or other activity, or disturbed by wild animals). Remains might be “fleshed” (recently deceased) or skeletal. Be aware that some animal bones can be easily mistaken for human bones.

Remember:

DO NOT touch human remains and NEVER collect/recover human remains or attempt to exhume a grave unless you are qualified to do so.

- If qualified forensic experts cannot perform the work, it is better to leave the remains in place.
- The proper recovery, management, and storage of remains and related evidence (clothes, jewellery, other personal items, and so on) are vitally important for the forensic identification of the victims(s), for differentiating the remains where several individuals are buried together (“commingling”), for distinguishing between primary and secondary graves, and for the collection of other evidence. If the recovery of remains and evidence is not done properly, important information can be lost.

You can thoroughly document and photograph the visible evidence without touching it, following the steps below.

For unburied bodies (in a morgue, hospital, home or found in an exposed location), confirm:

- Is the identity of the deceased person known?
- Where was the body found? Who brought it to the morgue/hospital/house?

If possible, interview the person(s) who found the body, to ask details about where it was found, its situation/condition when found and other details.

If the identity of the deceased person is known, wherever possible, seek the family's permission to document the body.

What to look for: Bodies

Examine bodies without touching them. Look for:

- Number of bodies (if more than one), their condition (fleshed or skeletal, complete or incomplete bodies/skeletons).
- Signs of the cause of death (such as bullet wounds, damage to the skull, none).
- Indications of the manner/circumstances of death (such as ligatures, handcuffs, blindfolds).
- Signs of torture (might be visible on a recently deceased person) – scarring, burns, lacerations, injuries, broken bones, presence of blood in certain parts of body. For skeletal remains, expert forensic examination is necessary to determine signs of torture.
- Identifying details – clothing (if any, or note the absence of clothing), jewellery, watches, scars, birthmarks, tattoos, and so on.

You might later be able to cross-reference identifying details with descriptions of missing persons or confirm details with a family member of the victim(s).

Do not touch or remove non-biological evidence (for example ID cards, jewellery) unless you are qualified to do so. The exception to this might be if there is a real/immediate risk that hostile entities might remove or destroy the evidence. In such cases:

- Do not move any evidence until you have photographed it in the location where you find it, and documented its position in relation to other evidence and features of the location (see below).
- Wear clean surgical gloves to touch any evidence, and store it in clean plastic bags clearly labelled with all the information about where it was found, when and who it was collected by.

Remember: Physical evidence may also be found on the bodies of survivors: signs of torture – scars, burns, injuries, and so on. You should document this evidence during your interviews (see Chapter 3 on interviewing). This involves asking survivors to give a detailed account of their experiences in detention and – with their consent – photographing the marks on their bodies.



© Jason Florio. Image shows evidence related to the remains of seven soldiers exhumed from an army barracks in The Gambia. Along with bone fragments, electrical cables were found that were used to bind victims' hands. The only clothing found was underwear, which corroborates testimony that the men were stripped before being shot.

Remember: Exhumations can only be conducted by qualified persons. In the Gambian case, after the end of Yahya Jammeh's rule, a Truth, Reconciliation and Reparations Commission was established to look into violations committed by his regime.

4.2 Sites of enforced disappearances

You will not be able to access detention centres or internment camps while they are still in use, and may not be able to access sites of executions. Evidence about the interior of places of detention will mostly come from the testimonial evidence of survivors of enforced disappearance, other former prisoners and informers.

You may be able to document the exterior of places of detention and their location through a combination of survivor and witness testimony, satellite imagery and on-the-ground photography.

If you gain access to buildings or locations that were formerly used in enforced disappearance cases, there are a number of features to look for, as detailed below.

4.2.1 *Buildings formerly used as (secret) detention centres*

- description of the site and details of surrounding location/area, precise location;
- size of the site and building(s);
- number and nature of buildings, relevant features (such as security measures/watchtowers, and so on);
- any signs/insignia/writing (for example, insignia of military/police units, armed groups);
- signs of when the site was in use or abandoned.

If you have access to the interior, look for/note:

- size and number of rooms;
- any visible signs of use/occupation of the facilities – such as equipment, ration packets, ammunition boxes, documents, bullet damage in walls or furniture, stains (blood and other), restraints;
- evidence of methods used in killings, or for the disposal/destruction of bodies.

4.2.2 *Sites of killings/executions*

Depending on the method of killing, there might be some signs or evidence at places where executions have taken place:

- indications of the method of killing, such as equipment, ammunition, rope, execution posts, gallows;
- ammunition embedded in walls or furniture can show where a killing took place;
- note the position of the evidence: such as multiple ammunition casings grouped together could pinpoint where the killer(s) were positioned during an execution;
- blood stains.

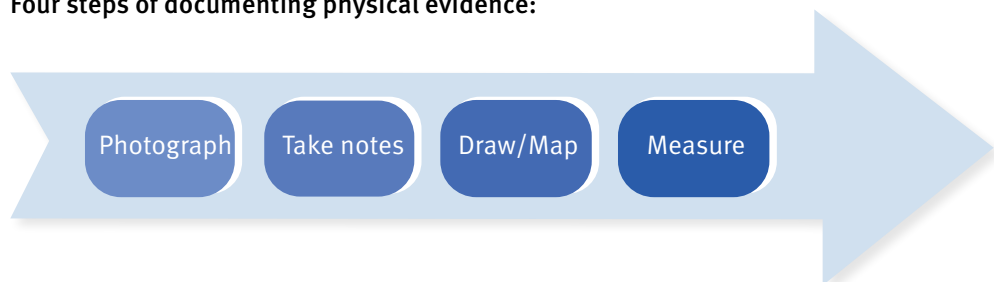
4.3 Documenting physical evidence

A wide range of disciplines can be relevant in forensic examinations of bodies and mass graves. Experts can determine details including the cause of death, age, sex and other details of the victims; establish how long a body has been in the ground; and distinguish primary from secondary graves. They may also be able to confirm the identity of victims.

But even without special expertise, and without touching the remains, **you can do important documentation with a camera and a notepad** (see figure below).

Your documentation may be especially important: if there is a risk that the bodies/graves may be removed/destroyed by the perpetrators or hostile entities, this may be the only opportunity to document that evidence.

Four steps of documenting physical evidence:



4.3.1 *Photograph the remains/grave/building/location*

After you have examined the body, grave site or location and assessed what evidence is there, take photographs first in case you are disturbed and have to leave the site quickly, so that you at least have a basic record to refer to later. If the family are present/known, ensure you have their permission before you photograph bodies.

Take three sets of photos:

1. **Wide angle:** Take photos that show the actual/suspected grave, the bodies/remains or the building/execution location in relation to the surroundings. Include in the frame any nearby landmarks or features of the landscape (buildings, trees, and so on): this will help prove the location of the evidence. (This is not necessary with bodies in morgues and other locations to which they have been moved.) If relevant, also include in the frame, or in additional photos, other pieces of evidence to illustrate their position in relation to each other.
2. **Medium range:** Frame photos to show the entire body, building, room or other piece of evidence (vehicle, ammunition, item of a uniform). If there is more than one body, take a separate photo of each, and another photo to show the group of bodies. Inside buildings, take photos of each room.

3. **Close up:** Take close-up photos of any small pieces of evidence, such as ammunition casings, and small details such as writing, numbers, markings. With bodies, take close-up photos of the details noted above – indications of the cause and circumstances of death, signs of torture, identifying details of victims. If there is more than one body, take individual and close-up photos of each body.

When photographing multiple bodies, allocate each body a reference number and put a marker showing this number in all photos of that body (close-up and wide angle) to keep track of which close-up photos/evidence relate to which body.

If possible, take photos with a scale marker in the shot (for both wide angle and close-up photos) to show the size/scale of the subject, and if possible to show the distances between items of evidence or features of the location.

Keep a written record of each photo and where it was taken in the context of the site to help identify the images later. If possible, include in each shot a marker showing a reference number for the photo.

Experts might later be able to identify important evidence or draw conclusions based on your photos, such as types of weapons, the identity of perpetrators, understand what happened in an incident based on the position of the evidence, and so on.

4.3.2 Notes

Write detailed notes on:

- Location of the site (mark on a map if possible, note GPS coordinates, nearest village or town, road).
- Description of the site (size, buildings, features of landscape).
- Location of the body/grave/other evidence at the site, its location in relation to other features of the surroundings/landscape, the position of different pieces of evidence in relation to each other.
- Approximate size of evidence/location/site (for example, approximate measurements of sites of disturbed ground – see below) and distances between relevant details.
- Bodies/uncovered remains: note all details covered above – cause of death, signs of torture, indications of circumstances of death, identifying details of victims. If there are multiple bodies, allocate a number to each and reference this number consistently across your documentation.
- Any other evidence found at the site and where it was found (such as ammunition, clothing, and so on).

4.3.3 Map/draw

Draw a (rough) sketch or map of the site. This is an essential record of where evidence

was found in relation to other evidence/features of the location that you can refer to later. It may also form part of the evidence: analysis of the location of evidence might provide clues to what happened.

- Mark on your map all the details of the site that you can see.
- Note on the map any measurements (see below) of features and distances between evidence/points of interest.
- If there are uncovered remains, mark distinct sets/groups of remains on your map – if you have allocated numbers to bodies, mark this on the map.
- Note the approximate location of any other evidence – such as ammunition, and so on.
- If possible, mark north on the map (most mobile phones have a compass feature).

