

Enforced disappearance and its impact on victims' human dignity

La desaparición forzada y su repercusión en la dignidad humana de las víctimas

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ABSTRACT

The aim of this paper is to analyse enforced disappearance and its impact on the human dignity of the victims. Thirteen academic articles were selected from journals specialising in law, human rights, social sciences and psychosocial studies. Enforced disappearance remains a complex challenge that profoundly impacts the foundations of the rule of law and the protection of human rights. This crime, which transcends the physical affectation of the victims to generate devastating psychosocial consequences in their families and communities, demands a forceful and efficient legal response from states. The lack of homogeneous criminalisation, insufficient training of security forces, and gaps in justice and reparation mechanisms aggravate impunity, perpetuating the violation of fundamental rights.

Descriptors: terrorism; human trafficking; crime. (Source: UNESCO Thesaurus).

RESUMEN

Se presenta como objetivo analizar la desaparición forzada y su repercusión en la dignidad humana de las víctimas. Se seleccionaron 13 artículos académicos de revistas especializadas en derecho, derechos humanos, ciencias sociales y estudios psicosociales. La desaparición forzada continúa siendo un desafío complejo que impacta profundamente los cimientos del Estado de derecho y la protección de los derechos humanos. Este crimen, que trasciende la afectación física de las víctimas para generar devastadoras consecuencias psicosociales en sus familias y comunidades, exige una respuesta jurídica contundente y eficiente por parte de los Estados. La falta de tipificación homogénea, la insuficiente formación de las fuerzas de seguridad, y los vacíos en los mecanismos de justicia y reparación agravan la impunidad, perpetuando la vulneración de derechos fundamentales.

Descriptores: terrorismo; tráfico humano; crimen. (Fuente: Tesoro UNESCO).

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Research articles section

INTRODUCTION

The forced disappearance of persons is one of the most heinous crimes against human dignity, not only because of the serious violations of fundamental rights it entails, but also because of the profound social, emotional and legal repercussions it generates. This crime, which has been classified as a crime against humanity in international law, persists as a disturbing practice in many parts of the world, especially in Latin America, where dictatorships, internal conflicts and institutional violence have favored its proliferation. Enforced disappearance not only affects the direct victims, who are uprooted from their environment without a trace, but also subjects their families to a state of perpetual uncertainty, depriving them of the possibility of emotional and legal closure.

In legal terms, enforced disappearance presents unique challenges that test justice systems in multiple dimensions. From its criminalization in national penal codes to the implementation of adequate mechanisms for its prevention, investigation and punishment, States face the arduous task of complying with their international human rights obligations. As Basaure-Miranda (2018) points out, the criminalization of the offense in Latin America has been uneven and, in many cases, insufficient to address the magnitude of the problem. Despite the fact that enforced disappearance is recognized in international law, cooperation among Latin American countries to address this phenomenon has been limited, resulting in high rates of impunity and lack of access to justice.

In this context, the role of the security forces is crucial in both the prevention and investigation of this crime. However, as Arana-Borja & Cruz-Piza (2023) argue, deficiencies in police training and the lack of specialized protocols hinder the effectiveness of the institutions in charge of combating this crime. In Latin America, police action against enforced disappearances is hampered by a series of structural problems, ranging from corruption to lack of resources and trained personnel, which aggravates the vulnerability of victims and perpetuates the cycle of impunity.

From a psychosocial perspective, the impacts of enforced disappearance are devastating. Studies such as those by Camacho-Quirós (2024) and Romero-Sáenz

& Cuellar-Cuellar (2022) have shown how this crime generates profound suffering in the families of the victims, who are trapped in an emotional limbo, not knowing whether their loved ones are alive or dead. Prolonged uncertainty, lack of information and the absence of a proper judicial resolution generate severe psychological effects, including post-traumatic stress, depression and anxiety disorders. In addition, in many cases, families are forced to assume activist and human rights defense roles, fighting against the negligence or even complicity of state authorities in a context of generalized impunity.

