

Research Article

COMPENSATION FOR CRIMES OF ENFORCED DISAPPEARANCE: A COMPARATIVE ANALYTICAL STUDY IN LIGHT OF INTERNATIONAL AND EMIRATI LAW

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ABSTRACT

Background: *The crime of enforced disappearance is one of the most serious human rights violations, as it causes severe suffering to victims and their families. This crime involves depriving a person of their freedom and fundamental rights in secret, without any official recognition, leaving victims living in a constant state of isolation and anxiety. Addressing this crime has become not only a legal obligation but also a moral obligation for states and the international community to protect victims and ensure justice. Modern criminal policies attach special importance to victims of the crime, not only by punishing the perpetrator but also by seeking to achieve justice through fair compensation for victims and their families. This approach is reflected in international and national legislation and the trends of international human rights courts. The importance of this study lies in analysing the legal framework for compensation for crimes of enforced disappearance from a comparative perspective between international law, UAE legislation and other comparative legislation, with the aim of assessing the adequacy of these laws in protecting victims and ensuring their compensation.*

Methods: *This study uses descriptive, analytical, and comparative methods to define compensation for enforced disappearance crimes, identify eligible recipients, and explore various compensation forms. Additionally, it analyses international court rulings on compensation for the crime of enforced disappearance, examines relevant provisions in Emirati law, and compares these with corresponding legal frameworks from other jurisdictions. The comparison of the legislations of Spain, the Philippines, Yemen, Qatar, and Venezuela with that of the UAE highlights the progress and gaps in the UAE's approach to compensating victims of enforced disappearance crimes. This method provides a legal model that the UAE legislator can benefit from in developing and expanding the legal foundations for compensation for the aforementioned crimes.*

Results and Conclusions: *The research concluded with several findings, the most significant being the insufficiency of current Emirati legislation to comprehensively compensate victims of enforced disappearance, unlike other comparative legislations. Human rights courts, such as the Inter-American and European Courts of Human Rights, have played a crucial role in establishing principles related to comprehensive compensation for enforced disappearance crimes. The study recommends removing the statute of limitations on compensation claims, allowing victims or their families to seek justice regardless of when the crime occurred. It also suggests benefiting from international judicial trends and successful global experiences in drafting national punitive legislation related to the criminalisation of enforced disappearance.*

1 INTRODUCTION

Enforced disappearance has its roots in World War II when it was systematically implemented by Adolf Hitler. On 7 December 1941, Hitler issued the Night and Fog Decree, which authorised the arrest of individuals deemed a threat to German security in occupied territories. These people were secretly transported to Germany, where they were made to disappear. The goal was to spread fear among the occupied populations.¹ Wilhelm Keitel, the German military commander, was convicted of enforced disappearance and sentenced to death at the Nuremberg Trials, even though enforced disappearance was not yet a crime against humanity.²

In the 1970s and 1980s, enforced disappearances were widely used in Latin America to suppress political dissent. This prompted strong reactions from human rights organisations such as the Inter-American Commission on Human Rights, which coined the term "enforced disappearance." International interest increased after the 1973 coup in Chile and as the phenomenon spread to authoritarian states.³ This led to efforts to criminalise the act and multiple definitions of enforced disappearances, which, while differing in detail, agreed on the basic elements of the crime.

Modern criminal policy prioritises victims, focusing on improving their access to suitable compensation for the harm suffered. This victim-centred approach is evident in many international conventions and has been practically reflected in the adoption of legislative policies in some countries, including measures to protect victims of enforced disappearance. Compensation is understood as a comprehensive term for different forms of reparation, such as restitution of rights, rehabilitation, and satisfaction. It is crucial to

1 Maher Jamil Abu Khawat, 'Protection from Enforced Disappearance in Light of International Law Rules' (2017) 73 *Egyptian Journal of International Law* 68, doi:10.21608/ejil.2017.297630.

2 Hamid Mohammed Ali Al-Baldawi, 'International and National Protection from Enforced Disappearance for Children' (2020) 46 (1) *Journal of the Iraqi University* 425.

3 Abu Khawat (n 1) 69-70.

note that these forms can be combined. Compensation can be provided when rights restitution is unfeasible, and moral damage can be compensated.

The importance of addressing compensation for the crime of enforced disappearance lies in its role as a fundamental right that seeks to restore balance for those affected. Victims often face considerable suffering due to their enforced disappearance. In many cases, the perpetrator may be unknown or a fugitive, leaving the victim without compensation. Under these circumstances, it is critical to decide what constitutes adequate compensation and explore possible alternatives, especially as some affected individuals may succumb to prolonged suffering or continue to endure deep psychological effects.

The study problem lies in the complex legal and regulatory aspects of compensation for enforced disappearance. Legislators face challenges in defining compensation, such as restitution, material compensation, rehabilitation, satisfaction, and guarantees of non-repetition. There are also questions concerning the adequacy of the UAE's legal framework compared to other nations and its alignment with international standards. The role of international courts, like the Inter-American and European Courts of Human Rights, in advancing judicial practices to protect victims' rights and ensure fair compensation is also explored. It analyses these courts' approaches and evidence standards in enforced disappearance cases to understand how they facilitate victims to secure just compensation.

The legal framework of the study encompasses key international treaties and declarations addressing enforced disappearance. These include the Inter-American Convention on Forced Disappearance of Persons (1994), the International Convention for the Protection of All Persons from Enforced Disappearance (2006), the Rome Statute of the International Criminal Court (1998), and the Geneva Conventions with their Additional Protocols (1949). It also includes national laws, such as the UAE's Federal Decree-Law on International Crimes (2017), the Federal Civil Transactions Law (1985), and the Federal Law on Crimes and Penalties (2021), alongside laws from Qatar and the Philippines. Relevant constitutions include those of the UAE (1971), Qatar (2004), Yemen (1991), Argentina (1994), and Venezuela (1999). Judicial bodies considered are the International Criminal Court, the Inter-American and European Courts of Human Rights, and national courts of the States Parties.

This study explores reparations for crimes of enforced disappearance as addressed by international courts, particularly the Inter-American Court of Human Rights and the European Court of Human Rights. These courts played an important role in ensuring justice for victims by granting comprehensive reparations to victims and their families. The study and analysis of the applications of these two courts hold significant importance in clarifying the role of human rights courts in compensating for this crime.

The need to research compensation for enforced disappearance arises from multiple considerations. First, there is increasing international concern over enforced disappearance as a grave violation of human dignity and fundamental rights, necessitating an examination

of legal mechanisms for victim compensation. Second, there is a lack of comprehensive research comparing Emirati legislation with other national legal systems, underscoring the need to fill this gap. Third, the study seeks to address legislative imperfections in certain legal systems regarding compensation for victims. Lastly, it aims to promote the development and implementation of legal frameworks to ensure justice for victims and enhance compliance with international obligations.

The study plan involves a thorough examination of the legal framework determining compensation for enforced disappearance, approached from a comparative standpoint that contrasts international law with national legislation. It is structured into three sections. The first section addresses the nature of compensation, its definition, the categories of eligible recipients, and the various types of compensation, including restitution, financial compensation, rehabilitation, satisfaction, and guarantees of non-repetition. The second section examines the provisions related to compensation for enforced disappearance crimes within the UAE's federal legislation, highlighting relevant regulations and drawing comparisons with other national legal frameworks. The final section evaluates the treatment of compensation for enforced disappearance in the rulings of international courts, with particular focus on the Inter-American Court of Human Rights and the European Court of Human Rights.

2 LITERATURE REVIEW

Al-Shammari's study (2020), *Limits of Compensation for Damage Arising from the Crime of Enforced Disappearance: A Comparative Study*,⁴ examines compensation and reparations, focusing on criminal policy to enhance victims' rights and access to fair compensation under international obligations. The study emphasises the need for fair compensation and highlights the failings of local legislation in providing comprehensive reparation. While Al-Shammari's work focuses on Iraqi and international legislation—addressing issues such as statutes of limitations and proof of disappearance—this research focuses on Emirati legislation and practical mechanisms for creating compensation systems. Al-Shammari's work is a valuable reference for identifying legislative omissions, inspiring the current study to propose more comprehensive mechanisms tailored to the Emirati context.

Hajij et al.'s study (2015), *Compensation for the Crime of Enforced Disappearance: A Comparative Study*,⁵ explores compensation for enforced disappearance, emphasising financial restitution proportional to the physical or psychological harm suffered. It

4 Mazin Khalaf Naser Al-Shammari, 'Limits of Compensation for Damage Arising from the Crime of Enforced Disappearance: A Comparative Study' (2020) 10 *Journal of Comparative Studies Generation* 47, doi:10.33685/1565-000-010-003.

5 Hassoun Obaid Hajij and Mohammed Hassoun Obaid, 'Compensation for the Crime of Enforced Disappearance: A Comparative Study' (2015) 1(36) *Islamic University College Journal* 37.

highlights victims' and their families' rights to material and moral compensation based on international judicial criteria for evaluating damage. It also stresses the importance of restoring rights, providing physical and psychological rehabilitation, and ensuring satisfaction—through acknowledging responsibility and revealing the truth—as crucial elements for achieving justice and rebuilding community trust. The study recommends expanding state legislation, especially in Iraq, to include indirect damages and ensure comprehensive remuneration for victims while criticising the absence of guarantees, such as provisions for non-repetition, in international texts like the Rome Statute.