4.3.4 Measure

- Measure the grave site, area of disturbed ground, rooms or any other relevant features/distances.
- If you do not have a measuring tape, count and make a note of the number of your steps/paces – you can measure your step later to give you an approximate size of the area.

Chapter 5

Documentary evidence

Although enforced disappearances are characterized by the suppression of information, a surprising amount of documentation may exist, including lists of prisoners, lists of those killed, death certificates, graveyard records, flight records and military orders.

Photos and video footage can capture incidents such as abductions, transportations and burials, or locations such as the exterior of suspected secret detention centres or mass grave sites. These images might capture evidence or reveal vital clues about the identity of perpetrators or victims, the methods used, locations where aspects of the case took place, details about places of detention, the presence of graves and other evidence.

Satellite images can provide vital detail to corroborate on-the-ground sources (such as photographic and testimonial sources). They might be used to identify or confirm the locations of graves, detention centres or internment camps, and may even be able to provide information about inaccessible locations.

Remember:

All documentary evidence needs to be cross-referenced with other sources of information such as survivor, family member and witness testimony. Investigations are most effective when a range of different types of evidence corroborate each other.

Confidentiality also applies to documentary evidence. Any reference to, or publication of, documentary evidence in your reporting must be based on careful consideration of the security of the source and any victims shown in the images. It may be necessary to conceal any identifying details.



Google Earth © 2016 CNES/Astrium. Satellite image of Saydnaya Military Prison, Syria. Tens of thousands of people have been detained here since 2011 in conditions amounting to enforced disappearance. Amnesty International and Forensic Architecture obtained satellite images of the prison and established a detailed picture of its interior and the practices there through the testimony of survivors and other witnesses. Amnesty International believes the red and white buildings between them might hold 10,000–20,000 detainees. Human rights activists believe 98,000 enforced disappearances have occurred since the conflict in Syria began in 2011.

5.1 Documents, photographs, video footage from sources

When planning your investigation (following the steps in Chapter 2) you may have identified types of documents, photo and video footage that might exist and be relevant to your findings if you can access them.

- Remember to ask all interviewees if they have any documents, photos or other evidence relating to any of the details they have told you about.
- Documentation created by perpetrators (in records, logs, military orders, and so on) will be very difficult to obtain while disappearances (and the regime responsible for them) are ongoing, unless an inside informer provides them to you.
- Any documents obtained during your investigation should be carefully analysed against other information/evidence to ensure consistency and to safeguard against misleading or false information.
- Store any hard copies of documents and photos and memory cards from cameras in highly secure locations. Always try to save one or two copies of documents in

different locations in case of confiscation, and so on. Keep a scanned (soft) copy of all documents in an encrypted location.

- If storing photographs on your computer, make sure they are in an encrypted location in your files.
- It is essential to verify the validity of all photos and footage sent or given to you, even where they come from trusted contacts (see Section 5.3).

► *See Ukweli Main Book, Section 5.3, for more guidance on information security.*

5.2 Information, photos and footage posted online (user-generated content)

Much content posted online – for example on social media sites and shared via messaging systems such as WhatsApp – is incorrectly or misleadingly labelled and does not show what it claims to show or originate from when/where it claims to have been taken. It may have been posted several times before under different labels.

► *See Ukweli Main Book, Section 8.4 for detailed guidance on how to verify the authenticity of content posted online, particularly photos and footage, how to confirm the date and location of the footage, determine whether the content has been altered or posted previously under a different label, and how to check the identity/validity of the account that posted the content.*

► *When the origin of the content has been verified, Ukweli Main Book, Chapter 9 provides further guidance on how to analyse and interpret it.*

5.3 Reviewing photos and footage

First watch the footage all the way through to note the general content. What happens (remember the questions who did what to whom, when, where, who and why)? Make notes of all details – for example, in footage of abductions, note the number of victims, description of victims, description of the perpetrators (number of perpetrators, what are they wearing, what weapons are they carrying, what vehicles are they using), methods used, and so on.

Watch the footage again in slow motion, freezing frame by frame to help spot vital details.

Any (free) video editing software will allow you to watch in slow motion. In a YouTube video you can do this by changing the Playback speed in Settings. See *Ukweli Main Book*, Section 8.4 for detailed guidance on reviewing footage.



© BBC News. By watching footage recorded on the ground frame by frame, the BBC was able to identify multiple details about the identity of perpetrators carrying out abductions and disappearances, and the methods they were using.²⁵

Look for:

- Clues or details on the identity of the perpetrators: any writing, numbers, insignia/symbols, markings of rank on uniforms, vehicles, weapons, buildings; number plates on vehicles (which might help you track the vehicle owner).
 - Details of the victims – how many, sex, approximate age, what are they wearing? This information might help identify the same victim later in the footage or in other footage, or in cross-referencing with witness testimony (including testimony about bodies that have been found).
 - Clues about locations.
- *See Chapter 8 of the Ukweli Main Book on how to “geolocate” – identify or confirm locations in a photo/footage by comparing the images to other photos/images of locations from the ground level or using satellite images from Google Maps/Google Earth or other mapping sites.*



© BBC News. During an investigation of the abduction of protestors in Sudan, the BBC compared on-the-ground footage with satellite images and was able to positively identify buildings based on shapes, features and surroundings.²⁶

Example: Effective analysis and triangulation of video evidence with other sources

In a film about investigating disappearances in Sudan,²⁷ the BBC documents detailed information about the hit squads responsible for the abduction of protestors in the 2018/2019 uprising.

Based on slow motion review of the footage, the BBC noted that white Toyota pick-ups were used in repeated incidents, often with the number plate removed or covered, and that in multiple incidents the vehicles were manned by a combination of military officers and plain-clothed individuals, often with their faces covered, who carried the same types of weapons.

The BBC gathered further evidence through eyewitness testimony, photos and video footage from ground-level and satellite imagery, and effectively triangulated the mixed sources. The BBC used these methods to establish the identity of the perpetrators of abductions, how the abductions were carried out, and the location of a secret detention centre where many of the abducted protestors were taken, and confirmed that the police, military and plain-clothed agents were working together to carry out the abductions.

5.4 Satellite imagery

Satellite imagery can be hugely important in enforced disappearance cases. As the locations of places of detention and burials (and other relevant locations) are often secret and inaccessible, satellite imagery can be particularly essential in providing details. The five main functions that satellite imagery might play in your investigation are discussed below.

General points on using satellite imagery in investigations

- Use geospatial mapping sites such as Google Earth or Google Earth Pro.²⁸
- You may want or need to commission or buy images from a commercial satellite imagery company. Commissioning enables you to get images taken of exact locations (such as an area where you suspect an internment camp, detention centre or mass grave might be); or you might need to buy existing images – of a specific location or from a specific date. If you lack the resources to commission satellite imagery, try to partner with a larger/international organization that could assist with funding/commissioning the images.
- With any details you identify from satellite imagery/mapping websites, take screen shots and record the date and time of the image.

TIP: While you can use satellite images to perform some basic identification/verification, specialist expertise might be needed to further interpret the images. You could partner with larger (international) organizations to access their expertise, or try to establish contact with an expert who might assist you pro bono.

The functions of satellite imagery in investigations

1. **Locate places where elements of the violation took place** (such as secret detention centres (buildings, compounds), locations where executions occurred)
 - Interview testimony may provide indications or clues of where a place of detention or other location might be. For example, a survivor's account of their journey to the detention centre (how long the journey took, the nature of the road surface, any landmarks seen during the journey), details of their time in detention (sounds heard from outside the walls), descriptions or photos from eyewitnesses living or working nearby (for example, a suspected detention centre or mass grave site), or by cross-referencing various sources.
 - You can then try to obtain and examine ground-level photos and satellite imagery of possible locations to try to identify the building/location in question – by searching for landmarks, identifiable features of the buildings or landscape, or calculating possible distances between places.

- If you identify a building or compound being used to detain victims, you might be able to track who the building is owned or occupied by. This could reveal further information about the perpetrators.

Example: Triangulating satellite images with other sources

In the example above from Sudan, the BBC identified a secret detention centre where abducted protestors were being detained by triangulating survivor testimony noting landmarks they saw nearby while being transported there with photos taken at ground level and testimony from people working in the neighbourhood, including those who reported that they regularly heard screams coming from the building.

By cross-referencing the sources and examining the images, the BBC was then able to identify the specific building where detentions were taking place, as well as specific parts of the building such as the area used for torture by exposure to extreme cold.



© BBC News



© BBC News

The BBC triangulated multiple sources to identify this building in Khartoum, Sudan, where protestors were being detained in conditions amounting to enforced disappearance in 2018/2019. The image on the left was posted on social media saying protestors were being taken there, and that anyone looking for a detainee should look there. By triangulating this image with satellite images and on-the-ground testimony, the BBC identified where victims were initially being taken after their abduction.²⁹

2. Locate (and prove the existence of) internment camps

Satellite imagery might be able to help prove the existence of internment camps in remote locations (such as labour or re-education camps), where people are taken after being forcibly disappeared based on their political activity, religion, association of certain crimes with one ethno-religious group, and so on.

3. Confirm information collected about locations from other sources, and measure features and distances

If you know the location of a place relevant to your investigation, you can use satellite imagery to confirm details of the site (including details mentioned in interviews). Google Earth Pro has a ruler feature that can be used to measure features and distances.

4. Provide further details of the building, compound or camp

After a location is identified, satellite imagery could be used to determine the size, layout, number of buildings or outdoor space within a compound, for example.

