



Human Rights Council
Working Group on Enforced or Involuntary Disappearances

General comment on women affected by enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eighth session (31 October – 9 November 2012)

Preamble

Equality and non-discrimination are the foundations of the international human rights system. The effective prevention and eradication of enforced disappearances requires States to adopt laws, policies and practices that are grounded on those principles. Particularly, gender equality and the empowerment of women are essential tools to address the situation that women victims of enforced disappearances face. A gender perspective is crucial in explaining, understanding and dealing with unique disadvantages and obstacles that women face in the exercise of their human rights and to outline solutions to try and address these issues.

The application of the principle of gender equality requires a full understanding of the different roles and expectations of the genders to effectively overcome issues that hinder the attainment of gender equality and full enjoyment of women's rights. The Working Group on Enforced and Involuntary Disappearances recognizes that women and girls are victims of enforced disappearance as disappeared persons, as relatives of someone who has disappeared or as any other person suffering harm as a result of an enforced disappearance. The experience of the Working Group demonstrates that the effects of enforced disappearances are lived and faced in different ways by women and girls due to gender roles, which are deeply embedded in history, tradition, religion and culture.

A gender perspective should be incorporated in all measures, including legislative, administrative, judicial and others, taken by States, when dealing with enforced disappearance. Gender equality in the area of enforced disappearances primarily requires that all individuals – regardless of their sex or gender – enjoy without discrimination the rights enshrined in the Declaration for the Protection of All Persons against Enforced Disappearances (hereinafter: the “Declaration”).

The Working Group recognizes that women play a fundamental role in securing and advancing the rights of disappeared persons. In particular, from its experience the Working Group recognizes that women are often at the forefront of the struggle against enforced disappearances. They often form organizations and associations to establish the

circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims themselves.

The Working Group recalls that the Human Rights Council in its resolution 7/12 requested the Working Group to apply a gender perspective in its work, including in collecting information and in formulating recommendations.

The Working Group adopts this general comment to explain and facilitate the full implementation of the provisions of the Declaration from a gender equality perspective.

General comment

1. The Declaration delineates States' obligations regarding the prevention and eradication of enforced disappearances. The Working Group relies on this instrument when assisting States to overcome obstacles in implementation of the Declaration's provisions. Although the Declaration does not explicitly contain a principle of non-discrimination and/or a principle of gender equality, numerous other international instruments and documents require States to comply with these principles. The Declaration is an integral part of the international human rights *corpus juris* that relies on the fundamental principle of equality and non-discrimination, with its article 21 clearly establishing that "the provisions of the present Declaration are without prejudice to the provisions enunciated in the Universal Declaration of Human Rights or in any other international instrument, and shall not be construed as restricting or derogating from any of those provisions."

2. The Working Group recalls the obligation of States, as defined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),² to take action to eliminate "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

Gender-based violence and enforced disappearances of women

3. When women are victims of enforced disappearances because they are women, they are also victims of gender-based violence. Gender-based violence is both a cause and a consequence of discrimination against women. No gender-based violence, including enforced disappearances against women, can be justified and States should take effective measures to prevent such violations. States have an obligation to respect, protect, promote and fulfil all human rights, including the right of women to be free from discrimination and violence. Failure to do so results in and exacerbates violence against women.

Women victims of enforced disappearances

4. Women are victims of enforced disappearances. Although statistics show that mainly men are forcibly disappeared, the Working Group has also in its files a number of cases of women who disappeared. Additionally, women as relatives of those men who disappeared are also considered victims of enforced disappearances.

5. States must acknowledge disappeared women, and recognize the particular types of harm they suffer based on their gender, including instances of sexual violence and forced impregnation, and the resulting psychological damage and social stigma as well as the disruption of family structures.

6. In certain countries, women from minority groups and women affected by poverty and social inequalities are particularly vulnerable and exposed to enforced disappearances.

The specific needs of these women enhance State obligations to protect them with proper understanding and underscoring their needs.