Similarities with Hajij et al.'s study include a focus on victims' rights to material and moral compensation, the inclusion of families in reparations, and addressing legislative gaps to ensure comprehensive redress. However, while Hajij et al.'s research centres on Iraqi legislation and its specific challenges, the current study examines Emirati legislation with a broader international comparison. Additionally, although Hajij et al. critique the Rome Statute's limitations on compensation, such as non-repetition guarantees, this aspect is not a major focus of the present study.

Ashley Needham's article, *Putting the Victim's Families First: The Comparative Analysis of the Inter-American Court of Human Rights and the European Court of Human Rights on the Right to be Free from Torture in Cases of Enforced Disappearances*,⁶ examines how these courts tackle cases of enforced disappearances. The Inter-American Court of Human Rights (IACtHR) employs a more adaptable standard of proof, allowing the use of circumstantial and presumptive evidence, which provides greater support to victims' families. In contrast, the European Court of Human Rights (ECtHR) follows a more stringent "beyond a reasonable doubt" standard, frequently necessitating direct evidence, which can constitute a considerable obstacle. Needham contends that the IACtHR's methodology is more progressive and effective in addressing the intricacies of enforced disappearances, thereby providing more effective protection and justice for victims and their families.

Likewise, this study, which examines reparations for enforced disappearances within international and Emirati law, highlights the necessity for comprehensive compensation mechanisms, pointing out the inadequacies of current Emirati legislation compared to other legal systems. Both studies emphasise the need to adapt legal frameworks to ensure justice and sufficient remuneration for victims of enforced disappearances.

6 Ashley Needham, 'Putting the Victim's Families First: The Comparative Analysis of the Inter-American Court of Human Rights and the European Court of Human Rights on the Right to be Free from Torture in Cases of Enforced Disappearances' (2015) 3(1) IALS Student Law Review 33, doi:10.14296/islr.v3i1.2248.

3 METHODOLOGY

This study adopts a descriptive, analytical, and comparative approach to examine the legal framework regarding reparations for crimes of disappearance at both international and national levels. This methodology can illuminate theoretical and practical aspects of victims' compensation and provide suggestions to develop national legal systems in general, with a specific focus on improving the UAE's legal framework.

A descriptive approach is used to summarise the fundamental concepts and principles of compensation for crimes of enforced disappearance. This includes determining the scope of compensation, beneficiary identification, and the classification of compensation. This study provides a comprehensive framework for understanding compensation mechanisms in the UAE and other legal systems.

The analytical method involves examining the provisions of international conventions and treaties, such as the 2006 International Convention for the Protection of All Persons from Enforced Disappearance. This approach assesses the rulings of international human rights courts such as the Inter-American and European Courts of Human Rights and provisions within the UAE's legal system, including Federal Law Decree No. 12 of 2017 and other relevant legislative measures. Through this analysis, the study identifies gaps, ambiguities, and areas of potential improvement in the UAE's current legal framework and other legal systems.

Comparative analysis juxtaposes the laws and judicial practices relating to compensation for enforced disappearances of the UAE with those of other jurisdictions, including Spain, the Philippines, Yemen, Qatar, and Venezuela. These jurisdictions were chosen based on several criteria: their relevance to the topic through established frameworks addressing enforced disappearance, their diversity in legal systems, and their historical and practical significance. For instance, Spain and the Philippines have developed comprehensive procedures for addressing enforced disappearance. Regional relevance was also considered, with Qatar and Yemen reflecting shared cultural and legal contexts with the UAE. By comparing these jurisdictions, the analysis determines the best national practices and shortcomings, providing a legal model for UAE legislators to consider when developing and expanding the laws guaranteeing compensation.

Furthermore, the comparative approach in this study analyses the case law of the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR), comparing their evidentiary standards, procedural practices, and reparative measures to assess how these courts address the complexities of enforced disappearance.

4 THE NATURE OF COMPENSATION FOR VICTIMS OF ENFORCED DISAPPEARANCE AND ITS FORMS

Criminal law defines committing a crime as fundamentally requiring an assault, either a direct assault causing actual harm or a threat to a right or interest protected by law. Harm is defined as a tangible assault that targets a legal right or interest, causing damage to it or placing it at risk.⁷ Adequate and effective compensation in cases of enforced disappearance aims to enhance criminal justice and mitigate the impact of this crime, thereby contributing to social peace. This subject will be addressed as follows:

4.1. The Concept of Compensation for the Crime of Enforced Disappearance

Compensation for the crime of enforced disappearance is a core aspect of achieving justice for victims and their families, aimed at addressing the physical and psychological harm they have endured. This process also seeks to counter the social and legal repercussions of this serious crime.

Compensation for enforced disappearance involves providing financial sums to victims in reparation for the physical, psychological, or other harm resulting from this crime. The amount of compensation is determined based on an economic evaluation that considers the severity of the violation and the circumstances of each case, ensuring it aligns with the gravity of the harm the victim endured.⁸ Compensable damages include physical or psychological harm, such as loss of employment or educational opportunities, deprivation of social benefits, and material losses, such as loss of income or potential future resources. Compensation also covers moral damages, including costs related to legal assistance, specialised consultations, medications, and medical, psychological, and social services. Given that some of these damages may be impossible to fully repair or return to their original state, compensation can be estimated based on principles of justice and equity when sufficient data is unavailable to determine the harm precisely.⁹ This mechanism often serves as the only way to assess damages caused by pain, mental suffering, anxiety, and harm to the reputation and dignity of those affected by enforced disappearance.

At the national level, reparation for damages is an integral part of the civil system in the United Arab Emirates. The Civil Transactions Law of 1985, as amended, regulates compensation as a means of redressing damages resulting from harmful acts. Article 282 of this law stipulates that anyone who harms another must completely compensate them for

7 Ramadan Abdullah Al-Sawy, *Compensation for Victims of Individual Crimes by the State and Funding Sources for Compensation* (New University Publishing House 2006) 45.

8 Nasreddine Bousmaha, *The Rights of Victims of International Crimes in Light of International Law Provisions* (2nd edn, University Thought House 2017) 50.

9 Ahmed Abdel Latif El-Feki, *Protecting Humans from Becoming Victims of Crime* (Dar Al-Fajr 2003) 388.

the damage.¹⁰ This principle falls within the general framework of civil liability, which is the legal basis for addressing damages resulting from unlawful acts, including enforced disappearance. Compensation in UAE laws is linked to other concepts, such as blood money and payment priorities, reflecting the comprehensive nature of the UAE legal system in addressing damages and compensating victims.

Federal Decree-Law No. 12 of 2017 on International Crimes addresses the legal framework for compensating victims of international crimes, with Article 43 being a fundamental source. The article states that “national courts in the United Arab Emirates may rule on appropriate compensation for damages suffered by victims as a result of international crimes.”¹¹ This reflects the state’s commitment to standards of corrective justice, not only through criminal penalties but also by ensuring that victims receive just compensation for harm.

International treaties, such as the Rome Statute of 1998,¹² emphasise the need to compensate victims of international crimes, including enforced disappearance. Notably, the reparations regime under Articles 75 and 85 of the Rome Statute provides a comprehensive, victim-centred approach to redressing damages resulting from international crimes under the Statute. Article 75 ensures that victims are provided with reparations through restitution, compensation, and rehabilitation, through direct orders against convicted individuals or through the Trust Fund for Victims, which provides support even when perpetrators are indigent. Article 85 affirms the right to compensation for wrongfully detained individuals and the obligation of the State to provide reparations in cases of procedural or judicial errors.

Notably, the Trust Fund’s provision of reparations when perpetrators are unable to do so confirms the ICC’s commitment to justice. At the national level, claims for reparations for such crimes are usually made through separate civil actions and are subject to the burden of proof. However, most national systems generally lack mechanisms such as the Trust Fund, which ensures compensation in cases where individual perpetrators are indigent.

However, the ICC’s reparations mechanisms often fall short of meeting victims’ expectations due to limited resources and insufficient implementation procedures. Compensation is frequently symbolic or collective, leading to resentment among victims and their families. Additionally, victims face cultural, logistical, and procedural barriers when participating in international court trials.¹³ To address these issues, clear guidelines should be established to define fair compensation standards, and mechanisms should be developed to assist States Parties in implementing reparations decisions effectively.

10 Federal Decree Law no (5) of 1985 ‘Concerning the Issuance of the Civil Transactions Law of the United Arab Emirates’ [1985] Official Gazette 158.

11 Federal Decree-Law no (12) of 2017 ‘On International Crimes’ [2017] Official Gazette 622.

12 Rome Statute of the International Criminal Court (adopted 17 July 1998) [2004] UNTS 2187/3.

13 Yidou Yang, ‘The Gap between the International Criminal Court and Victims: Criminal Trial Reparations as a Case Study’ (2023) 12(4) *Laws* 72, doi:10.3390/laws12040072.