5. Locate or confirm the presence of (suspected) graves

Satellite imagery can be used to locate mass graves where they have been reported or in areas where you suspect they have been created, for example where large numbers of disappearances have been reported, in locations close to detention centres where enforced disappearances cases are believed to be occurring, or where local communities have reported activities suggesting executions or burials.

- This technique is most effective when you compare “before and after” images. The timeline or “history” function of mapping sites such as Google Earth Pro enables you to compare images over a period of time. To do this, you need an approximate idea of the dates when the graves, camps (or other areas under examination) may have been created.
- Before and after images from dates very close together can sometimes prove exactly when a grave site or an internment camp was created or expanded.
- For graves, look for signs of changes in the landscape – such as ground that appears to have been disturbed, or where shrubs, trees or grass have been cleared/are not growing, and appear different to the surrounding land. You might also see shadows cast by a mound of earth.

Be aware:

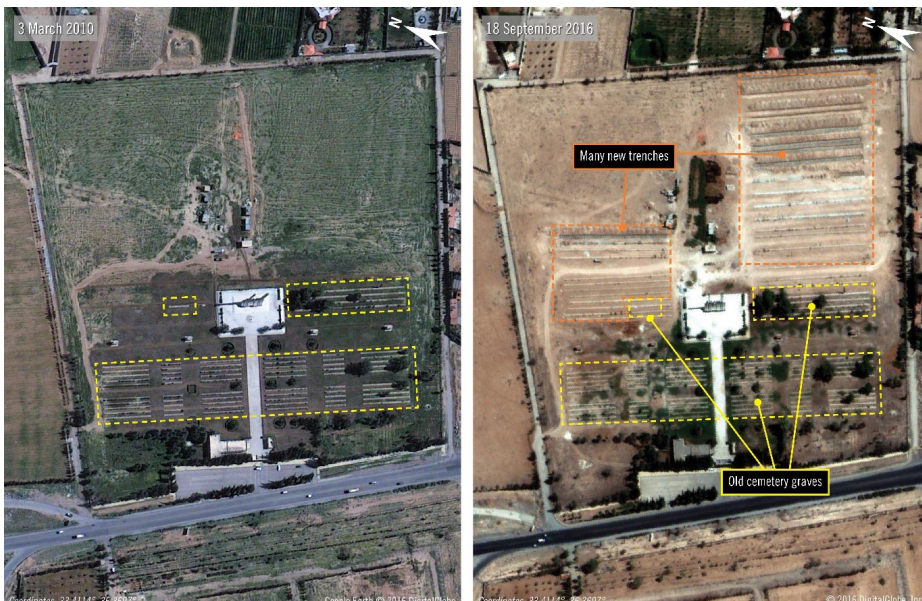
- Neither satellite nor ground-level photos of a suspected grave can definitely confirm the contents. New technologies are developing all the time that can perform remote imaging, detect changes in vegetation and soil, and other techniques that can confirm the presence of human remains, but these require highly specialist equipment and knowledge.
- Documenting and publicizing the location of a grave could put it at risk: perpetrators could dig up the grave and relocate or destroy the contents. (Grave sites could also be affected by family members who want to reclaim the body of a loved one.)
- You will need to weigh up the risks to the grave versus the benefits of being able to at least partially document it before it would possibly be moved or destroyed

anyway. Remember there may be other opportunities in the future for the remains to be properly exhumed and identified, and forensics experts can distinguish between primary and secondary graves.

Examples: Using satellite imagery to document suspected graves

In Burundi in late 2015/early 2016, a number of killings of political protestors were known to have recently taken place. Amnesty International found and documented a suspected mass grave by triangulating the testimony of witnesses on the ground, ground-level photos and satellite imagery. By analysing before and after satellite images around the dates of the killings, Amnesty International was able to identify the appearance of a newly disturbed area of ground. This correlated with other sources of information that a burial may have taken place in that location.³⁰

As part of an investigation into mass enforced disappearances at Saydnaya prison in Syria, Amnesty International analysed satellite imagery to detect significant increases in the number of graves in two cemeteries where victims of enforced disappearance killed at Saydnaya were being buried. This increase was identified by comparing images over a several-year period.³¹



Left image: Google Earth © 2016 DigitalGlobe. Right image: © 2016 DigitalGlobe, Inc. A cemetery near Damascus, Syria. Amnesty International used satellite imagery to show how new, 90 meter-long trenches began to appear in 2013 and continuing into 2014. By 18 September 2016, imagery shows the grave area had more than doubled in size with additional 90 metre-long trenches.

Chapter 6

Verifying your information,
analysing your findings and
establishing patterns

6.1 Verifying information

In any human rights investigation, information should never be publicized or shared before it has been verified. This can be particularly challenging in enforced disappearance investigations, as the suppression of information means there may be limited evidence available and few sources between which to corroborate details.

Where multiple cases are being reported, identifying patterns between cases can be very helpful in corroborating the consistency of your information with other cases and wider patterns. Analysing your information, drawing conclusions and identifying patterns between cases is explained below. However, before trying to correlate cases and identify patterns, you must verify the information in each individual case to the fullest extent possible.

► *See Ukweli Main Book, Chapter 9 for further guidance on verifying your information using the three main criteria of consistency with other sources, credibility of sources and consistency with the context.*

Key reminders and considerations on verifying your information in possible enforced disappearance cases

- Is the information consistent between different sources? Are details about what happened corroborated by different types of evidence, and/or a variety of sources (to avoid bias)?
- Is your testimonial evidence consistent with other cases you know of/reported by others (for example, have other people from the same political group been targeted, were the methods of abduction similar)?
- Are the testimonies of first-hand sources consistent with/supported by the documentary evidence you have collected, and the physical evidence you have observed?
- Is the information consistent with what is known of the context?
- Seek the opinion of experts whenever relevant and possible to verify or interpret photos, video footage and other documentary evidence, and details mentioned by witnesses during interviews. Forensics, medical and weapons experts – among others – might be relevant to review evidence relating to signs of torture, signs of cause and/or manner of death, suspected (mass) graves, and ammunition or weapons found at abduction, execution or grave sites. Has the expert assessment confirmed technical details in the information or assessed the consistency of accounts/photos with what is known on the subject?
- Are there any inconsistencies or contradictions in the information between sources?

- In the absence of information in many cases, be particularly aware of any assumptions and speculation family members and other witnesses (and you) may be making.
- Remember that survivors of disappearances may tell you things they believe to be true because they were given false information or because their memory of events has been affected by trauma.

6.2 Analysing your findings and drawing conclusions

After verifying the specific details of cases, you then need to analyse your findings in order to conclude whether the case constitutes an enforced disappearance. Consider:

- Are all three components of an enforced disappearance present in the case?
- What legal obligation has been violated, and by whom? Are these obligations under national/international law (sources of these obligations? Such as specific legal instruments)? Does your government have obligations under the relevant international law (for example under the Convention on Enforced Disappearances)?
- Were other human rights violated in relation to the case? Again, what legal obligations have been violated, and by whom?
- Does the suffering of the victim/family member appear to amount to torture? (For cases perpetrated by an agent of the state for a violation, or by a state or non-state actor for a crime against humanity.)
- Does any national legislation applied in the case conform with international law and standards (such as anti-terrorism legislation)? Do you need to call for it to be reviewed/amended?

If the case does not constitute enforced disappearance, it may nevertheless constitute one or more other violations. Identify other violations you think may have occurred, and return to the legal framework to analyse what legal obligation has been violated, and by whom.

In many enforced disappearance cases, it may not be possible to absolutely confirm the details or to draw definite conclusions. Use your judgement and thoroughly assess the information you have.

If there are strong indications that an enforced disappearance has taken place but not all the details could be verified, you can still report it, but be clear and transparent that some of the information is unconfirmed or the evidence is not conclusive. Where there is a wider pattern of disappearances occurring, you can conclude that an enforced disappearance “is likely to have occurred” if other details in the case are consistent and the victim fits the profile of targeted groups or individuals.

Calling for further investigation

States party to the Convention on Enforced Disappearances have a duty to investigate credible allegations that disappearances have occurred. Where your information shows strong indications that enforced disappearances have taken place, you can call for investigations to be carried out by the relevant government bodies, as well as other mandated institutions such as security forces' oversight bodies, national human rights commissions, ombudsman offices, and so on.

Where there is evidence that widespread or systematic enforced disappearances are occurring, or if the government has shown it is unable or unwilling to conduct thorough, impartial and credible investigations, or any investigations at all, you can call for an independent international investigation.

6.3 Storing/recording your findings and establishing patterns

If you are investigating multiple cases of enforced disappearance, either as part of a single investigation or when documenting recurrent violations over many years, analysing your findings will also involve looking for patterns between cases.

Establishing patterns can be particularly important for enforced disappearance cases, as the nature of the violation means you might not be able to establish a full picture of exactly what happened in a particular case. Successfully identifying patterns can help you to **piece together a picture of the practice** where the same aspects are repeated across a number of cases. For example, how enforced disappearance is being used, against whom, by whom, how abductions occur, what happens to victims, and so on. Such patterns can indicate what is likely to have happened to other victims, even if there is no information about them.

Identifying patterns can help **corroborate** information from other sources and help corroborate other cases – through comparing new information/new cases with previously gathered data. This can enhance the credibility of your information.

Such patterns can also help to **guide future investigations** – informing what you will investigate and where and how you will look for information in future cases – and serve as an early warning to help protect at-risk groups and individuals.