A central aspect in the analysis of forced disappearance is the relationship between this crime and human dignity. According to Durán-Mantilla et al. (2021), enforced disappearance not only represents a direct violation of the rights of the disappeared person, but also undermines the fundamental principles of justice and equity that should govern a state under the rule of law. The lack of access to the truth and the absence of effective reparation mechanisms constitute an additional violation, preventing victims and their families from closing the cycle of pain and finding a form of justice. In this sense, Latin American judicial systems have shown a profound inability to provide satisfactory responses, unlike other international jurisdictions, such as Europe, where courts have advanced in the judicialization of these cases, as highlighted by León and Villa (2019).

Another recurrent problem in the region is the confusion between enforced disappearance and presumed death, which affects both victims and their relatives. Friend-Macías & Naveda-Vera (2018) point out that, in many Latin American legal systems, the lack of clear differentiation between these concepts leads to double victimization: families not only face the disappearance of their loved one, but also see how the judicial system declares them dead without a thorough investigation or search for the truth. This directly affects the right of victims to be recognized and complicates reparation processes, as families cannot effectively access justice.

The gender dimension is another fundamental aspect in the discussion on enforced disappearance, especially with regard to women, who are particularly affected by this crime, both as direct victims and as family members. According to Tamayo-Arango & Arenas-López (2021), women who have lost their sons, husbands or

fathers in contexts of enforced disappearance are forced to reconstruct their identity and role in society, often assuming the struggle for truth and justice in an environment of violence, discrimination and exclusion. These new maternities and social struggles constitute a unique phenomenon that must be understood from an intersectional perspective, which takes into account not only gender, but also the social, economic and cultural context in which it develops.

The objective is to analyze forced disappearance and its impact on the human dignity of the victims.

METHOD

This study was developed under a qualitative and descriptive methodology, focused on the collection, analysis and comparison of documentary sources related to enforced disappearance and its impact on human dignity. Thirteen academic articles were selected from journals specialized in law, human rights, social sciences and psychosocial studies, with the aim of providing a comprehensive and multidisciplinary view of the phenomenon of enforced disappearance, covering its legal, psychological and social dimensions.

The documentary analysis technique was used to examine key categories related to the crime of enforced disappearance, such as criminalization, training of security forces, reparation of violated rights and the psychosocial impact on victims and their families. Each reference was selected based on its relevance to address the issue from a specialized perspective, ensuring that the research included studies from different jurisdictions, such as Latin America and Europe, allowing a comparative analysis of the strategies implemented and the challenges present in each region.

For the comparative analysis, the studies were grouped into thematic categories that reflect the different facets of the problem, such as the focus on prevention, prosecution of crime, victims' rights and psychosocial impacts. Based on this classification, a contrast was made between the different national and international approaches, highlighting the main deficiencies in the application of the law, the normative gaps and the limitations in the systems of reparation of the rights of the victims of enforced disappearance.

ANALYSIS OF RESULTS

The results of the research are presented:

Table 1. Enforced disappearance and its impact on the human dignity of the victims.