International law obliges states to compensate for damages resulting from their breach of international obligations. International responsibility arises when there is a breach of obligations stipulated in the Geneva Conventions of 1949 or any of its protocols, necessitating compensation, reparation, or restitution. The Permanent Court of International Justice affirmed this in the *Chorzow Factory Case* in 1927, stating: "It is a principle of international law that the violation of a state's commitment entails an obligation to make reparation in an adequate manner and that the obligation to repair the harm is the necessary complement of failure to apply an agreement, even if not expressly stated within the agreement itself."¹⁴

The four Geneva Conventions also affirm international responsibility in cases of breaches of their provisions,¹⁵ as do the principles of Article 1 of the 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts adopted by the International Law Commission. Consequently, compensation is an essential consequence of established responsibility aimed at compensating the victim and removing the harm's effects. If feasible, it is preferred to restore the victim to their original state before the harm occurred. When that is not possible, financial compensation equivalent to the harm is provided, and the legal system ensures that compensation does not exceed the actual damage, covering all types of compensable damages.

When comparing the national and international frameworks, there are important points of convergence. Compensation is considered a basic means of achieving restorative justice in both systems, whether through financial remuneration or the victim's return to their previous status. However, the Emirati system is notable for its integration of compensation with traditional concepts such as blood money and payment priorities, which gives a unique character to the treatment of damage. The international system focuses on redress within the context of international criminal justice, with institutions like the International Criminal Court playing a prominent role in ensuring reparations.

In international law, corrective justice reflects an all-encompassing mechanism for redress, rehabilitation and satisfaction. In the UAE, this is embodied by the combination of financial compensation and blood money, which highlights the harmonious relationship between traditional values and modern legal frameworks. UAE laws, such as the Civil Transactions Law and the Decree Law on International Crimes, safeguard this balance between justice and impartiality.

Compensation for enforced disappearance requires integration between the national and international systems to ensure justice for victims. Such integration allows for leveraging the strengths of both systems, making compensation an effective tool for remedying harm and restoring victims' rights. By implementing a comprehensive system to care for those affected by enforced disappearance, UAE legislators can ensure a more just system for the years to come.

14 *Factory at Chorzów (Germany v Poland)* (Claim for Indemnity) (PCIJ, 26 July 1927) Series A no 9 <<https://www.worldcourts.com/pcij>> accessed 25 November 2024.

15 Ahmed Abdel Latif El-Feki, *The Criminal Protection of the Rights of Crime Victims* (Dar Al-Fajr 2001) 369.

4.2. Persons Entitled to Compensation

International conventions related to enforced disappearance underscore the right of victims and their families to receive fair and equitable compensation for the harm they have suffered. This right is enshrined in Article 19 of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance, as well as Article 49 of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).¹⁶

Understanding victims' rights is essential, and the Rome Statute of the International Criminal Court distinguishes between two opposing concepts: the injured party and the victim. Article 75 addresses the concept of the injured party, while Article 85 deals with the concept of the victim.¹⁷ The term "victim" is broader than "injured party". While the injured party is directly harmed by the crime, the victim encompasses anyone impacted by the harm, even if they were not the direct target of the crime.¹⁸ For example, compensation beneficiaries include immediate family members of the disappeared person, such as the spouse, children, mother, father, and siblings. The categories of individuals eligible for compensation are addressed as follows:

4.2.1. The Disappeared Person as a Direct Victim of Enforced Disappearance

The term "disappeared person" refers to the direct victim of the crime of enforced disappearance, the individual targeted by the perpetrator and whose existence caused the crime to occur.¹⁹ This person was subject to arrest, abduction, detention, or any other form of deprivation of liberty by state officials or individuals or groups acting with the state's consent or support. This often involves a formal denial of their deprivation of liberty and concealing their fate or whereabouts, depriving them of legal protection.²⁰

In this regard, reports from the Working Group on Enforced or Involuntary Disappearances established by the United Nations Human Rights Commission in 1980, aimed at investigating cases of enforced disappearances, clarified the impact of these practices on human rights. They affirmed that the secret detention of individuals after their arrest constitutes a severe and ongoing violation of several fundamental rights and

16 Declaration on the Protection of All Persons from Enforced Disappearance (adopted 18 December 1992 UNGA Res 47/133) <<https://digitallibrary.un.org/record/158456?ln=en>> accessed 25 November 2024; International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) (adopted 20 December 2006 UNGA Res 61/177) UNTS 2716/3 <<https://digitallibrary.un.org/record/589467?ln=en>> accessed 25 November 2024.

17 Rome Statute (n 12).

18 Tayeb Smati, *Protection of Crime Victim Rights During Criminal Proceedings* (Al-Badi Publishing and Media Services 2008) 87.

19 Ibrahim Suleiman Alqatawneh, 'Compensation for Victims of Terrorist Crimes Comparative Study' (2022) 6(1) *AAU Journal of Business and Law* 150, doi:10.51958/AAUJBL2022V6I1P7.

20 Mohamed Abdel Latif Farag, *Confronting Enforced Disappearance in International Instruments and Egyptian Legislation* (3rd edn, Police Press 2020) 13.

freedoms guaranteed by international conventions. These include the right to liberty and personal security, the right of anyone deprived of their liberty to humane treatment that respects their dignity, the right not to be subjected to torture or any inhuman or degrading treatment, and the right to be recognised as a person before the law.²¹

The International Human Rights Committee issued opinions on 29 March 1982 regarding cases of enforced disappearance in Uruguay, specifically the disappearance of Eduardo Bleier. In October 1975, he was secretly detained by security forces and placed in an unknown detention camp. His fate remains unknown due to the Uruguayan authorities' denial of the incident. The committee declared that these events constituted a violation of several provisions of the International Covenant on Civil and Political Rights, urging the Uruguayan government to reconsider its stance, take effective steps to determine Bleier's fate and prevent similar violations in the future.²²

Based on the above, enforced disappearance is not limited to the violation of the civil and political rights of the disappeared person but also extends to the violation of their economic, social and cultural rights. In addition to being deprived of their liberty, the disappeared person is deprived of their right to work, health and education. Under this deprivation of liberty, it becomes impossible for the person to enjoy basic rights that guarantee a decent life and human dignity.²³

4.2.2. The Indirect Victim of Enforced Disappearance

According to Principle 5 of the United Nations Principles on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law of 2005, the term "victim" extends to include indirect victims. This principle clarifies that the term "victim" may include, where applicable and in accordance with national laws, immediate family members of affected persons or those directly dependent on them. Additionally, it includes individuals who suffered harm as a result of intervening to assist victims in their distress or to prevent further harm.²⁴

21 UN Commission on Human Rights, 'Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment: Question of Enforced or Involuntary Disappearances : Report of the Working Group on Enforced or Involuntary Disappearances' E/CN.4/1985/15 (23 January 1985) 9-10 <<https://digitallibrary.un.org/record/83575>> accessed 25 November 2024.

22 *Eduardo Bleier v Uruguay* Communication no R.7/30 (Human Rights Committee, 29 March 1982) UN Doc Supp no 40 (A/37/40) at 130 (1982) <<https://juris.ohchr.org/casedetails/575/en-US>> accessed 25 November 2024.

23 UN Human Rights Council, 'Report of the Working Group on Enforced or Involuntary Disappearances, Addendum: Study on enforced or involuntary disappearances and economic, social and cultural rights' A/HRC/30/38/Add.5 (9 July 2015) 15 <<https://digitallibrary.un.org/record/801312?ln=en>> accessed 25 November 2024.

24 Nasreen Jenadin, 'International Protection for Persons from Enforced Disappearance' (DPhil thesis, University of Algiers 2018) 181.

The International Convention for the Protection of All Persons from Enforced Disappearance in Article 24(1) states: "For the purposes of this Convention, "victim" means the disappeared person and any individual who has suffered direct harm as a result of this enforced disappearance."²⁵ Notably, the term "victim" in the aforementioned article lacks precision, particularly regarding indirect harm. Direct harm affects individuals whose interests were directly impacted by the crime, while indirect harm extends to family members of the victim who are entitled to claim compensation and redress for the harm they suffered due to the disappearance.

For the effective implementation of this article, it is crucial for state parties to ensure that the definition of "victim" in their national laws includes any person directly affected by enforced disappearance, including the disappeared person and the family or friends impacted by this crime. This approach aligns with Principle 5 of the United Nations Principles on the Right to Remedy and Reparation, which recognises the right of both direct and indirect victims to obtain appropriate compensation and redress.

International provisions have emphasised that enforced disappearance causes severe suffering for both the disappeared persons and their families. Article 1/2 of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance states that any act of enforced disappearance causes profound suffering to those subjected to it and their families, underscoring the importance of addressing this crime seriously and ensuring the right of victims and their families to compensation and justice. Article 19 of the declaration further stresses the need for redress for harm caused to the victim and their family, emphasising the provision of fair and appropriate compensation to alleviate the suffering caused by this crime and restore the rights and dignity of those affected.²⁶

In support of this, the United Nations Working Group on Enforced or Involuntary Disappearances states that "in addition to those who survive enforced disappearance, their families also have the right to compensation for the suffering they endured during the disappearance of their loved ones, and in the case of the victim's death, those who were dependent on them also have the right to reparation."²⁷

The Human Rights Committee, in the 1983 case of *Almeida de Quinteros v. Uruguay*, held that the anxiety and distress experienced by a mother due to her daughter's disappearance, coupled with ongoing uncertainty about her fate and whereabouts, made her a victim of

25 ICPED (n 16) art 24(1).

26 Declaration on the Protection of All Persons (n 16).

27 Manfred Nowak, 'Civil and Political Rights, Including Questions of: Disappearances and Summary Executions : Report submitted by independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, pursuant to paragraph 11 of Commission Resolution 2001/46' E/CN.4/2002/71 (8 January 2002) <<https://digitallibrary.un.org/record/459055?ln=en>> accessed 25 November 2024.

torture and cruel, inhuman treatment. This is prohibited under Article 7 of the International Covenant on Civil and Political Rights.²⁸

The Inter-American Court has established standards to ensure that the family or other affected individuals receive fair compensation, as follows:²⁹

1. Compensation should be based on actual and regular contributions made by the victim to the claimant, whether these contributions stem from a legal or non-legal obligation.
2. The relationship between the victim and the claimant should be such that it can be reasonably assumed that these contributions would have continued if not for the victim's death.
3. Compensation should be based on the living needs of the beneficiary.