Crucially, if you can establish that there are patterns in the way enforced disappearances are being carried out – showing that they are conducted in a systematic way (meaning organized/pre-planned) – it **could form evidence of crimes against humanity**. Multiple cases occurring during the same timeframe is a pattern in itself and could show the use is widespread – also possible evidence of crimes against humanity.

6.3.1 *Storing and categorizing your findings*

If you are documenting multiple cases, it is extremely helpful to take a systematic approach to recording and storing your information.

Develop a standardized format in which you can enter the key details of each case – for example, case sheets (such as a template document) or a database (such as Excel spreadsheet). Having standardized categories means you enter the same information for each case. This enables you to easily search and analyse information across multiple cases according to specific details (variables) looking for patterns and similarities. If you are documenting large numbers of cases – hundreds, or even thousands – a database will be needed to properly track all cases reported and/or investigated.

When preparing a case sheet or a database to file enforced disappearance cases, include a separate category for each key piece of information, for example:

- case/file number
- date case entered into database/form
- identity of victim
- date of arrest/abduction
- location of arrest/abduction
- location of detention (if known)
- date of release (if relevant)
- cause of death (if relevant)
- location of grave (if known)
- alleged perpetrator (you may need separate columns for perpetrators of abduction/detention/killing)
- response of authorities (if relevant)
- types of documentary evidence (and file names/numbers)
- physical evidence observed/documented

When you have verified and recorded your information in your standardized format, you can then review across cases to look for repeated patterns in details.

Remember: You should also watch out for emerging patterns while your information collection is ongoing, but make sure you properly verify and analyse a suspected pattern when reviewing your findings.

Key details of enforced disappearance cases in which you might discern a pattern

1. Identity of victims • Do certain groups appear to be targeted? • Is there any pattern in the identities of victims who are killed compared to those who are released?	Do the victims have common characteristics, or have they participated in common activities/behaviour? • For example, political affiliation or activities, membership of certain movements/groups, professional occupation/activities, ethnicity, known/suspected membership of armed groups, religious background, sexual orientation, gender, age group, residents of specific areas.
2. Identity of perpetrator(s) (Different perpetrators may be involved in various aspects of the disappearance)	Do the perpetrators have common characteristics? • Same uniforms/fatigues/civilian clothing, headbands, tattoos, carrying same weapons, using same vehicles, speaking a certain language/dialect; • (Identifiably) belong to a specific branch/unit of security forces, militia, paramilitary or insurgent group (if you are able to identify the specific unit/entity); • Specific rank(s), specific commanders in charge.
3. Methods used to commit violation(s) In one or more of the components: • arrests/abductions • detentions • treatment in detention (such as torture) • executions • burials/graves	Are the same methods used to commit violations? • Abductions carried out in the same manner (location, timing, number of people involved/roles, weapons used); • Victims detained in same location/types of location; • Methods/instruments of torture, weapons, techniques, certain parts of the body targeted, forms of sexual violence, forced confessions; • Method of killings/executions (such as shooting, hanging, drowning, use of restraints, execution at graveside); • Burials: graves date from same timeframe; size of graves (similar number of bodies), location of graves (for example, close to detention centres); multiple graves with victims of shared identity; multiple graves created by same perpetrators.

4. Location • abductions • detentions • killings • burials	Are the disappearances taking place in specific areas? • Specific regions, cities, neighbourhoods, localities; areas predominantly inhabited by a specific ethnic, religious, political group, and so on; • Abductions, detentions, killings, burials occurring in the same locations.
5. Reasons given	Did the perpetrators give similar reasons for the violation? • Similar statements made at time of arrest/abduction or during detention, certain language used (could show common orders, common motivation of the violation/its intended purpose or impact, and so on); • Releases: same conditions/threats attached to release (such as refraining from political activity).
6. Specific context	What is the context before and after the violations? • For example, elections, demonstrations, internal/international armed conflict, riots, state of emergency, military operations/reprisals, counterterrorism operations, during migration.
7. Reactions of government authorities	Are there similarities in the government's response (or lack thereof)? • In statements or denials made in response to requests for information on the whereabouts/fate of the disappeared; • In the treatment of families during requests for information (for example, harassment, arrest); • In explanations of what might have happened to victims; • In investigations conducted (such as who carries it out, how thorough), absence of prosecutions or the alignment of prosecutions with international standards (such as intimidation of witnesses, courts responsible for prosecution (military/civilian), absence or nature of the verdict, and so on).

When interpreting patterns and drawing conclusions, be aware of structural factors that might influence them, for example, which cases are reported and how. Disappearances might be under-reported in groups that lack access to (or knowledge of) where to report to, due to insufficient resources, fear or for other reasons.

6.3.2 Identifying trends over prolonged periods

If you are monitoring and documenting enforced disappearance cases over an extended period, you might notice trends in certain aspects of the violation, for example, the identity of the victims has changed (the shared identity of victims as a group) or the frequency of the violation has changed. You might note that the number of incidents per week or per month has increased or decreased over a certain period.

Do not make assumptions about the reason for a trend without verifying the cause. For example, a reduction in the number of reported cases does not necessarily mean a reduction in the number of actual cases.

When a trend has been identified, assess the **contextual information to see if additional dynamics have contributed to the change**. For example, a drop or a rise in the number of cases might come shortly after a political change, a change in the region's military commander, and so on.

Chapter 7

Taking action

There are a range of actions you can take at the national, regional and international levels to conduct advocacy around individual cases and patterns of enforced disappearance, and to advocate for strengthened institutional protections against disappearances. In contexts where it is feasible, you may also assist the family to take immediate steps to try to locate or secure the release of the disappeared person.

7.1 Immediate action

It is likely that family members will have taken steps to try to locate the disappeared person, or to find out information about their whereabouts or fate. In some contexts, there may be a general understanding that it is too dangerous and/or that there is no point in trying to ask the authorities for information about a disappeared person. As discussed in Chapter 3, information about whether and how the family have tried to find out the fate of the disappeared should be covered in all interviews with family members.

However, in some cases family members might want your assistance to take immediate action to try to locate the disappeared person or secure their release. There are two main courses of action that can be taken immediately to try to locate or secure the release of the disappeared person.

1. Try to establish the whereabouts or fate of a disappeared person

This might involve going to police stations, detention centres/prisons or civilian administration offices to ask for information, request confirmation of a detention or report a missing person or list of persons, and request an investigation into the disappearance(s). You could also consider approaching hospitals and morgues to search for the individual.

2. Use a legal procedure to challenge the lawfulness of the detention

If you are a lawyer or have identified a lawyer who will assist, you may be able to file an application for a writ of habeas corpus, a writ of amparo or other procedures on behalf of the detainee (as discussed in Chapter 1), in countries where such procedures exist. (While the right to challenge the lawfulness of a detention is a universal right, not all countries' legal systems have procedures in place to challenge the legality of a detention through the courts.)

Decisions on whether or not to approach the authorities to ask for information will be highly dependent on the context.

If the family have already tried to take legal steps to locate the individual or if it is widely considered unsafe to do so, then you should not consider either of the above actions.

Requesting information from the authorities can sometimes confirm that the case is not an enforced disappearance – for example, if the authorities acknowledge the detention but the family have not been informed.

Where the above steps might be feasible:

- Before you begin work on enforced disappearances or conduct any interviews, familiarize yourself with any legal processes available in your country to challenge the lawfulness of a detention.
- Be aware that any action could potentially result in further repercussions for the victim, and for the person who asks for information/submits the application.
- Before approaching the authorities or initiating a legal procedure, consider the most suitable person/entity to take these actions and carefully assess any risks involved – and prepare to respond to those risks.
- These decisions should be made in consultation with the family, and legal representatives if relevant/possible. Decisions should consider the risks of taking action and the likelihood of success.

7.2 Objectives of advocacy and other action on enforced disappearances

Your advocacy efforts and other activities are likely to focus on four main objectives on which you call on the state to take action.

1. Reveal the fate and whereabouts of persons who have been subjected to enforced disappearance

This might include calls for:

- Immediate release of the victim(s);
- Immediate disclosure of information to family members – on the whereabouts of disappeared persons, information on their fate or the whereabouts of the remains;
- The government to initiate an investigation into the disappearance(s), including investigations into the whereabouts of children born to victims of disappearance, and the identification of remains where relevant;
- The return of victims' remains to their families;
- The publication of the names of all those detained in the country.

2. Remedy and reparation for survivors and family members

This might include calls for:

- Access to justice for survivors and family members;

- Provision of reparation, including rehabilitation (for example, access to psycho-social services), restitution (such as of property), reinstatement (for example, to a prior position of employment and reinstatement of pension rights), satisfaction and guarantees of non-repetition;
- Compensation for harm caused;
- Necessary laws, policies and mechanisms established to realize the right to remedy and reparation for victims of enforced disappearances (survivors and family members);
- Measures/assurances to ensure that reparations programmes are not conditional on any related processes (see Section 7.5).

► *The box below contains details on the right to remedy and reparation for victims and explains the different areas of reparations.*

3. Investigations and prosecution of perpetrators

This is one aspect of the right to satisfaction (see box). This might include calls for:

- All persons suspected of criminal responsibility for enforced disappearances (and related violations) to be brought to justice in fair trials that meet international standards;
- Measures to be implemented to ensure effective investigations can take place (including adequate independence, sufficient funding, cooperation from state organs);
- If necessary, measures to be put in place to protect victims and witnesses.