REFERENCE	DOCUMENTARY CATEGORY	MAIN TOPIC	COMPARATIVE ANALYSIS
Arana-Borja, Y. A., & Cruz-Piza, I. A. (2023)	Prevention and police training	Analysis on the prevention of kidnapping and the importance of police training and citizen participation.	Relates enforced disappearance to other crimes such as kidnapping and highlights the lack of police training in many regions of Latin America.
Basaure-Miranda, Isaac Marcelo. (2018)	International Criminal Law	The crime of enforced disappearance in Latin America and its criminal classification.	Emphasizes the need to strengthen international cooperation and sanctions for enforced disappearance, comparing legal frameworks in various Latin American countries.
Camacho-Quirós, José David. (2024)	Psychosocial Impact	Analysis of the psychosocial effects on the families of disappeared persons in Latin America.	The psychosocial impact is greater in regions with high levels of impunity, where families lack access to justice and reparations.
Durán-Mantilla, J. G., Sandoval-Mesa, J. A., & Moreno Durán, Álvaro H. (2021)	Justice and Reparations	Relationship between enforced disappearance and higher values from Michael Sandel's ethics of justice.	Compared to other regions, Latin America lacks a comprehensive system of reparations and effective justice for the victims of enforced disappearance.
Friend-Macías, R., & Naveda-Vera, M. C. (2018)	Civil and Criminal Law	Legal relationship between presumed death and enforced disappearance in the Civil Code.	In countries with less developed legal systems, the confusion between disappearance and presumed death affects the victims' right to be recognized.
Hernández-Brussolo, Ricardo, et al. (2022)	Psychology and Mental Health	Psychological repercussions on secondary victims of enforced disappearance.	Compared to other crimes, enforced disappearance generates a deeper psychological impact due to the prolonged uncertainty experienced by families.
León, S., & Villa, D. (2019)	International Jurisprudence	Analysis of enforced disappearance in the jurisprudence of the European Court of Human Rights.	In Europe, enforced disappearance has received more judicial attention, while in Latin America, cases continue to be treated with impunity and delays.

Mejía-Naranjo, C. N., et al. (2023)	Right to Truth	Violation of the right to truth in the Guachalá Chimbo vs. Ecuador case.	The Guachalá case is representative of the lack of access to truth in Ecuador, a common situation throughout Latin America in cases of enforced disappearance.
Romero-Sáenz, Laura Camila, & Cuellar-Cuellar, Viviana Katherine. (2022)	Psychosocial Impact	Psychosocial impacts on relatives of victims of enforced disappearance.	Similar to other psychosocial studies, it confirms that relatives suffer from post-traumatic stress and other sequelae, aggravated by the lack of justice.
Rosas-Villicaña, Rosa María. (2020)	Human Rights and Justice	Truth and justice for disappearance victims in Mexico.	Compared to other countries, Mexico faces high levels of impunity and a lack of resources for the search and reparations for victims of disappearance.
Sferrazza-Taibi, Pietro. (2019)	International Law	Definition of enforced disappearance in international law.	At the international level, there is a lack of consensus on the classification and treatment of enforced disappearance in some national legal systems.
Tamayo-Arango, A. S., & Arenas-López, K. (2021)	Gender Studies and Human Rights	Impact of enforced disappearance on multiple maternities and absences.	Enforced disappearance affects women and mothers differently, generating new forms of struggle for truth and justice, in contrast with other victims.

Source: Own elaboration.

The documentary analysis (Table 1) shows that forced disappearance constitutes one of the most serious human rights violations and represents a multifaceted challenge in both the legal and social spheres. This crime, typified in international law, not only implies the physical disappearance of a person, but also carries with it a series of legal, psychological and social repercussions that affect the direct and indirect victims, as well as state institutions and the social fabric in general. The comparative analysis of enforced disappearance and its implications for human dignity, based on the references reviewed, allows us to observe profound differences in the approach and treatment of this crime in various jurisdictions.

In the first place, enforced disappearance presents an operational gap in the training of security forces and in the training of officials responsible for its prevention and investigation. In this order, Arana-Borja & Cruz-Piza (2023) expose the importance of police training and citizen participation as key elements in the prevention of crimes such as kidnapping and enforced disappearance. Despite this, in much of Latin America there is a structural deficiency in the preparation of law enforcement agencies, which compromises their ability to act effectively against these crimes. This shortcoming not only perpetuates impunity, but also deepens the sense of vulnerability and lack of protection for victims and their families, who often have to deal with inefficient and, in many cases, corrupt judicial systems.