The Inter-American Court considers that the parents and children of the victim meet these standards, allowing them to be regarded as indirect victims of enforced disappearance.³⁰

In light of the above, the right to compensation extends to both direct and indirect victims, regardless of the type of harm—whether physical, psychological, or economic. A victim is not limited to the person who was directly assaulted but also includes those who suffered harm, either directly or indirectly, as a result of that assault. Therefore, the concept of the victim applies equally to individuals and groups.

4.3. Forms of Compensation for Harm from the Crime of Enforced Disappearance

The concept of reparation includes a range of measures, such as restitution, compensation, rehabilitation, and satisfaction. Although these measures may be implemented independently, they can sometimes be combined, as is the case with restoring rights and compensation. For example, restoring rights may include the return of property, while compensation may be allocated to offset moral damages.³¹

28 *María del Carmen Almeida de Quinteros et al v Uruguay* Communication no 107/1981 (Human Rights Committee, 21 July 1983) UN Doc CCPR/C/OP/2 at 138 (1990), paras 14, 16 <<https://juris.ohchr.org/casedetails/339/en-US>> accessed 25 November 2024.

29 Livio Zilli, Alex Conte and Ian Seiderman, *The Right to a Remedy and to Reparation for Gross Human Rights Violations: A Practitioners' Guide* no 2 (ICJ 2018).

30 Al-Shammari (n 4) 53.

31 UN Secretariat, 'Civil and Political Rights, Including Questions of Disappearances and Summary Executions: Question of Enforced or Involuntary Disappearances' E/CN.4/2001/69 (21 December 2000) <<https://digitallibrary.un.org/record/431296?ln=en>> accessed 25 November 2024; Diane Orentlicher, 'Independent Study on Best Practices, Including Recommendations, to Assist States in Strengthening their Domestic Capacity to Combat All Aspects of Impunity' E/CN.4/2004/88 (27 February 2004) paras 57, 60 <<https://digitallibrary.un.org/record/517694?ln=en>> accessed 25 November 2024.

International conventions outlined such forms of reparation in relation to enforced disappearance, including restitution, financial compensation, and rehabilitation. Additionally, the mechanism of reparation should also include satisfaction and non-repetition as important elements for fully restoring victims' rights.

4.3.1. Restitution

The term "restitution" refers to a series of actions to return the victim to the state they were in before the crime. This includes regaining their freedom and property and returning to their original place of residence, as well as returning to their previous job or profession. Essentially, it seeks to restore the situation to what it would have been had the enforced disappearance not occurred.³²

The United Nations General Assembly's 1985 Declaration supports this, stating in Paragraph 8 that: "Where appropriate, offenders or those otherwise responsible should provide fair compensation to victims or their families or dependents, which should include the restitution of property, a fair amount to offset any harm or loss suffered, reimbursement for recurring expenses due to the harm, and services aimed at restoring rights."³³

Under the Rome Statute of the International Criminal Court, restitution is one of the primary forms of reparation allocated to victims of international crimes, including enforced disappearance. Article 75(1-2) allows for various forms of reparation, including restitution, satisfaction, and compensation. Article 35 further imposes responsibility on states for acts deemed internationally unlawful, stating, "The responsible state must make restitution, provided it is not materially impossible or would not impose a burden disproportionate to the benefit derived from restitution instead of compensation."³⁴

The release of detainees or victims of enforced disappearance and the return of arbitrarily seized property are among the simplest forms of restitution. The International Law Commission, in its commentary on Article 35 of the Draft Articles on State Responsibility for Internationally Wrongful Acts, affirmed that restitution is the primary form of reparation.³⁵

However, international conventions on enforced disappearance do not universally include "restitution" as a form of reparation for this crime. For instance, Article 19 of the 1992

32 Al-Shammari (n 4) 54.

33 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (adopted 29 November 1985 UNGA Res 40/34) para 8 <<https://digitallibrary.un.org/record/280057?ln=en>> accessed 25 November 2024.

34 Rome Statute (n 12) arts 35, 75(1-2).

35 Draft Articles on State Responsibility for Internationally Wrongful Acts, in: UN International Law Commission, 'Report of the International Law Commission, 53rd session (23 April - 1 June and 2 July - 10 August 2001)' A/56/10 (2001) art 35 <<https://digitallibrary.un.org/record/449524?ln=en>> accessed 25 November 2024.

International Declaration omits the concept of "restitution," focusing solely on compensation and rehabilitation.³⁶ Likewise, the American Convention on Enforced Disappearance does not refer to reparation measures, including restitution.³⁷

Article 24(5)(a) of the ICPPED highlights the importance of restitution by mentioning various forms of reparation, including compensation, restitution, rehabilitation, satisfaction, and guarantees of non-repetition. In contrast, Article 75(1-2) of the Rome Statute excludes guarantees of non-repetition, focusing solely on three forms of reparation: restitution, compensation, and satisfaction. Therefore, to ensure a more comprehensive approach, those responsible for drafting the Rome Statute should include guarantees of non-repetition, considering their equal importance to the other forms of reparation.

4.3.2. Financial Compensation

The term "compensation" refers to the provision of financial reimbursement to the victim for physical, psychological, or other damages caused by the crime, assessed according to an economic valuation corresponding to the severity of the violation and the specifics of each case.³⁸ Such damages may include lost wages and potential income, moral damages, legal aid, expert assistance, medication, and medical, psychological, and social services.³⁹ In cases where precise information is unavailable to assess the damages, the principle of "equity" can be used for estimation. This is the most common method for valuing damages stemming from pain, suffering, anxiety, and harm to the victim's reputation and dignity due to enforced disappearance.⁴⁰

The Human Rights Committee recommended compensating the families of the disappeared for the psychological pressures caused by enforced disappearance, based on Article 7 of the International Covenant on Civil and Political Rights. In *Coronel v. Colombia*, the committee did not find a direct violation of Article 7 concerning the victims' families, but it recommended compensation based on the implicit assumption that their psychological state was adversely affected.⁴¹

Furthermore, the Inter-American Court of Human Rights awarded compensation for moral damage in *Maritza Urrutia v. Guatemala*, based on the principle of social justice. The

36 Declaration on the Protection of All Persons (n 16) art 19.

37 Inter-American Convention on Forced Disappearance of Persons (adopted 9 June 1994) ILM 33/1529 <<https://www.oas.org/juridico/english/treaties/a-60.html>> accessed 25 November 2024.

38 Bousmaha (n 8) 50.

39 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (adopted 15 December 2005 UNGA Res 60/147) paras 8, 9 <<https://digitalibrary.un.org/record/563157?ln=en>> accessed 25 November 2024.

40 Al-Shammari (n 4) 56.

41 *José Antonio Coronel et al v Colombia* Communication no 778/1997 (Human Rights Committee, 24 October 2002) UN Doc CCPR/C/76/D/778/1997 (2002) para 10 <<https://juris.ohchr.org/casedetails/1032/en-US>> accessed 25 November 2024.

court held that family members of victims do not need to prove psychological damage due to the close relationship presumed to exist with the victim, which includes parents, children, spouses, and permanent partners.⁴²

As for the statute of limitations on victims' right to claim compensation, the Inter-American Court of Human Rights ruled that civil actions for compensation related to severe human rights violations should not be subject to statutes of limitations, as this obstructs justice, accountability, and undermines victims' rights to compensation.⁴³

4.3.3. Rehabilitation

Rehabilitation involves supporting victims to help them maintain a life as close to normal as possible, offering services and support across various aspects of life. This right is safeguarded by a set of international conventions related to enforced disappearance, with particular emphasis on Article 19 of the 1992 International Declaration, which states: "The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible."⁴⁴

Likewise, Article 24(5)(b) of the 2006 Convention on Enforced Disappearance states, "The right to reparation referred to in paragraph (4) of this article... shall, where appropriate, include other forms of reparation, such as (b) Rehabilitation..."⁴⁵

However, the American Convention on Enforced Disappearance (1994) and the Rome Statute of the International Criminal Court (1998) lack explicit references to rehabilitation measures in their texts.