4. Longer-term measures to increase safeguards against enforced disappearance

These measures are related to guarantees of non-repetition (see box). This might include calls for:

- An end to all practices that amount to enforced disappearance;
- Criminalization of enforced disappearance in national legal frameworks;
- Measures to ensure essential safeguards against enforced disappearances are in place in policing, judicial and corrections systems;
- Ratification of the Convention on Enforced Disappearances (for states that have not yet ratified), including making the declaration enabling individuals to submit complaints to the Committee on Enforced Disappearances (see below).

Guidance: The duty to prevent

Under the Convention on Enforced Disappearances, states party have a duty to prevent – to put in place a state apparatus that minimises the possibility that persons will be subjected to enforced disappearance. This includes adequate

procedures to ensure people are detained in accordance with the law, case management systems and systematic record keeping in places of detention, and independent monitoring of places of detention.

Remedy and reparation under the Convention on Enforced Disappearances and other areas of international law

The Convention on Enforced Disappearances specifies that the right to reparation includes compensation for “material and moral damages and, where appropriate, other forms of reparation such as (a) restitution; (b) rehabilitation; (c) satisfaction, including restoration of dignity and reputation; (d) guarantees of non-repetition.”

Definitions:

- **Restitution** – Measures to restore the victim to their original situation before the violation occurred. This includes restoration of liberty, return to place of residence, restoration of property and employment, enjoyment of human rights, identity, family life and citizenship.
- **Compensation** – Should be provided for damage that can be economically assessed, proportional to the gravity of the violation, such as physical or psychological harm; lost opportunities (for example, employment, education); material damages, loss of earnings, and loss of earning potential; moral damage; costs of legal, medical and psychological assistance.
- **Rehabilitation** – Including medical and psycho-social care, legal and social assistance.
- **Satisfaction** – Might include measures aimed at ending continuing violations; investigation/verification and full and public disclosure of the truth (provided this does not cause further harm to the victim, family or other people involved in the case); efforts to establish the whereabouts of the disappeared, the identities of abducted children, the locations of the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies with reference to the families’ wishes; an official declaration restoring the dignity, reputation and rights of the victim and closely connected persons; public apology, acknowledgement of the facts and acceptance of responsibility; judicial and administrative sanctions against perpetrators; commemorations and tributes to the victims.
- **Guarantees of non-repetition** – Measures to strengthen long-term protection against enforced disappearance, such as measures to ensure effective

civilian control of military and security forces; ensure all civilian and military proceedings adhere to international standards for fair trial; strengthen the independence of the judiciary; provide human rights and humanitarian law training for law enforcement, military and security forces; amend or repeal laws contributing to human rights violations.

Article 24 (4,5) of the convention requires states party to ensure that their legal systems enshrine the right of victims of enforced disappearance to obtain reparation and prompt, fair and adequate compensation.

7.3 Deciding what action to take

Your objectives will influence what actions you take, what information you use and how you use it.

- Highlighting cases and exposing practices can be incredibly important to counter the secrecy surrounding enforced disappearances. But if widespread enforced disappearances, or other serious violations, are still ongoing, carefully consider the possible consequences of taking action.
- Decisions on action(s) to take regarding disappearances must be informed by discussions with family members of the disappeared persons. Any decision regarding actions on individual cases, or actions in which individual victims will be named, must be decided jointly with the family members of the individual (or the survivor, where relevant).
- Assess the possible risks of each action – to the disappeared person, to family members and to yourself/your organization – to determine the most effective way to achieve your objectives without increasing the risk of harm to anyone.
- As discussed in Chapters 1 and 2, as a starting point, check what your government's legal obligations are regarding enforced disappearance, including in the national legal framework, and international conventions and other instruments your government has ratified. This will inform your advocacy messages, efforts to achieve justice and any other actions you might take.

7.4 Publishing reports/statements, media work, activism

Unlike other human rights reporting, which usually conceals the victims' identities for their safety, it can be useful to actively highlight the cases of victims of enforced disappearance in order to pressure the government to release information about their fate or whereabouts. You may decide to publicize cases or the pattern of enforced disappearances through reports, media work and activism in line with your identified objectives.

Remember: Decisions to highlight individual cases must have the informed consent of the disappeared person's relatives and be based on an assessment of the risks to the disappeared person, the family and to you.

If publishing the results of your investigation may put you at risk, you could try to establish secure channels to convey your findings to the international media, or find an international organization to partner with in publicly reporting your findings.

In many contexts where enforced disappearances are occurring, the families of the disappeared, their friends and supporters establish protest, activism and solidarity movements or establish NGOs to campaign on disappearances, such as SOS Disparus in Algeria and Families for Freedom in Syria. You could collaborate with or find other ways to support these movements. Such movements can create significant international attention and provide an important source of solidarity for family members, but can also be extremely dangerous (see box below).

Example: Families taking action

During Argentina's period of military rule, tens of thousands of people were disappeared. The "Mothers of Plaza de Mayo" were a group of women who gathered every Thursday to silently walk around the Plaza de Mayo in the centre of Buenos Aires to protest the disappearance of their children. Tragically, many of the founding members of the movement were themselves disappeared and murdered.

Two important dates could serve as hooks for your advocacy at the national or international level, media work, or for public action to pressure the government to release information, initiate investigations or other calls related to your identified objectives:

- 30 August: International Day of the Disappeared
- 24 March: International Day for the Right to the Truth of Victims of Gross Human Rights Violations and for the Dignity of Victims



© Jason Florio and Helen Florio. Victims call on the Gambian government to investigate the enforced disappearances of their relatives which occurred during the 22 years of Jammeh's rule. Banjul, May 2018.

7.5 Action at the national level

7.5.1 Seeking justice

Where victims want to pursue justice, you can support them by initiating or accompanying them through the legal process. This could have several purposes:

- To try to ensure that the perpetrators are brought to justice;
- To seek compensation for survivors or for family members of the disappeared;
- To seek other forms of reparation (see box above);
- To help end impunity and strengthen protections against enforced disappearance in the longer term.

If enforced disappearance is a crime under domestic law in your country, and/or if the state is a party to the Convention on Enforced Disappearances, the government has a **duty to investigate**. The victims (survivors, family members of the disappeared) have the **right to the truth**, and a **right to remedy, reparation and compensation**.

Similarly, where there are allegations of torture or where cases might amount to torture, if torture is a crime under domestic law in your country, and under the prohibition on torture under the Convention against Torture and customary international law, governments have a duty to investigate and victims have the right to reparation and compensation.

Legal processes can be lengthy and expensive, and there is no guarantee of success. However, even if a case is unsuccessful, it can serve some important functions. Some regional and international courts and bodies (such as individual complaints to the Committee on Enforced Disappearances – see below) require that domestic avenues be exhausted before they can consider a case/complaint. Court cases could also draw attention to the practice of enforced disappearance in your country.

Efforts to seek justice will be the family's decision. In contexts where widespread disappearances are occurring and ongoing, it will likely be neither feasible nor safe to do so.



© REUTERS/Marcos Brindicci. A member of the Madres de Plaza de Mayo and friend react after hearing the verdict of the trial of former Argentine Navy officer Alfredo Astiz and other military officials in 2011. Astiz, known as the “Blonde Angel of Death,” was jailed for life for his role in Argentina’s 1976–1983 dictatorship.

7.5.2 Campaigning on reparations and compensation measures

In addition to supporting individual legal cases, you might also want to campaign to ensure that the government provides reparations measures/programmes to victims, and that they are appropriate to the circumstances and the gravity of the cases and the harm suffered. This might encompass compensation, access to rehabilitation services, restoration of employment and pension rights for victims, and so on.

Particularly where widespread disappearances have taken place, you may also want to campaign for symbolic reparations such as official recognition/public apology, lists of names, monuments, remembrance sites, commemorative occasions/events, and religious or cultural ceremonies or rituals.

It is vital to ensure that reparations processes:

- Acknowledge and respond to the fact that family members are also victims of enforced disappearance, and address the significant harm caused to them. If reparations processes in your country do not do so, you might want to campaign to ensure this recognition.
- Do not make access to reparations for family members dependent on a declaration of death. This process can be extremely lengthy in some countries, which can significantly delay victims' ability to access assistance. In circumstances where the victim's family have to make the decision to declare the missing person dead in order to access assistance, it can also place an extreme emotional burden on them. A declaration of death might also cause an investigation to cease, which can mean the victim's family may be forced to choose between receiving assistance or finding out the truth (see the box below).
- Where they are part of transitional justice processes occurring after the end of a period of conflict or authoritarian rule, do not make compensation and other forms of reparation conditional on the withdrawal of charges against, or pardoning of, the alleged perpetrators of the disappearance.

Legal status of the disappeared

The Committee on Enforced Disappearances has stated that parties to the Convention must incorporate into their legislation a legal category of "declaration of absence as a result of enforced disappearance" in order to address the legal status of the disappeared and their family.³²

This means that the disappeared person does not have to be declared dead in order for their relatives to access reparations, assistance or benefits, inherit assets or wealth, or for other matters relating to social welfare, family law, property rights or finances.

Several countries have adopted this legal category, including Peru, Argentina, Brazil, Chile, Colombia and Uruguay,³³ although most of these laws apply to a specific period of time. The Committee has declared that families must be able to obtain such a declaration of absence for cases of enforced disappearances committed during any period.