7. The Working Group is conscious that women are in a situation of particular vulnerability during times of conflict. During those times, many women are targeted and are forcibly disappeared or suffer other forms of gender-based violence.

8. Women forcibly disappeared are disproportionately subject to sexual violence and exposed to suffering and humiliation. Due to the biological attributes of women, specifically their ability to reproduce, women victims of enforced disappearance are often used as a tool or an instrument to achieve specific objectives. Women's bodies are used as part of a strategy of social control. According to the experience of the Working Group, in particular the testimonies of many witnesses and survivors, women who are forcibly disappeared are subject to gender-based violence such as physical and sexual violence, including rape, which may meet the definition of torture, or threats of such harms.

9. Women who are forcibly disappeared are also victimized in situations when sexual abuse of women results in unwanted pregnancies or when already pregnant women forcibly disappear. These situations expose women to additional trauma because of their concerns for their health and fears of delivery of a child under such inhuman circumstances and which, in many cases, could result in the loss of a child at the hands of State officials. The Working Group notes that States have the obligation to establish special protection measures for pregnant women who are detained.

10. States must also guarantee that a child born during the enforced disappearance of his or her mother shall be fully protected. Immediate registration of birth guaranteeing the child's true identity shall be secured and information shall be provided to relatives and/or legitimately concerned persons through relevant State institutions.

11. Frequently, the mothers of persons who are disappeared are socially stigmatized by being blamed for not taking proper care of their disappeared children. This can lead to both community and family rejection and cause grave psychological and emotional trauma to the mothers.

12. Family members' victimization becomes even greater when men, who mainly suffer the fate of enforced disappearances, were the head of household. Here, enforced disappearance of men results in entire families becoming victims of enforced disappearances. As the family structure is disrupted, women are negatively affected economically, socially and psychologically. The emotional upheaval is thus exacerbated by material deprivation, made more acute by the costs incurred should they decide to undertake a search for their love ones. Furthermore, they do not know when—if ever—their loved one is going to return, which makes it difficult for them to adapt to the new situation. In some cases, national legislation may make it impossible to draw a pension or receive other means of support in the absence of a death certificate. Therefore, economic and social marginalization is frequently the result of an enforced disappearance. In such circumstances, several economic, social and cultural rights enshrined in the Universal Declaration of Human Rights and in other instruments, such as the rights to health, education, social security, property and family life are violated.

The duties of States

13. Articles 2 and 3 of the Declaration require that no State shall practise, permit or tolerate enforced disappearances, and that they shall contribute by all means to the prevention and eradication of enforced disappearances.

14. In order to prevent and respond to all forms of gender-based violence, including that related to enforced disappearances, States should develop national programmes and

procedures, based on a holistic and multidisciplinary approach. These should include adoption of relevant legislation, provision of financial resources and establishment of national machineries addressing discrimination and promoting women's equality and empowerment.

15. Particularly, these steps must include the removal of obstacles to the equal enjoyment of rights by men and women victims of enforced disappearances. States must not only adopt protective measures, but should also take affirmative action in all spheres in order to strengthen women's effective and equal participation in the prevention and eradication of enforced disappearances. These measures should primarily be aimed at removing institutional barriers that prevent women victims of enforced disappearances from enjoying their human rights fully and equally and on the same basis as men. Furthermore, the steps must also include equal participation of men and women in all decision-making processes, and educating citizens - particularly public servants - on gender equality. Those measures should also ensure equality in reporting of enforced disappearance and guarantee that reports shall not be treated differently in light of the sex of the reporting person.

16. States must pay particular attention to the obstacles that hinder women victims of enforced disappearances from enjoying their guaranteed rights in the same way as men. Women's access to rights is aggravated by lack of legal literacy and the lack of services designed to ensure their rights are protected, particularly in situations where police, judicial and other institutions dealing with enforced disappearances are mainly staffed by men. Furthermore, in cases where women become household heads, family obligations constitute a further limitation on their access to rights, due to the increase in family burden and concomitant reduction in time to deal with all the issues.