Therefore, the rehabilitation process particularly requires "physical and psychological treatment for the victims, as well as rehabilitation services to address any physical or mental damage they may have sustained." In *Yaque v. Peru*, the Inter-American Court of Human Rights recommended providing medical treatment as part of the reparations and ordered the reopening of a medical centre in one of the villages affected by severe human rights violations.⁴⁶ In the *Plan de Sánchez Massacre* case, the international court ordered the provision of medical treatment and medications for the victims and mandated the implementation of a free psychological treatment program.⁴⁷

42 *Maritza Urrutia v Guatemala* (IACrtHR, 27 November 2003) paras 169 (a), (b), (c) <<https://www.legal-tools.org/doc/8def48>> accessed 25 November 2024.

43 *Barrios Altos v Peru* (Merits) (IACrtHR, 14 March 2001) Series C no 75, para 41 <<https://www.legal-tools.org/doc/fl439e>> accessed 25 November 2024.

44 Declaration on the Protection of All Persons (n 16) art 19.

45 ICPPED (n 16) art 24(5)(b).

46 *Aloeboetoe et al v Suriname* (Reparations) (IACrtHR, 10 September 1993) Series C no 15, para 96 <<https://www.legal-tools.org/doc/e0b8e3>> accessed 25 November 2024.

47 *Plan de Sánchez Massacre v Guatemala* (Reparations) (IACrtHR, 19 November 2004) Series C no 116, paras 106, 108, 117, 298 <<https://www.legal-tools.org/doc/e8533d>> accessed 25 November 2024.

4.3.4. Satisfaction

Compensation for non-material losses is considered a form of redress, where its exact value is difficult to determine and is often assessed through theoretical and approximate methods.⁴⁸ Such cases often pertain to moral damage, manifesting in various forms. International courts have recommended in numerous cases that a guilty verdict may constitute a form of "satisfaction," especially when an independent and impartial judiciary confirms that the victim has suffered human rights violations.⁴⁹

According to the United Nations Principles on the Right to Remedy, satisfaction includes several important aspects aimed at achieving justice for victims. These aspects encompass fact-finding and public disclosure, ensuring that this disclosure avoids causing additional harm and guaranteeing the safety of the victim, witnesses, and other collaborators. Satisfaction also includes locating forcibly disappeared persons, identifying them, assisting in the retrieval of their remains, and providing for their reburial according to the wishes of their families. Additionally, it includes public apologies, acknowledgement of facts, and acceptance of responsibility for the violations that occurred. Satisfaction also involves integrating educational and training materials in international human rights and humanitarian law into educational curricula.⁵⁰ Such measures are crucial and as significant as imposing judicial and administrative sanctions on those responsible for the violations.

Public commemoration, carrying symbolic value, may also contribute to the redress process for present and future generations. This can include actions such as naming streets after certain individuals or erecting memorials to honour victims of past violations.

In light of this, satisfaction is essential for compensating moral damages related to dignity and reputation. It should involve restoring the legal and social standing of the victims, enabling them to regain their dignity and status within society. Article 24/5(c) of the ICPPED underscores this principle.

4.3.5. Non-Repetition

The UN Principles on the Right to Remedy emphasise the importance of preventing the continuation or recurrence of violations through several measures, including legislative and institutional reform, constitutional amendments, security sector reform, and enhanced civilian oversight of the military and security forces.⁵¹

48 Mohammed Ahmed Abdeen, *Compensation between Material and Moral Damages* (3rd edn, Manshat Al-Maaref 2020) 36.

49 Mohamed Adel Mohamed Saeed, *Ethnic Cleansing: A Study in Public International Law and Comparative Criminal Law* (2nd edn, Dar Al-Jameaa Al-Jadida 2019) 827.

50 Basic Principles and Guidelines on the Right to a Remedy (n 39) principle 22 (b), (c), (h), (e).

51 *ibid*, principles 22, 23.

The Inter-American Court of Human Rights has been at the forefront in supporting non-repetition measures. In the case of *Azul Rojas Marín v. Peru*, the victim was subjected to torture and sexual violence due to her sexual orientation while in arbitrary detention by police officers. Upon her release, she filed a criminal complaint, but the authorities did not act seriously and closed the investigation without prosecuting the perpetrators. As a result, the court ordered the adoption of a protocol for investigating and prosecuting cases of violence against the LGBTQ community and the education and training of state employees to prevent such crimes from recurring.⁵² The court also stressed the necessity for states to join the Inter-American Convention on Forced Disappearance of Persons and to review their domestic laws in alignment with international obligations, particularly concerning fair trials and the death penalty.

In light of the above, human rights violations through enforced disappearance, murder, or torture constitute serious breaches of states' obligations under international law. If these violations persist, the state must cease them and implement measures to ensure they are not repeated. These steps may include enacting necessary legislative measures if the violations stem from domestic law and adopting policies and practices to protect groups at risk of enforced disappearance, murder, or torture.

5 LEGAL REGULATIONS OF COMPENSATION FOR ENFORCED DISAPPEARANCE IN THE UAE COMPARED TO OTHER NATIONAL LEGISLATIONS

Many national laws affirm the right of victims of enforced disappearance to obtain appropriate, effective, and prompt compensation, necessitating the enactment of suitable laws and the implementation of measures to facilitate the compensation of those affected by enforced disappearance, restoring their dignity, and holding those responsible accountable.

The United Arab Emirates (UAE), despite not joining the ICPPED, classifies enforced disappearance as an independent crime within crimes against humanity. Article 6, Paragraph 6, of Federal Law Decree No. 12 of 2017 on International Crimes states: "Enforced disappearance of persons through their arrest, detention, or abduction by the state or a political organisation, or with its authorisation, support, or acquiescence, and its refusal to acknowledge the deprivation of their liberty or to disclose their fate or whereabouts, intending to remove them from the protection of the law for a prolonged period."⁵³

52 *Azul Rojas Marín et al. v. Peru* (IACrHR, 12 March 2020) Series C no 402 <<https://policehumanrightsresources.org/azul-rojas-marin-et-al-v-peru-series-c-402>> accessed 25 November 2024.

53 Federal Decree-Law no (12) of 2017 (n 11) art 6, para 6.

Article 299 of the Federal Civil Transactions Law states that “compensation for harm to the person must be provided. However, in cases where blood money or reparation is due, neither may be combined with compensation unless the parties agree otherwise.”⁵⁴ Article 25 of the Federal Code of Criminal Procedure states that “a civil lawsuit may be filed before criminal courts against the insured to compensate for the damage caused by the crime.”⁵⁵

Federal Law on Crimes and Penalties No. 31 of 2021 and Federal Law No. 38 of 2023 on Criminal Procedure do not contain specific legal provisions on compensation. Therefore, the study recommends adding the following provision to the Code of Criminal Procedure: “Victims and those affected may file a civil lawsuit before this court or any successor court against the accused for damages arising from acts constituting a crime under the provisions of this law.”

The proposed text thus identifies the parties entitled to initiate civil lawsuits in the UAE's Code of Criminal Procedure, including anyone who has suffered direct harm, whether material or moral, from any crime. If the individual is not competent to litigate civilly, a legal representative may act on their behalf. This allows victims of enforced disappearance, such as the disappeared person, parents, children, spouse, and siblings, to seek compensation for the damage inflicted upon them. In line with the principles of solidarity and social integration, states should compensate crime victims for harms they could neither foresee nor protect themselves against. States cannot shirk from or neglect this obligatory right.

Turning to Qatari legislation, Qatar has not joined the ICPPED. However, it affirms its commitment to fundamental human rights in its domestic laws. The Qatari constitution stipulates that “citizens are equal in rights and public duties” and that “personal freedom is guaranteed.”⁵⁶ Penal Code No. 11 of 2004 considers enforced disappearance a crime, with Article 163 punishing any public official who unlawfully detains a person.⁵⁷ Although Qatari legislation does not explicitly mention enforced disappearance, related acts such as kidnapping and unlawful detention are prohibited under Article 318 of the Penal Code, which prescribes imprisonment for up to ten years.

In Qatari law, individuals have the right to claim compensation for harm resulting from unlawful acts, including human rights violations such as enforced disappearance. Qatari Civil Code No. 22 of 2004 regulates compensation generally, with Article 201 stating that

54 Federal Decree Law no (5) of 1985 (n 10) art 299.

55 Federal Law no (35) of 1992 ‘Concerning the Criminal Procedure Law’, art 25 <<https://hzlegal.ae/federal-law-no-35-of-1992-concerning-the-criminal-procedural-law/>> accessed 25 November 2024.

56 Constitution of the State of Qatar (2004) arts 34, 36 <<https://www.refworld.org/legal/legislation/natlegbod/2004/en/101710>> accessed 25 November 2024.

57 Mohamed Saleh Ali Jurhib Al-Marri, ‘The Crime of Enforced Disappearance in International and National Criminal Law: An Analytical and Comparative Study’ (College of Law, Qatar University 2024) 120-1 <<https://qspace.qu.edu.qa/handle/10576/56318>> accessed 25 November 2024.

“the damage for which the liable party must compensate is the loss incurred and the profit missed, as long as it is a natural result of the unlawful act.”⁵⁸

While there is a legal framework to enhance individuals' rights to claim compensation, the effectiveness of these compensations depends on the enforcement of laws. It is important for Qatari legislation to adopt clear and effective procedures related to compensating harm from enforced disappearance, ensuring justice for victims, and strengthening human rights protection.