Be aware of any structural obstacles that prevent family members from being able to exercise their rights or access justice or support, and try to address these through your advocacy and activism. For example, women may be prevented from accessing family assets in the absence of a death certificate for their husband, or female family members may be subjected to repercussions for transgressing societal norms in trying to access justice.

7.5.3 Non-judicial mechanisms and bodies

Many countries have a variety of other mechanisms and bodies that, in theory, have a mandate to receive and investigate allegations of human rights violations including enforced disappearance, for example:

- a national human rights commission;
- an ombudsman;
- parliamentary commissions or committees on human rights;
- an independent police complaints/oversight commission.

The degree of independence of these bodies varies. In some countries, they can be effective tools for exercising oversight and holding the government and security forces to account. In others, they are weak, lack independence and are heavily influenced by the government.

Based on your assessment of the strength of these institutions, you may consider submitting complaints to them to put pressure on your government. Showing that you have approached all the relevant bodies could help demonstrate the authorities' refusal to confirm or investigate an enforced disappearance and the whereabouts and fate of a disappeared person, which might be particularly relevant when referring cases to regional or international mechanisms.

7.6 Action at the regional level

You can also submit cases, complaints or information to regional human rights bodies or courts such as the African Commission on Human and Peoples' Rights, African Court on Human and Peoples' Rights, the Inter-American Commission on Human Rights, and the European Court of Human Rights. Each has its own procedures and admissibility

requirements. At the time of writing, the Middle East does not have a regional mechanism mandated to oversee human rights compliance and receive complaints.

In states that are party to the African Charter on Human and Peoples' Rights, individuals and NGOs can submit a communication to the African Commission on Human and Peoples' Rights (African Commission) to report a violation of one of the rights protected in the charter.

- Submissions can be made on behalf of another person, but you must name the victim.
- You must include your name, but you can request anonymity during the consideration of the complaint.
- Domestic remedies have to be exhausted before the complaint is submitted, unless they are not available or unduly prolonged.
- You cannot submit a communication about a case that is already under consideration or has been considered by another international body (such as the UN Committee on Enforced Disappearances – see the link to the guidelines below).

► *Guidelines on submitting complaints to the African Commission can be found here: achpr.au.int/en/guidelines-submitting-complaints.*

If the case is deemed admissible, the commission considers evidence/responses from the author and the state in question to decide whether a violation of the charter has occurred, and issues recommendations to the state in question. If the recommendations are adopted by the African Union Assembly of Heads of State and Government, they become binding on the state in question. However, the lack of enforcement mechanism to compel states to abide by the recommendations means they are often disregarded.

Therefore, a decision from the commission may not result in changes in the case, but it will form part of the public record – acknowledging that an enforced disappearance has occurred, and putting additional pressure on the government to reveal the whereabouts of the disappeared person and provide justice to the victims.³⁴

Your advocacy can be directed towards regional human rights courts, such as the European Court of Human Rights and the African Court on Human and Peoples' Rights (if your state made the necessary declaration recognizing the court's competence to receive complaints from individuals and NGOs).³⁵

Some courts, such as the East African Court of Justice, do not have a specific human rights brief but are sometimes prepared to take on serious human rights issues if the government in question is deemed to have breached its regional obligations.

7.7 Action at the international level

You can also use international mechanisms to pressure the state to release a disappeared person, provide information or investigate in specific cases, or to draw attention to the wider practice of enforced disappearance in the country.

If your state is party to the Convention on Enforced Disappearances, you can submit cases for urgent action and individual complaints or report on a general situation to the UN Committee on Enforced Disappearances. If not, you can submit cases for action to the UN Working Group on Enforced and Involuntary Disappearance (WGEID), which can consider cases from any country. The two bodies, and the ways to make submissions are explained below. If you are working on submissions with family members of victims of disappearances, it is important to explain that it can take several years for these bodies to investigate or consider cases.

7.7.1 Submitting cases to the WGEID

The Working Group's primary task is to help families locate disappeared persons by acting as a communications channel between families and the state.

- Family members (or someone acting on their behalf) can submit cases of enforced disappearance to the WGEID.
- Cases should be submitted in writing and should contain as many details as possible about the identity of the disappeared person and the circumstances of their disappearance.
- Cases can be submitted to the Working Group from any country, regardless of whether it has ratified the Convention.
- You do not need to have exhausted domestic remedies to submit a case for consideration.

The Working Group uses standard procedures or urgent appeals, depending on how recently the case occurred:

- **Standard procedures:** Cases that meet the requirements of the Working Group will be submitted to the governments in question, requesting they investigate and inform the Working Group of the results.
- **Urgent appeals:** Credible allegations that a person has been (or is at risk of being) forcibly disappeared within three months of the date of the submission will be urgently transmitted to the minister for foreign affairs of the relevant government. The government will be requested to investigate the fate or whereabouts of the person(s) and to inform the WGEID of the results.

Some governments respond to the communications with information, while others do not. A submission to the WGEID, and a communication from the group to the government

concerned, is no guarantee of results. It can, however, apply additional pressure to the government and draw attention to the individual case and possibly the wider situation, and sometimes results in further information being provided.

- *To make a communication to the Working Group about an alleged enforced or involuntary disappearance, use this form: [ohchr.org/Documents/issues/Disappearances/Communication_form_E.doc](https://www.ohchr.org/Documents/issues/Disappearances/Communication_form_E.doc)*
- *More information on the working methods of the WGEID can be found here: [ohchr.org/en/special-procedures/wg-disappearances](https://www.ohchr.org/en/special-procedures/wg-disappearances)*

7.7.2 Submitting cases to the UN Committee on Enforced Disappearances

The role of the Committee on Enforced Disappearances is to monitor state parties' compliance with the Convention on Enforced Disappearances. Individuals, family members and NGOs can submit requests for an urgent action, information and individual complaints. The Committee can only consider cases from countries that have ratified the Convention, and cases that occurred after the Convention's entry into force. However, because enforced disappearance is seen as a consolidated and continuous act, where a disappearance was ongoing at the time your country ratified the Convention it entered into force, the Convention applies and the Committee can look at the **whole act** and not only the aspects that occurred after the entry into force.

Urgent actions

Requests to urgently find a disappeared person can be submitted to the Committee. You can also ask the Committee to request the government in question to urgently take interim measures to locate and protect the disappeared persons, and to protect the complainant, witnesses, relatives of the disappeared person and their lawyer, and persons participating in the investigation.

The majority of urgent actions remain unresolved. In a small number of cases, the government in question responds with information. The Committee includes an update on all urgent action requests in its annual reports. The main purpose of filing an urgent action is thus to expose the government's practices, apply pressure and draw attention to the case. The benefits of doing so should be weighed up with family members, with realistic expectations of outcomes.

Making a submission

- Requests can be submitted by the relatives of the disappeared person, their legal representative, or any person authorized by the relatives, or any other person with a legitimate interest.
- Prior efforts must have been made to raise the case with the relevant bodies in the state in question.

- Requests must be submitted in writing, contain the identity of the disappeared person and a detailed description of the facts.
- You can request that the identity of the person submitting the request remains confidential.
- The Committee can take various follow-up actions in response to requests, including making recommendations to the state party concerned, ordering interim measures to locate and protect the disappeared person, and ordering protection measures – to protect the disappeared person, witnesses, relatives, their defence counsel or other persons participating in the investigation.
- You cannot submit a request for an urgent action if the case has already been submitted to another international mechanism.

► *Information on the submission process and a model form for submitting a request for an urgent action can be found here: tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CED/C/4&Lang=en*

Submitting information to the Committee

NGOs, associations of victims' families and other relevant civil society actors can also submit information to the Committee about cases and patterns of enforced disappearance in their country. This can be done by submitting an alternative report or other information or documentation on the state's actions in relation to its obligations under the Convention. NGOs can also attend the Committee's review of a government's report on the steps taken to implement the Convention, and can make oral submissions during the session. Submitting information to the Committee can be an effective way of drawing international attention to the practice of enforced disappearance in your country. Based on information submitted that a state is seriously violating the provisions of the Convention, the Committee may request to the state in question that members of the Committee visit and report back. The state may refuse or ignore the request.

Individual complaints

If your country made the necessary declaration under Article 31 of the Convention,³⁶ the Committee can receive complaints from individuals about a violation of their rights under the Convention.

- The communication should be submitted by or on behalf of persons who consider themselves to be victims of a violation by a state party of one or more of the rights set forth in the Convention.
- Domestic remedies must be exhausted before submitting the complaint.
- The communication must not be anonymous. The Committee needs to be in

contact with the victim/author throughout the process. But you can request that your/the victim's identity is not disclosed in the Committee's decision on the complaint.