17. Some States have responded to women's groups' and individuals' questions about their relatives by declaring all of those disappeared were presumed dead. While these measures may have some positive legal effects for married women, whose identity and assets are tied to their disappeared husbands, they also have other negative consequences for women's groups and individuals attempting to find the truth. These measures undermine the efforts of family members, disproportionately women, who are attempting to determine the whereabouts of their disappeared relatives. These laws present another obstacle for women's groups as the State can therefore claim to have resolved their issues. However, such processes and laws that involve presumptions of death, without any investigation, attempt to placate family members without actually addressing their concerns. Any measure that impedes women's searches for disappeared persons, without offering another viable course of action, is a violation of the obligations set forth in article 3 of the Declaration.

18. Until the fate and whereabouts of the disappeared person are ascertained, States should put in place a mechanism, as temporary measure, of presumption of death or preferably a certificate of absence for reasons of enforced disappearance. States should also provide specific assistance in such situations and ensure that those procedures do not cause additional trauma to women.

19. Article 4 of the Declaration states that, "all acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness". The suffering of women affected by enforced disappearance may be increased as noted earlier by sexual violence, unwanted pregnancy, the potentially destructive impact of enforced disappearance on families, psychological trauma, economic difficulties, and legal obstacles which affect women in particular. In addition, women whose relatives are subjected to enforced disappearance may be left in a vulnerable position. Each of these factors may exacerbate the seriousness of the crime of enforced disappearance in the specific context of women, and must be taken into account when penalizing the perpetrators of this heinous practice.

Detention of women and enforced disappearances

20. Strict compliance with international standards in relation to detained women is essential to the prevention of enforced disappearances. Holding women in detention in unofficial or secret places of detention is strictly prohibited. In those circumstances, women could be exposed to sexual and other abuses. States should take into account the specific needs and realities of women in detention in developing relevant legislation, procedures, policies and action plans.

21. States are obliged to ensure that women deprived of their liberty are accommodated in places separate from those of men. States are also required that women deprived of their liberty are under the immediate supervision of women.

Right to the truth

22. A gender perspective in relation to the right to truth should uncover how enforced and involuntary disappearances have affected women on both the individual and collective levels. In its obligation to give full access to information available, a State is also required to employ all measures necessary to ensure that women have knowledge, including with respect to procedures on how to request information.

23. A gender approach should be included in the debates that precede the establishment of any truth-seeking process, including truth commissions, as well as in their functioning and evaluation. In any truth-seeking process of enforced disappearances, States must guarantee the allocation of a budget dedicated specifically to the gender analysis; proper expertise and training is needed for the implementation of the gender perspective; and that documents disclosing the results of the truth-seeking process give visibility to the particularly effects of enforced disappearances on women.

24. In creating a truth commission to investigate enforced disappearances, States need to consider gender balance in the appointment of commissioners. The appointment of women as commissioners and staffers also facilitates the investigation of cases of sexual violence in the context of enforced disappearances.

25. Truth-seeking processes need to secure women's participation. The experience of the Working Group demonstrates that women generally do not talk about themselves, preferring to elevate the stories of their husbands and children. Thus, questionnaires, protocols and guides for interviews must take account of this. Interviews, public hearings, public and media materials, and databases used in the truth-seeking process must include a gender perspective, facilitate women's participation and make their suffering and issues visible. Finally a gender perspective should guide the analysis of causes and consequences of enforced disappearances under investigation.

Right to an effective remedy

26. Ensuring the right to speedy and effective legal remedy requires accessibility to the means to achieve such remedies. Taking account of the numerous obstacles women face in this context, additional measures should be taken by States to ensure that women, who are the victims of enforced disappearance, have access to the means to achieve their rights.