Both Emirati and Qatari legislation affirm human rights principles and the necessity of protecting individuals from violations of freedoms. However, neither explicitly addresses crimes associated with enforced disappearance. While UAE legislation has a more explicit framework for criminalising enforced disappearance and includes compensation for victims, Qatari legislation lacks a clear definition of this crime. This legislative ambiguity in both countries reflects the need to strengthen legal frameworks to address human rights challenges, including providing clear and effective legal protection against enforced disappearance.

Focusing on Spanish legislation, the Spanish Penal Code No. 10 of 1995 classifies enforced disappearance as a crime against humanity under Article 607 bis, reflecting Spain's adherence to its international obligations after ratifying the International Convention for the Protection of All Persons from Enforced Disappearance in 2009. According to Paragraph 6 of this article, perpetrators who detain a person, deprive them of their liberty or refuse to provide information on their fate or whereabouts can face a prison sentence of 12 to 15 years. Paragraph 7 further stipulates a prison sentence of 8 and 12 years for those who detain and deprive someone of their liberty in a manner contrary to international rules, with a reduced sentence if the period of detention is less than 15 days.

Spanish criminal law allows victims to claim compensation for material and moral damages. This includes damages that directly affect the victim and also family members or third parties impacted by the crime. In essence, both the victim and family members or those directly affected by the crime can claim compensation for damages they have sustained.⁵⁹ This broad understanding of "victims"⁶⁰ aligns with international conventions, ensuring that individuals directly impacted by crimes such as illegal detention, abduction, or enforced disappearance can claim reparations.

Spain's history of enforced disappearances dates back to the Spanish Civil War (1936–1939) and the Franco dictatorship (1939–1975), during which an estimated 114,226 people

58 Qatar Law no (22) of 2004 'Regarding Promulgating the Civil Code', art 201 <<https://www.almeezan.qa/LawPage.aspx?ID=2559&language=en>> accessed 25 November 2024.

59 Spanish Law no 10/1995 'Criminal Code' (23 November 1995) [1995] BOE 281, arts 109, 110 <<https://www.boe.es/eli/es/lo/1995/11/23/10/con>> accessed 25 November 2024.

60 ICPPED (n 16) art 24(1).

disappeared permanently.⁶¹ In 2008, Judge Baltasar Garzón, who worked at the National Supreme Court in Madrid, launched an investigation into these crimes based on his court's jurisdiction over gross human rights violations. Though this move was disputed and led to charges being brought against Garzón himself, it brought attention to the need for justice. Spain has been heavily criticised by international organisations for its failure to address the legacy of these crimes. In 2013, Amnesty International described Spain's failure to investigate and punish these crimes as "shameful". Similarly, the International Coalition Against Enforced Disappearances (ICAED) criticised the government for not acknowledging the abduction of children of political opponents during the Franco era, despite having ratified the ICPPED.⁶²

Despite Spain's legal progress, enforced disappearances are not explicitly criminalised in its national legislation, prompting calls to bolster the legislative framework and intensifying efforts to ensure justice and address outstanding cases. To affirm victims' right to fair compensation, the Spanish Law on Assistance and Support for Crime Victims (No. 35 of 1995) established several measures to guarantee their rights.⁶³ The law requires police to keep victims informed on the investigation's progress, provided that doing so does not affect the outcome. It also mandates courts to notify victims of their right to claim compensation and to communicate significant developments in proceedings. These provisions aim to ensure victims stay informed and aware of their rights.

While Spain has faced criticism for its weak enforcement of enforced disappearances, the Philippines set a leading example with the signing of the Anti-Enforced Disappearances Act by President Benigno Aquino III on 21 December 2012.⁶⁴ The law was the first of its kind in Asia to punish perpetrators with life imprisonment and considers enforced disappearances a separate human rights violation. Human Rights Watch hailed it as a landmark achievement reflecting the struggle of victims of the Ferdinand Marcos dictatorship. Notably, it allows the prosecution of perpetrators of past crimes if they continue to conceal the fate or whereabouts of victims.

61 'Observaciones preliminares del Grupo de Trabajo sobre las Desapariciones Forzadas o Involuntarias de la ONU al concluir su visita a España' (*United Nations Human Rights: Office of the High Commissioner (OHCHR)*, 30 September 2013) <<https://www.ohchr.org/es/statements/2013/09/default-title>> accessed 20 December 2024.

62 International Coalition Against Enforced Disappearances, 'ICAED Statement on the Acquittal of Judge Baltasar Garzon' (*Asian Federation Against Involuntary Disappearances*, 17 March 2012) <<https://disappeared-asia.org/whats-happening/10-statements/29-icaed-statement-on-the-acquittal-of-judge-baltasar-garzon>> accessed 7 January 2025.

63 Spanish Law no 35/1995 'On Aid and Assistance to Victims of Violent Crimes' (11 December 1995) BOE 296 <<https://www.boe.es/eli/es/l/1995/12/11/35/con>> accessed 25 November 2024.

64 Republic of the Philippines Act no 10353 of 2012 'Anti-Enforced or Involuntary Disappearance Act' (21 December 2012) <<https://issuances-library.senate.gov.ph/legislative-issuance/republic-act-no-10353>> accessed 25 November 2024.

During the Marcos dictatorship (1972–1981), the Philippines experienced one of its worst periods of abuse. An estimated 1,500 people were killed, more than 800 abducted, and 159 forcibly disappeared, with their bodies never recovered, according to the human rights organisation Karapatan. More than 10,000 victims or their families filed individual lawsuits against Marcos, accusing his regime of enforced disappearances, torture, and executions.

In 1992, a group of victims filed a landmark lawsuit in the U.S. District Court for the District of Hawaii, titled *In re Estate of Ferdinand E. Marcos Human Rights Litigation*, which resulted in a 1995 judgment ordering the Marcos family to pay \$2 billion in damages.⁶⁵ However, enforcing this judgment proved challenging due to significant legal disputes over Marcos' assets, many of which were either hidden or tied to international lawsuits.

The Philippine Anti-Enforced Disappearance Law (No. 10353 of 2012) punishes the perpetrators and includes comprehensive compensation for the victims and their families. This includes both material and moral aspects, underscoring the importance of addressing the multi-faceted effects of this crime. The law requires financial support for victims and their families to cover expenses related to income loss, economic damage, or any other costs resulting from the incident. This financial support may also cover indirect losses families experience due to the deprivation of their breadwinner or the financial and psychological support the victim provided.⁶⁶

The law ensures victims and their families receive rehabilitation, including healthcare, psychological therapy, and social services, to address the trauma and health impacts of enforced disappearance. It provides moral compensation, such as acknowledgement of harm and official apologies from authorities for violations that led to the enforced disappearance, alongside financial support. Additionally, the law guarantees their protection from threats or retaliation when exercising their rights.⁶⁷

A comparison of the Spanish and Philippine legal systems shows a clear contrast in political will and commitment to addressing the legacy of enforced disappearances. While the Philippines has shown significant progress with a comprehensive law focused on justice and redress for victims, Spain continues to be widely criticised for its lack of adequate legislation and practical measures to achieve justice.

In Yemen, the legal framework clearly protects individuals from arbitrary detention. Although Yemen has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance, Article (48) of the 1991 Constitution provides legal guarantees for the freedom of individuals and prohibits arbitrary detention. The same article obliges authorities to compensate victims while allowing those arrested to inform

65 *In Re Estate of Marcos Human Rights Litigation* 910 F Supp 1460 (MDL 840) (US District Court, D Hawai'i, 30 November 1995) <<https://law.justia.com/cases/federal/district-courts/FSupp/910/1460/1943938/>> accessed 7 January 2025.

66 Al-Marri (n 57) 110-1.

67 *ibid* 118.

whomever they choose of the status of their detention. Furthermore, the UN Group of Experts on Yemen notes that Yemen's ratification of the International Covenant on Civil and Political Rights obliges it to refrain from enforced disappearance.⁶⁸

Despite these legal safeguards, violations persist. According to Human Rights Watch, between 31 May and 12 June 2024, the Houthis launched a campaign targeting staff of international and local agencies in Sanaa, detaining 17 UN staff and more than 60 people. Their fates remain unknown.⁶⁹ These violations are part of a long history of enforced disappearances, such as the continued detention of members of the Baha'i community without charge. These incidents revealed the need for strengthening the rule of law and holding those responsible for these crimes accountable. In a positive and effective step, the Supreme Security Committee suspended the commander of the Counter-Terrorism Forces, Yusran al-Maqtari, and required him to investigate the disappearance of Lieutenant Colonel Ali Abdullah Ashal, with the formation of a joint investigation committee from the security, criminal investigation, security belt, intelligence, and counter-terrorism agencies.⁷⁰

Turning to Venezuela, the country signed the International Convention for the Protection of All Persons from Enforced Disappearance in 2008 and ratified it in 2010. Article (30) of the Constitution obligates the state to provide comprehensive reparation to victims of human rights violations, including material compensation and reparations for damages resulting from public crimes.⁷¹

The case of Venezuelan naval officer Rafael Acosta Arévalo, who was abducted and tortured to death by security forces in 2019, stands as a stark example of enforced disappearance and systematic repression. His wife reported him missing on 22 June, and by 28 June, he was brought before a military court.⁷² This case exposes a glaring disparity between Venezuela's international obligations and its actual practices. It underscores the urgent need for international intervention, justice for victims, and strengthened efforts to ensure accountability and address ongoing human rights violations.