- You must have the consent of the person concerned or, where the disappearance is ongoing, show that you have a legitimate interest and that the person concerned is not in a position to give their consent.
 - You cannot submit a case if it has been considered by another UN mechanism (such as the Committee against Torture) or by a regional mechanism (such as the African Commission on Human and Peoples' Rights).
- *For guidance and a model form on how to submit a complaint to the Committee, see: "Submitting a complaint": tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CED/C/5&Lang=en*

Annex

Resources and references

Other handbooks in this series

- Amnesty International, *Ukweli: Investigating Human Rights Violations*.
 - *Main Book, with detailed guidance on the process of investigating violations, which should be used in conjunction with this handbook.*
- Amnesty International, *Ukweli: Investigating Human Rights Violations – Abridged version*.
 - *This publication is an abridged version of the Ukweli Main Book and focuses on its practicality. It can be used in conjunction with other books in this series.*
- Amnesty International, *Ukweli: Investigating Torture*.
 - *It may be helpful to refer to this handbook when interviewing survivors of enforced disappearance and family members of the disappeared.*

These publications are accessible on: [amnesty.nl/actueel/ukweli-monitoring-and-documenting-human-rights-violations-in-africa](https://www.amnesty.nl/actueel/ukweli-monitoring-and-documenting-human-rights-violations-in-africa)

Other resources

- Amnesty International (2014). *Fair Trial Manual* (Second Edition).
[amnesty.org/en/documents/POL30/002/2014/en/](https://www.amnesty.org/en/documents/POL30/002/2014/en/)
 - *This manual contains a comprehensive guide to the rights associated with each stage of the arrest and detention of individuals. It is an essential reference for the “protection of the law” outside of which victims of enforced disappearance are placed, and the various due process rights violated during disappearances.*
- International Commission of Jurists (2015). *Enforced Disappearance and Extrajudicial Execution: Investigation and Sanction: A Practitioners Guide*.
[icj.org/wp-content/uploads/2015/12/Universal-Enforced-Disappearance-and-Extrajudicial-Execution-PGN09-Publications-Practitioners-guide-series-2015-ENG.pdf](https://www.icj.org/wp-content/uploads/2015/12/Universal-Enforced-Disappearance-and-Extrajudicial-Execution-PGN09-Publications-Practitioners-guide-series-2015-ENG.pdf)
- International Committee of the Red Cross and Red Crescent. *Missing Persons and their Families Factsheet*.
[icrc.org/en/document/missing-persons-and-their-families-factsheet](https://www.icrc.org/en/document/missing-persons-and-their-families-factsheet)
- International Committee of the Red Cross and Red Crescent (2004). *Operational Best Practices Regarding the Management of Human Remains and Information on the Dead by Non-Specialists, for all armed forces; for all humanitarian organizations*.
[icrc.org/en/doc/assets/files/other/icrc_002_858.pdf](https://www.icrc.org/en/doc/assets/files/other/icrc_002_858.pdf)

- Justice and Peace and Netherlands Helsinki Committee (2014). *Engaging with the Committee on Enforced Disappearances: Addendum to the Manual Practical Guide for Relatives of Disappeared Persons and NGOs Using Law Against Enforced Disappearances*.
justiceandpeace.nl/wp-content/uploads/2020/04/Manual-addendum-to-using-law-against-enforced-disappearances.pdf
 - *Manual on the ways in which NGOs can work with the Committee on Enforced Disappearances, including making communications, submitting information, advocating for country visits.*

International bodies

- UN Committee on Enforced Disappearances
ohchr.org/en/treaty-bodies/ced
- UN Working Group on Enforced or Involuntary Disappearances
ohchr.org/en/special-procedures/wg-disappearances
- International Committee of the Red Cross and Red Crescent (ICRC)
 - Information on missing persons: icrc.org/en/war-and-law/protected-persons/missing-persons
 - Restoring Family Links: familylinks.icrc.org
 - *Service provided by the ICRC – through radio broadcasts of messages seeking family members, distribution of photo books of separated/missing persons among displaced or home communities, and so on. The service seeks to identify, restore contact between and reunite family members, and to clarify the fate of those who remain missing. Searches are initiated through national Red Cross and Red Crescent societies in the searcher's home country, or through partner organizations where a national chapter is not operational.*

Organizations working on enforced disappearance

- International Commission of Missing Persons (ICMP)
icmp.int
 - *The leading international organization working exclusively on the issue of people who have gone missing as a result of armed conflict, human rights violations and abuses, natural disasters, organized crime, irregular migration and other causes. The ICMP works with governments, civil society organizations, justice institutions and others to address the issue of missing persons by providing technical expertise to locate, recover and identify the missing, through institutional capacity-building, supporting the drafting of legislation and encouraging public involvement. The ICMP also has a DNA*

testing programme, through which it has tested over 50,000 bone and tissue samples provided by governments, along with thousands of family reference DNA samples to support the identification of missing persons.

You can report a missing person to ICMP: oic.icmp.int/index.php?w=mp_reg&l=en

- Argentine Forensic Anthropology Team (Equipo Argentino de Antropología Forense, EAAF)
eaaf.org
 - *An international NGO that applies forensic sciences to the investigation of human rights violations through programmes in investigation, training and advisory assistance, scientific development, strengthening the field, and documentation and dissemination.*
- International Coalition Against Enforced Disappearances
icaed.org/home
 - *The principal objective of the Coalition is to maximize the impact of the activities carried out by its members in favour of an early ratification and effective implementation of the Convention for the Protection of all Persons from Enforced Disappearances.*
- Redress
redress.org/our-work/enforced-disappearance-in-africa
 - *Redress works with partners in several African countries to help human rights lawyers bring cases challenging enforced disappearance, and to conduct advocacy with individual governments and the African Union/African Commission on Human and Peoples' Rights.*

Resources on ambiguous loss

- Dr Pauline Boss (2017). “Families of the Missing: Psychosocial Effects and Therapeutic Approaches”, *International Review of the Red Cross*, 99 (2), 519–534.
international-review.icrc.org/articles/families-missing-psychosocial-effects-and-therapeutic-approaches
- ICRC (2015). “The Agony and the Uncertainty: Missing Loved Ones and Ambiguous Loss”.
icrc.org/en/document/agony-and-uncertainty-missing-loved-ones-and-ambiguous-loss

Endnotes

- 1 Article 1(2), Convention for the Protection of All Persons from Enforced Disappearance, ohchr.org/sites/default/files/Documents/ProfessionalInterest/disappearance-convention.pdf, and Human Rights Committee, General Comment No. 29 on Article 4 of the International Covenant on Civil and Political Rights: Derogations during a State of Emergency, refworld.org/docid/453883fd1f.html. Also, Advisory Opinion of the Inter-American Court of Human Rights – habeas corpus may not be suspended by States party to the Convention in times of emergency: Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), Advisory Opinion OC-8/87 of 30 January 1987, Inter-American Court of Human Rights, corteidh.or.cr/docs/opiniones/seriea_o8_ing.pdf?fbclid=IwAR2dRWkjtrzi_kQwcce8qEosqOd4tTapMFpl-uGrhphwkYpkCop8qwengws.
- 2 United Nations Declaration on the Protection of All Persons from Enforced Disappearance, para. 17(1), ohchr.org/EN/ProfessionalInterest/Pages/EnforcedDisappearance.aspx; Working Group on Enforced or Involuntary Disappearances, General Comment on Enforced Disappearance as a Continuous Crime, ohchr.org/sites/default/files/Documents/Issues/Disappearances/GC-EDCC.pdf; Committee Against Torture, *Larez v. Venezuela*, (May 2015), ohchr.org/EN/HRBodies/CAT/Pages/Jurisprudence.aspx; European Court of Human Rights (ECtHR), *Varnava and Others v. Turkey* (Appl. No. 16064/90), Judgment, 18 September 2009, para. 147–49, hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-94162%22%5D%7D; UN Human Rights Committee, *Quinteros v. Uruguay* (July 1983), bayefsky.com/html/133_uruguay107vws.php, and *Lyashkevich v. Belarus* (April 2003), bayefsky.com/pdf/belarus_t5_iccpr_887_1999.pdf, European Court of Human Rights, *Kurt v. Turkey* (May 1998), refworld.org/cases,ECHR,49997ae512.html, European Court of Human Rights, *Timurtas v. Turkey* (June 2000), legal-tools.org/doc/7936aa/pdf/. Decisions of the Inter-American Court of Human Rights have also held that close relatives, spouses and permanent companions should automatically be presumed to be victims of violations of the prohibition. For example, in *Anzualdo Castro v. Peru* (Sept. 2009), corteidh.or.cr/docs/casos/articulos/seriec_202_ing.pdf; *Chitay Nech et al v. Guatemala* (para. 220) (May 2010), corteidh.or.cr/docs/casos/articulos/seriec_212_ing.pdf; and *Masacres de Ituango v. Colombia* (Ser. C) No. 148), para. 264 (July 2006), corteidh.or.cr/docs/casos/articulos/seriec_148_esp.pdf.
- 3 Article 9(4) of the International Covenant on Civil and Political Rights, Article 17(2) (f) of the Convention on Enforced Disappearances, Article 37(d) of the Convention

on the Rights of the Child, Article 16(8) of the Migrant Workers Convention, Article 7(6) of the American Convention on Human Rights, Article 14(6) of the Arab Charter on Human Rights, Article 5(4) of the European Convention on Human Rights, Principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Guideline 32 of the Robben Island Guidelines, Section M(4) and (5) of the Principles on Fair Trial in Africa, Article XXV of the American Declaration on Human Rights, Guideline VII(3) of the Council of Europe Guidelines on Human Rights and Counter-terrorism. Also see Article 8 of the Universal Declaration on Human Rights. While not expressly set out in the African Charter on Human and Peoples' Rights, the jurisprudence of the African Commission indicates that this right is inherent in Article 7(1) of the African Charter. *Constitutional Rights Project v Nigeria* (153/96), African Commission 13th Annual Report (1999), para. 17.