27. In accordance with article 13 of the Declaration, States are obliged to initiate an ex-officio investigation into enforced disappearances and conduct that investigation in a serious manner. States also should ensure that complaints are treated equally regardless of the sex of the complainant and that, in relevant situations, specific procedures designed for women are available and that the right to information for the victim's family members is promoted.

28. The Working Group acknowledges that disappearance can be accompanied by sexual and gender-based violence and that these require specific attention during the investigation. In such cases, specific visibility and attention should be given to suffering of women. As in any case of violence against women, States should investigate cases of enforced disappearances of women acting with due diligence.

29. States should devise a comprehensive, coordinated and properly resourced State policy to ensure that women victims of enforced disappearance have full access to judicial protection. This will assist in ensuring that acts of enforced disappearance are properly prevented, investigated, punished and redressed. To achieve this, States must acknowledge the obstacles women face in obtaining effective judicial remedies and take all appropriate steps to eliminate these obstacles. These measures should address inequality of access to States' institutions by women, including linguistic, economic and cultural barriers.

30. States are urged to circulate information nationwide about the judicial resources available to women victims of enforced disappearance and their families, taking into account the diversity of the community in terms of education, economics, race, ethnicity and language etc. States are further encouraged to ensure that women are able to obtain promptly complete and accurate information, and are treated respectfully when seeking information on enforced disappearances.

31. Some examples of measures that could remove access barriers experienced by women include providing childcare facilities at courts and prosecutors' offices; safe transportation; psychosocial support for women testifying before, during, and after the hearing. States may provide support to women's and other organizations so they can work closely with the courts, particularly to ensure the access of women to them. States should consider introducing facilities in courts to ensure confidentiality (through *in camera* hearings or protective screens where needed), and to prevent stigmatization of witnesses.

Witness and victim protection

32. States must ensure additional protective measures for protection of witnesses and victims, taking in account that victims can be the disappeared persons and individuals who have suffered harm as the direct result of an enforced disappearance. This is crucial in any efficient investigation and prosecution of perpetrators of human rights violations. In cases in which witnesses are women, successful protection should provide a full range of physical protection measures and psychosocial support to witnesses and victims. Types of measures adopted depend on the gravity of the psychological and physical trauma suffered and the stigma attached to the multiple forms of violations that may have occurred, including gender-based violence. A safe environment in which a woman witness feels encouraged to tell her story requires integration of a gender perspective into witness protection programmes. This is necessary to prevent women victims' secondary victimization.

Women's participation

33. Women's participation in the area of enforced disappearance requires their full representation, in all aspects related to enforced disappearance, including participation in the decision-making processes, implementation and evaluation.

34. Furthermore, States must ensure active participation of women in all official proceedings regarding cases where women are victims of enforced disappearance. The fact that women have less access to education, and suffer political and economic discrimination may lead to lack of access to legal mechanisms and public institutions. This demonstrates the need to create public spaces for women, educate women about their political options and rights, and provide training and awareness-raising among public officials and citizens in general about the issues and needs of women victims of enforced disappearances. States

should develop or strengthen programmes to train all public officials on women's rights, equality and non-discrimination, and how to respond to their claims appropriately.

35. Limited access and exposure to public institutions affect the way women's groups find out about their relatives. Many women in search of information initially meet at hospitals, police stations or morgues, where they search for their relatives. When they decide to organize and challenge the State in regard to their relatives' disappearances, the traditional avenues of political action are often not available to them. As a result, many women's groups use public protest. This demonstrates that there is a need to help women to become accustomed to using public institutions. Thus, States should use legislative, administrative, judicial, and other measures to facilitate the activities of individuals and grass-roots groups, which often provide the only voice for marginalized and previously apolitical women, in joining the mainstream political process, and in bringing their unique perspectives into the traditional realm of political life.

36. The State must take measures to prevent and combat reprisals, intimidation and threats, as well as the social stigmatization of women for their activism in response to enforced disappearances. The Working Group has observed that many women who are defenders and activists in the field of human rights, as well as relatives of disappeared persons, are frequently subjected to violence and are also victims of enforced disappearance.