68 Mohamed Al-Sayed Saeed, 'Invisible and Unheard: The Escalating Tragedy of Enforced Disappearances in Yemen' (*Cairo Institute for Human Rights Studies*, 30 August 2024) <<https://cihrs.org/invisible-and-unheard>> accessed 7 January 2025.

69 *ibid.*

70 'The Security Authorities in Aden Announce the Details of the Kidnapping of Sheikh Ali Ashal and Say that Yisran Al-Maqtari Fled the Country (names of the suspects)' (*Barran Press*, 1 August 2024) <<https://barran.press/news/topic/4195>> accessed 7 January 2025.

71 Al-Shammari (n 4) 12.

72 'Bachelet deeply concerned by death in custody of Captain Acosta Arévalo in Venezuela' (*United Nations Human Rights: Office of the High Commissioner (OHCHR)*, 1 July 2019) <<https://www.ohchr.org/en/press-releases/2019/07/bachelet-deeply-concerned-death-custody-captain-acosta-arevalo-venezuela>> accessed 7 January 2025.

UAE legislation currently lacks a specific provision addressing redress for victims of enforced disappearance, unlike other comparative laws. Currently, it only provides compensation for crimes identified by law, omitting other forms of redress like non-recurrence, satisfaction, or rehabilitation. To address this gap, it is recommended that UAE law be amended to include detailed provisions for victims of enforced disappearance, covering guarantees against repetition of violations, adequate satisfaction, and both psychological and physical rehabilitation. Additionally, victims and their legal representatives should have the right to access the judiciary and file complaints about human rights violations. This is in line with Article 41 of the Federal Constitution, which guarantees every individual their rights and freedoms, stipulating that “everyone has the right to submit a complaint to the competent authorities, including the judiciary, regarding the infringement of the rights and freedoms set forth in this chapter.”

Comparative constitutions have also guaranteed every person harmed by actions taken by the state the right to file a lawsuit for compensation for the damage caused to them. Article 43 of the Argentine Constitution states that “any person may file a prompt and expeditious action for protection, in the absence of other appropriate judicial means, against any act or omission by public authorities or individuals that immediately or subsequently causes harm, restricts, alters, or threatens arbitrarily or illegally, clearly, the rights and guarantees recognised by this Constitution, by treaty, or by law as appropriate.”

Similarly, the Yemeni legislator stipulates in Article (48) of the 1991 Constitution compensation for cases of arbitrary arrest or detention in places other than those subject to the Prisons Organization Law. It also grants the arrested person the right to notify someone of their arrest and mandates judicial oversight for any decision to continue detention. In the same context, Article 30 of the Venezuelan Constitution obliges the state to fully compensate victims of human rights violations. This includes ensuring appropriate compensation, including necessary reparations for damage caused by public crimes.⁷³

The federal legislator could have drawn on the Yemeni and Venezuelan constitutions in this field, ensuring compensation for those harmed by cases of arbitrary arrest, detention, and imprisonment or by torture, cruel, inhuman, or degrading treatment, regardless of the state’s circumstances, ordinary or exceptional. Accordingly, the study proposes the addition of a new article to the effective Federal Constitution, granting victims of crimes violating freedom, including enforced disappearance, the right to claim compensation. The proposed article is as follows: “The state guarantees just compensation to those harmed by cases of arbitrary arrest, detention, or imprisonment, and to their family members, as regulated by law.”

73 Al-Shammari (n 4) 12.

Based on the above, compensation for victims is a constitutionally and legally protected right that must not be denied to any victim, regardless of their status. This right extends broadly to include not only direct victims but also their heirs and dependents, such as those who died due to acts by armed forces, security forces, or paramilitary groups. It further extends to individuals born while their mothers were deprived of liberty, as well as minors who were with their parents who disappeared or were detained for political reasons.

However, implementing legal reforms in the UAE presents several practical challenges that must be considered. These include the difficulty of amending the constitution, which is considered rigid, the need to ensure smooth cooperation between the federal authorities and the emirate-level authorities within the framework of the UAE's federal system, and the necessity to align proposed reforms and amendments with cultural and religious values to gain public support.

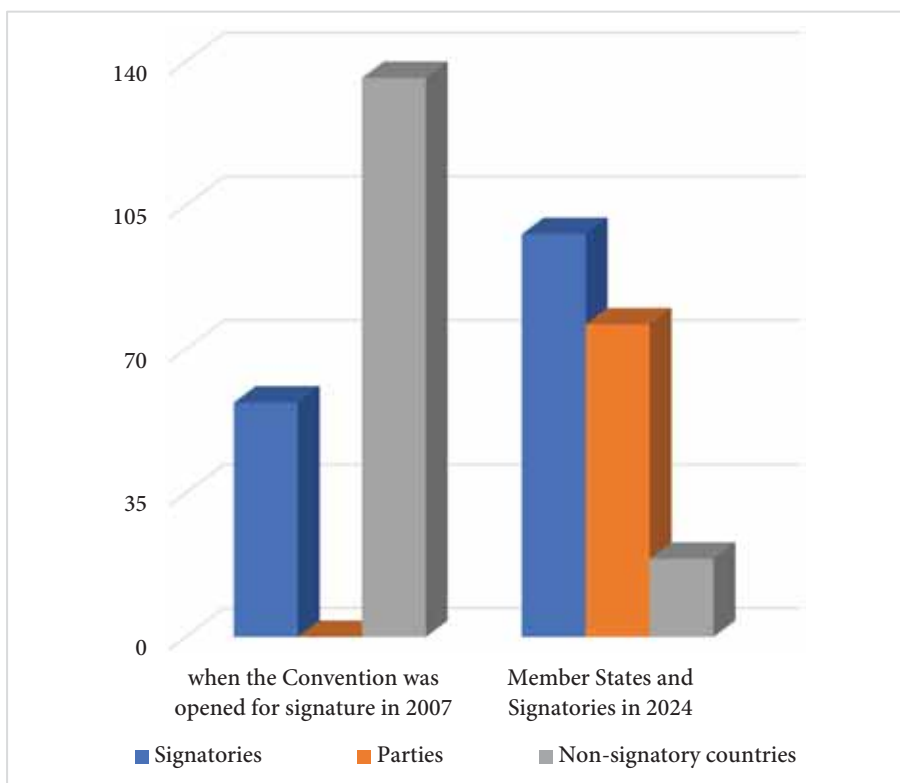


Figure 1. Breakdown of Signatories and Ratifications for the ICPPED (2007-2024)

The above figure illustrates the progress of international engagement with the ICPPED over a 17-year period. It highlights the increasing number of countries that have signed and ratified the Convention, demonstrating a growing international commitment and consensus on the importance of protecting individuals from enforced disappearance.⁷⁴

6 COMPENSATIONS FOR CRIMES OF ENFORCED DISAPPEARANCE IN INTERNATIONAL COURT RULINGS

Compensation for crimes of enforced disappearance is a vital area in international law, with the Inter-American Court of Human Rights and the European Court of Human Rights playing a prominent role in delivering justice for victims. These courts strive to provide fair and adequate compensation to victims and their families, upholding international human rights standards and legal principles.

This section will outline compensation for crimes of enforced disappearance in international courts as follows:

6.1. Applications of the Inter-American Court of Human Rights

The Inter-American Court of Human Rights demonstrated a strong commitment to providing comprehensive compensation for victims of enforced disappearance in *Barrios Altos v. Peru*. The court ruled that compensation for victims must cover a variety of forms aimed at redress, rehabilitation, and ensuring that such crimes are not repeated in the future.⁷⁵

In its decision on 14 March 2001, the court ordered the Peruvian government to provide direct financial compensation to victims of enforced disappearance and their families. This compensation covers financial losses, including income loss and expenses incurred by families in searching for their loved ones. In addition to financial compensation, the court emphasised the importance of providing redress for victims. This includes medical and psychological support for the victims and their families to aid in their physical and mental recovery from the negative impacts of enforced disappearance.

The court also indicated the need for the state to restore victims' dignity through a formal, public apology. Such an apology is essential for acknowledging wrongdoing and rebuilding trust between the state and society. Regarding non-repetition, the court requested that the state conduct thorough and transparent investigations into cases of enforced disappearance

74 'International Convention for the Protection of All Persons from Enforced Disappearance, 2006: States Parties' (ICRC) <<https://ihl-databases.icrc.org/en>> accessed 7 January 2025; 'Working Group on Enforced or Involuntary Disappearances: About Enforced Disappearance' (*United Nations Human Rights: Office of the High Commissioner (OHCHR)*, 2025) <<https://www.ohchr.org/en/special-procedures/wg-disappearances/about-enforced-disappearance>> accessed 7 January 2025.

75 *Barrios Altos v Peru* (n 43).

and hold those responsible accountable. The state was mandated to provide specialised training for armed forces and correctional institutions on human rights and international humanitarian law. This decision highlighted the necessity of comprehensive compensation, extending beyond financial reparations to include corrective measures and preventive actions to prevent future violations.