- 4 Committee against Torture, General Comment 2, para. 13, refworld.org/docid/47ac78ce2.html. See also European Court on Human Rights, *Ismoilov v. Russia* (2947/06) (2008), para. 145-152 (detention related to request for extradition); *Varbanov v. Bulgaria* (31365/96), (2000), para. 58-61 (detention related to proceedings for psychiatric internment); *Benjamin and Wilson v. United Kingdom* (28212/95) (2002) para. 33-28 (detention in hospital following discretionary life sentence); *Baritussio v. Uruguay*, HRC, UN Doc. A/37/40 (Supp. 40) (1982), para. 13 (security-related detention).
- 5 Human Rights Council resolution 15/18, para. 4(d)-(e), right-docs.org/doc/a-hrc-res-15-18/.
- 6 Article 17(2(f)) of the Convention on Enforced Disappearances, Article 7(6) of the American Convention on Human Rights, Section M(5)(b) of the Principles on Fair Trial in Africa. See also Principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- 7 Article 9 of the UN Declaration on the Protection of All Persons from Enforced Disappearance, Article X of the Inter-American Convention on Disappearance, Section M(5)(b) of the Principles on Fair Trial in Africa.
- 8 Committee Against Torture, *Larez v. Venezuela* (May 2015), ohchr.org/EN/HRBodies/CAT/Pages/Jurisprudence.aspx; UN Human Rights Committee, *Quinteros v. Uruguay* (July 1983), bayefsky.com/html/133_uruguay107vws.php; *Lyashkevich v. Belarus* (April 2003), bayefsky.com/pdf/belarus_t5_iccpr_887_1999.pdf; European Court of Human Rights, *Kurt v. Turkey* (May 1998), refworld.org/cases,ECHR,49997ae512.html; *Timurtas v. Turkey* (June 2000), legal-tools.org/doc/7936aa/pdf/; Inter-American Court on Human Rights,

Anzualdo Castro v. Peru (Sept. 2009), corteidh.or.cr/docs/casos/articulos/seriec_202_ing.pdf; *Trujillo Oroza v. Bolivia*, Reparations and Costs (Feb. 2002), para. 114, corteidh.or.cr/docs/casos/articulos/Seriec_92_ing.pdf; *La Cantuta v. Peru* (Nov. 2006), supra note 58, para. 125, corteidh.or.cr/docs/casos/articulos/seriec_162_ing.pdf; *Goiburú et al. v. Paraguay* (Sept. 2006), supra note 59, para. 101, corteidh.or.cr/docs/casos/articulos/seriec_153_ing.pdf; UN Human Rights Committee, *Jegatheeswara Sarma v. Sri Lanka* (2003), opil.ouplaw.com/display/10.1093/law:ihrl/1928unhrco3.case.1/law-ihrl-1928unhrco3. See also Working Group on Enforced and Involuntary Disappearances, General Comment on the Right to the Truth in Relation to Enforced Disappearances, ohchr.org/sites/default/files/Documents/Issues/Disappearances/GC-right_to_the_truth.pdf.

Note: in cases of enforced disappearances as a crime against humanity perpetrated by non-state actors (under the Rome Statute of the ICC), the treatment of the disappeared person and their family members cannot amount to torture, as actions only constitute torture when perpetrated by state agents.

- 9 Article 24, Convention on Enforced Disappearances. Working Group on Enforced or Involuntary Disappearances, General Comment on the Right to Truth in Enforced Disappearance Cases, ohchr.org/sites/default/files/Documents/Issues/Disappearances/GC-right_to_the_truth.pdf.
- 10 Working Group on Enforced or Involuntary Disappearances, General Comment on Enforced Disappearance as a Continuous Crime, para. 2, ohchr.org/sites/default/files/Documents/Issues/Disappearances/GC-EDCC.pdf.
- 11 Ibid., paras. 1, 2, 3 and 5.
- 12 United Nations, Convention for the Protection of All Persons from Enforced Disappearance, ohchr.org/Documents/ProfessionalInterest/disappearance-convention.pdf.
- 13 United Nations, International Covenant on Civil and Political Rights, ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf.
- 14 United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ohchr.org/sites/default/files/Documents/ProfessionalInterest/cat.pdf.
- 15 International Committee of the Red Cross, "International Humanitarian Law Databases, Rule 98: Enforced Disappearance", ihl-databases.icrc.org/en/customary-ihl/v1/rule98.
- 16 International Criminal Court, Rome Statute of the International Criminal Court, icc-cpi.int/resource-library/Documents/RS-Eng.pdf.

- 17 Organization of American States, Inter-American Convention on Forced Disappearance of Persons, oas.org/juridico/english/treaties/a-60.html.
- 18 For example, Decision of the African Commission: *Mouvement Burkinabe des droits de l'homme et des Peuples v. Burkina Faso* (2001), hrlibrary.umn.edu/africa/comcases/204-97.html.
- 19 Guidelines on the Protection of All Persons from Enforced Disappearances in Africa (2022), achpr.au.int/en/documents/2022-10-25/guidelines-protection-persons-enforced-disappearances-africa.
- 20 For some examples, see ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule98.
- 21 The UN General Assembly has repeatedly called on states to ensure that counterterrorism measures comply with international law, including the right to challenge the legality of detention. UN General Assembly Resolutions 65/221 para. 6(b)-(c), undocs.org/en/A/RES/65/221, and 64/168 para. 6(b)-(c), un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/168&referer=/english/&Lang=E; See also Human Rights Council Resolution 13/26 para. 9, documents-dds-ny.un.org/doc/UNDOC/GEN/G10/130/21/PDF/G1013021.pdf?OpenElement. The Working Group on Arbitrary Detention has underlined the importance of ensuring that all people deprived of their liberty in connection with terrorism-related activity enjoy the effective right to habeas corpus. UN Working Group on Arbitrary Detention, UN Doc. A/HRC/10/21 (2009) para. 53, 54 (e)-(f), documents-dds-ny.un.org/doc/UNDOC/GEN/G09/110/43/PDF/G0911043.pdf?OpenElement. For example, numerous human rights bodies have raised concerns that individuals held at Guantanamo Bay were deprived of this right for a number of years. See UN Mechanisms Joint Report on Detainees at Guantanamo Bay, UN Doc. E/CN.4/2006/120 (2006) para. 17-29, undocs.org/en/E/CN.4/2006/120.
- 22 For more detail, see United Nations General Assembly, Report of the Working Group on Enforced or Involuntary Disappearances on Enforced Disappearances in the Context of Migration (2017), undocs.org/en/A/HRC/36/39/Add.2.
- 23 See for Google Maps: google.com/maps and Google Earth Pro: google.com/intl/en_uk/earth/versions.
- 24 Definition from the International Criminal Tribunal for the Former Yugoslavia.
- 25 BBC. "What Happens inside Sudan's Secret Detention Centres?" BBC News, 13 February 2019. bbc.com/news/av/world-africa-47216487.
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- 32 Committee on Enforced Disappearances, Concluding observations on the report submitted by Germany, CED/C/DEU/CO/1 (27 March 2014), paras. 26 and 27, undocs.org/en/CED/C/DEU/CO/1; Concluding observations on the report submitted by Montenegro, CED/C/MNE/CO/1 (17 September 2015), paras. 32 and 33, undocs.org/CED/C/MNE/CO/1.
- 33 International Centre for Transitional Justice, *The Disappeared and Invisible: Revealing the Enduring Impact of Enforced Disappearance on Women* (2015), ictj.org/sites/default/files/ICTJ-Global-Gender-Disappearances-2015.pdf; Council of Europe, Commissioner for Human Rights Issue Paper: *Missing persons and victims of enforced disappearance in Europe* (2016), rm.coe.int/missing-persons-and-victims-of-enforced-disappearance-in-europe-issue-/16806daa1c.
- 34 See African Commission on Human and People’s Rights, *Mouvement Burkinabe des droits de l'homme et des Peuples v. Burkina Faso*: “Decision” (2001). caselaw.ihrda.org/ar/entity/wqwnr7geeqc.
- 35 See en.african-court.org/ for more information.
- 36 A list of states party that have made the declaration under Article 31 can be found at treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&clang=en.

UKWELI

Investigating Enforced Disappearances

Every day, human rights activists and organizations across the globe are investigating human rights violations being committed in the context of conflict, shrinking civic space, or for instance, counter-terrorism policies. It is essential that such investigations are conducted accurately and consistently. The findings of high-quality and credible investigations can influence policy and practice; provide reasonable grounds to start judicial investigations; help campaign and advocate for justice, remedy and assistance for survivors and victims of violations and accountability by perpetrators. It can also generate pressure on duty bearers. Moreover, reliable investigations are crucial for building and maintaining the legitimacy and reputation of human rights organizations and activists, locally, nationally and internationally.

This practical handbook was designed for human rights investigators working on enforced disappearances. It provides detailed information and guidance relevant to investigating enforced disappearances, verifying findings, writing reports and advocacy. It includes checklists, tips, case-studies, and practical considerations which investigators can adapt to their needs. It is designed to be used in conjunction with its main book entitled *Ukweli: Investigating human rights violations* and its condensed version *Ukweli Abridged*, which provide essential information on each stage of planning and conducting investigations into possible violations. Several thematic handbooks accompany these, which focus on investigating specific violations – including this present guide. Other handbooks focus on investigating torture, and sexual and gender-based violence and conflict-related sexual violence.

The Human Rights Capacity-Building Programme (HURICAP) of Amnesty International Netherlands has worked with African civil society organizations in building human rights capacity for 30 years. Following the successes of working with African civil society, HURICAP started operating in the Middle East in 2016. A key part of this work has been in strengthening the knowledge and skills of local human rights organizations and activists to monitor, document, and report on human rights violations and abuses. This handbook draws on this experience.