On the other hand, the analysis of the criminalization of enforced disappearance in Latin America conducted by Basaure-Miranda (2018) highlights the lack of uniformity in national regulations regarding this crime. Although enforced disappearance has been recognized as a crime against humanity by international law, cooperation between Latin American States and the implementation of effective measures for its prosecution and punishment still present significant gaps. This is reflected in the small number of cases that reach trial and the difficulty in convicting those responsible, which reinforces the climate of impunity. In contrast to Europe, where international courts, such as the European Court of Human Rights, have been more active in their jurisprudence on enforced disappearances, Latin America still shows a marked weakness in this regard, despite having a large number of victims and emblematic cases.

The psychosocial impact of enforced disappearance is also a central issue in the discussion. In this regard, Camacho-Quirós (2024) and (Romero-Sáenz & Cuellar-Cuellar, 2022) highlight the psychological and emotional impacts that this crime has on the families of the victims. Prolonged uncertainty, lack of information and the absence of justice generate a state of suspended grief in family members, which translates into anxiety disorders, depression and post-traumatic stress. In many cases, families are forced to undertake long struggles for the truth, in a context of total impunity and negligence on the part of the State, which aggravates their suffering. In Europe, judicial intervention has been more effective in some cases,

while in Latin America, the State's response remains insufficient, increasing the emotional burden on indirect victims.

The study by Durán-Mantilla et al. (2021) introduces an ethical and philosophical perspective around the reparation of the higher values of justice. This analysis reveals how enforced disappearance not only affects direct victims, but also undermines fundamental principles of the rule of law, eroding trust in judicial institutions. The lack of effective reparations for victims and their families constitutes an additional violation of rights, which is exacerbated by the failure of the state to guarantee access to truth and justice. This institutional deficit is not exclusive to Latin America; however, in this region the structural weakness of the judicial systems aggravates the situation, which contrasts with other international contexts where more progress has been made in the judicialization and reparation of these cases.

Another relevant aspect in the analysis is the confusion between enforced disappearance and presumed death in less developed legal systems, as exposed by Friend-Macías & Naveda-Vera (2018). This confusion has direct consequences on the right of victims to be recognized and on reparation processes. In systems where there is no clear differentiation between enforced disappearance and presumed death, families are deprived of the possibility of seeking justice, as the disappeared are treated as dead without the necessary investigations to clarify the facts. This generates a double victimization: on the one hand, the loss of the loved one and, on the other, the impossibility of obtaining justice or adequate reparation.

The gender dimension of enforced disappearance also emerges as a critical issue, especially in the case of women victims or relatives of the disappeared. Accordingly, Tamayo-Arango & Arenas-López (2021) explore how enforced disappearance particularly affects women, as mothers, wives, and daughters of victims. These women not only face the emotional burden of loss, but are also forced to assume the role of advocates for the rights of their loved ones, often in a context of violence, discrimination, and exclusion. Enforced disappearance thus generates new forms of motherhood and struggle, in which women are forced to rebuild their identities and communities in the midst of suffering and impunity.

Ultimately, enforced disappearance continues to be a legal and social challenge that calls into question the effectiveness of States in protecting their citizens and ensuring justice. The comparative analysis reveals that, while some regions have made progress in the criminalization and prosecution of these cases, Latin America continues to face serious deficiencies in terms of prevention, investigation and punishment of this crime. The lack of access to the truth and the absence of effective reparations perpetuate the violation of the rights of both direct and indirect victims, undermining the principles of human dignity and justice that should guide legal systems.

CONCLUSIONS

Enforced disappearance continues to be a complex challenge that profoundly impacts the foundations of the rule of law and the protection of human rights. This crime, which transcends the physical affectation of the victims to generate devastating psychosocial consequences in their families and communities, demands a forceful and efficient legal response from the States. The lack of homogeneous criminalization, insufficient training of security forces, and gaps in the mechanisms of justice and reparation aggravate impunity, perpetuating the violation of fundamental rights.

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