Right to reparation

37. Although article 19 of the Declaration envisages a right to compensation to victims of enforced disappearances and their dependents, as well as right to rehabilitation, the Working Group believes that this right should be viewed in the broader context of reparations.

38. Reparations programmes should use a wide and comprehensive definition of "victim" and should not distinguish between direct and indirect victims. A comprehensive definition should recognize that family members of the disappeared are also victims because they endure unique forms of suffering as a direct result of the disappearance. To include women and family members of the disappeared as victims acknowledges their suffering by allowing them to be fully recognized, compensated and rehabilitated as victims. This will assist in breaking down stereotypes and eliminating gender hierarchies.

39. Reparation is particularly important for women victims, due to the fact they are often victims of enforced disappearance and gender-based violence. Reparation requires recognition of women's rights as equal citizens, acknowledgement of the harm suffered, as well as a concrete contribution towards the victim's recovery. The Working Group acknowledges that reparation programmes designed through a gender perspective more effectively contribute to the rehabilitation of women. Reparation programmes not only have the potential to return the individual victims to the status quo ante, but also to transform the community by breaking down pre-existing gender hierarchies.

40. The right to non-repetition requires that States remedy not only existing instances of enforced disappearances, but adopt measures to eradicate the circumstances that permitted the disappearances to occur, and which may permit similar events to occur again in the future. This is vital not only to protect the safety of victims in the future, but also to prevent more people and women in particular from becoming victims at all. Particularly in societies where violence against women in general, and enforced disappearances in particular, are embedded in deep inequality roots, States need to take measures to overcome those disparities as a preventive measure.

41. Symbolic reparations are crucial components in a comprehensive reparations programme. They can take the form of commemoration days, museums and parks, reburials

and rituals, individual and collective apologies, plaques, tombstones, and monuments as well as other appropriate undertakings. Symbolic reparations aid in the psychological and emotional rehabilitation of victims and are crucial for its collective dimensions and impact on the society as a whole.

42. Symbolic reparations have gendered impacts on how women are viewed and remembered. Particularly, symbolic reparations should break down and not reinforce stereotypes. For instance, monuments should show women not just as caregivers or victims, but highlight the role of women in leading the fight against enforced disappearances.

43. States should address linguistic and literacy barriers that hinder women's ability to access reparations. States should also address any obstacles to reparations faced by women and caused by a lack of knowledge, transportation, documentation or financial ability.

44. Women as family members, particularly where they become household heads due to an enforced disappearance, are in specific material, financial, psychological and legal needs. The relevant governmental institutions must provide them adequate counselling, rehabilitation and support services, assistance and information.

Training and awareness-raising

45. Pursuant to their obligations under article 6 of the Declaration, States must train law enforcement officials on issues related to disappearances. This training should include education about the consequences of enforced disappearances on women, among others, regarding sexual violence and steps that should be taken to prevent and respond to it. Additionally, officers should be trained to acknowledge social stigma associated with women interacting with the State, where such stigma exists. Further, public officials should be trained on techniques for interacting with women relatives of disappeared persons in order to overcome any barriers that women have in dealing with the State. Those trainings should include programmes aimed at changing stereotypical attitudes in regard to the roles and status of men and women

46. Government officials need to be aware of the rights to which women are entitled, gender-based violence and the differential impact of enforced disappearances on women. Gender-sensitive training of judicial and law-enforcement officers, including, but not limited to, prosecutors, police officers, judges, court-appointed attorneys, administrative personnel and forensic professionals as well as other public officials involved in the prevention, investigation and prosecution of cases of enforced disappearances is essential to effectively implement the Declaration from a gender perspective.

47. Publication and dissemination of this general comment constitute comprehensive elements of policies aiming to improve the situation of women victims of enforced disappearances. The Working Group encourages all relevant actors to publish and disseminate this general comment.