The Inter-American Court of Human Rights also heard the *Velásquez Rodríguez v. Honduras* case between 1981 and 1984, one of the landmark cases in international law related to enforced disappearance. In September 1981, university student Mr Manfredo Velásquez Rodríguez was abducted by an armed group in civilian clothes under the direction of the armed forces without any arrest warrant or legal documents to justify it. He was severely tortured during interrogation at a military base and later transferred to another location, after which all news of him ceased until 1986.⁷⁶

On 29 July 1988, the Inter-American Court of Human Rights ruled that the Honduran government had failed to provide compelling evidence to refute the allegations and did not protect the victims' rights. The court declared that enforced disappearance constitutes a continuing crime, violating a wide range of human rights guaranteed under the 1969 American Convention on Human Rights. Consequently, the court held the Honduran government responsible for providing financial compensation to Velásquez Rodríguez's family as part of its international obligations. It also pointed out that the state commits the crime of enforced disappearance either through action or omission, with omission occurring when the state fails to take the necessary care to prevent such violations.⁷⁷

The court further ruled that the government had violated Rodríguez's fundamental rights guaranteed by the American Convention on Human Rights by failing to protect him and effectively investigate his enforced disappearance. The court emphasised that compensation extends beyond financial aspects to include acknowledgement of responsibility and the provision of psychological and moral support to the victim's family. It also stressed that the obligation to investigate must not be a mere formality but a binding legal duty,³⁹ independent of the victim's or family's initiative.

The IACtHR adopts a flexible and victim-focused approach, frequently allowing circumstantial or indirect evidence when direct evidence cannot be obtained. *Velásquez Rodríguez v. Honduras* highlighted the importance of using circumstantial or presumptive evidence, recognising the state's capacity to conceal its actions. This approach allows victims to provide evidence without adhering to an unreasonably strict standard. The court permitted the inclusion of newspaper articles as evidence. Despite the IACtHR's inability to regard the press clippings as documentary proof, the

76 *Velásquez Rodríguez v Honduras* (Merits) (IACrHR, 29 July 1988) para 177 <<https://edld.ehrac.org.uk/case/velasquez-rodriguez-v-honduras/>> accessed 25 November 2024.

77 *ibid*, para 172.

circumstantial evidence strengthened the applicant's claim that the Honduran government was responsible for the disappearances.⁷⁸

This ruling underscores the importance of compensation as a fundamental mechanism for achieving justice for victims and their families and reaffirms the necessity of holding states accountable for human rights violations they commit or allow. The European Court of Human cited the *Velásquez Rodríguez* decision in relation to situations where direct evidence of human rights violations is difficult to obtain, particularly when the state itself is accused of committing or permitting the violations.

In the case of *Blake v. Guatemala*, concerning the abduction and murder of American journalist Nicholas Blake in Guatemala in 1985, the journalist was considered missing until his fate was revealed in 1992. The court deemed enforced disappearance a continuous crime until the victim's fate or whereabouts were disclosed, ruling that the ongoing nature of the crime until 1992 brought it within its jurisdiction. The court ordered the Guatemalan government to provide financial compensation to Nicholas Blake's family as part of its international obligations. This compensation covered financial, psychological, and moral aspects, including financial reparations for material damages and expenses incurred by the family in searching for the victim, as well as psychological harm resulting from the loss of a family member under coercive and tragic circumstances.⁷⁹

The court found Guatemala in violation of Article 8(1) (the right to a hearing within a reasonable time by a competent, independent court) for failing to investigate Mr Blake's disappearance and death effectively, prosecute the responsible parties, and impose appropriate penalties on the perpetrators. The court also found the state in violation of Article 5 (the right to humane treatment), as the enforced disappearance caused suffering for Mr Blake's family, especially his brother, who endured psychological harm due to the incineration of Mr Blake's remains.

The court based its decision on international legal principles concerning the protection of persons from enforced disappearance, viewing this crime as ongoing until the victim's fate is revealed. The court cited Article 17(1) of the 1992 United Nations Declaration on the Protection of All Persons from Enforced Disappearance and Article 3(1) of the 1994 Inter-American Convention on Forced Disappearance of Persons, which require states to take necessary measures to classify enforced disappearance as a crime, punish the perpetrators, and provide compensation to victims.

The court's ruling in the Blake case, a significant judicial precedent, has considerably impacted the development of criminal legislation and the applications of national criminal courts in cases of enforced disappearance in American states. This decision emphasised the

78 Needham (n 6) 36.

79 *Blake v Guatemala* (Reparations and Costs) (IACrtHR, 22 January 1999) <<https://www.refworld.org/jurisprudence/caselaw/iacrthr/1998/en/89033>> accessed 25 November 2024.

need to provide fair compensation to victims and their families as part of transitional justice, thus strengthening human rights protection at the international level.

The IACtHR employs a victim-centred methodology regarding the burden of proof, frequently transferring this responsibility to the state in cases involving human rights violations. In *Velásquez Rodríguez v. Honduras* and *Godínez Cruz v. Honduras*, the Court underscored the state's duty to present evidence and assist in revealing the truth due to its access to critical information. This strategy alleviates the burden on victims, promoting a more equitable process, especially in instances of enforced disappearances, where states may conceal or eliminate evidence.⁸⁰

6.2. Applications of the European Court of Human Rights

The applications of the European Court of Human Rights (ECtHR) in cases of enforced disappearance hold particular significance, primarily relying on the European Convention on Human Rights of 1950. The ECtHR emphasised the importance of filing complaints concerning legal violations within six months of the final national decision. However, this rule does not apply to cases of ongoing enforced disappearance, where the state's obligation to investigate remains active until the victim's fate is known.

The ECtHR has similar rules for the admission of evidence as the IACtHR. The IACtHR allows indirect and circumstantial evidence, particularly when it comes to enforced disappearances. Likewise, the ECtHR can admit any type of evidence as long as it is relevant.⁸¹ In *Ireland v. United Kingdom*, the ECtHR recognised that, like the IACtHR, it is not bound by inflexible rules of evidence under the European Convention or the theories governing international courts.⁸² As a result, the Court can consider any evidence deemed relevant to the case.

In *Kurt v. Turkey*, a young man was forcibly disappeared by Turkish security forces on 25 November 1993.⁸³ The ECtHR found that the evidence provided by the victim's mother was insufficient to establish a violation of Article 2 of the European Convention on Human Rights, which protects the right to life. However, the court ruled that detaining an individual without acknowledgement constitutes a complete denial of the fundamental rights protected by Article 5, which requires states to conduct prompt and effective investigations into any claim of detention followed by disappearance. The court concluded that the relatives of a disappeared person might themselves be considered victims of torture or cruel and inhumane treatment, constituting a breach of Article 3 of the European

80 Needham (n 6) 41-2.

81 *ibid* 36.

82 *Ireland v the United Kingdom* App no 5310/71 (ECtHR, 18 January 1978) <<https://hudoc.echr.coe.int/eng?i=001-57506>> accessed 7 January 2025.

83 *Kurt v Turkey* App no 24276/94 (ECtHR, 25 May 1998) <<https://hudoc.echr.coe.int/fre?i=001-58198>> accessed 7 January 2025.

Convention on Human Rights. The court awarded the applicant compensation for the material damage suffered by both her and her son.

The ruling by the ECtHR in *Kurt v. Turkey* appears inconsistent. On the one hand, the ECtHR permitted a broader array of evidence to be accepted, recognising that the state may have suppressed direct evidence. However, it maintained strict standards of proof that circumstantial evidence alone could not satisfy. Judge Gölcüklü did not confirm that the applicant's son's disappearance met the definition of enforced disappearance by the state, as the facts were not established beyond a reasonable doubt. Nevertheless, the Court ruled in favour of the applicant regarding several violations, including the violation of the prohibition of torture under Article 3.⁸⁴ Judge Gülcüklü's dissent highlights concerns about the ECtHR's strictness in the standard of proof used in cases of enforced disappearance.

In a similar vein, the ECtHR in *Sakis v. Turkey* ruled that although no specific violation was found concerning the rights of the applicant whose relative disappeared, he still suffered rights violations that the court proved. Consequently, he could be considered an "injured party" entitled to compensation.⁸⁵ The ECtHR often grants compensation for non-material damages to claimants, considering the severity of the violations and other justice-related reasons.⁸⁶

The ECtHR frequently stresses the need for the state to conduct an effective investigation in cases of enforced disappearance. In *Tahsin Acar v. Turkey*, Turkey expressed regret for what happened to the victim and committed to providing substantial financial compensation to the victim's family. However, the court ruled that "in cases of enforced disappearance with compelling evidence, where the perpetrators remain unidentified, and the state conducts an investigation that does not meet the minimum standards set by the Convention, a unilateral declaration of responsibility must also include a commitment to a thorough investigation in full compliance with the Convention, as established by previous rulings in similar cases."⁸⁷

Before shifting the burden of proof to the state, the applicant must first present a *prima facie* case, meaning there is enough evidence to support their claim unless it is disproven. In *Togcu v. Turkey*, the Court explained that the applicant must meet this requirement before the government is required to provide an explanation. This shows that the ECtHR's approach to the burden of proof has similarities to the IACtHR, demonstrating the importance of enforced disappearances.⁸⁸

84 Needham (n 6) 37.

85 *Çakici v Turkey* App no 23657/94 (ECtHR, 8 July 1999) para 130 <<https://hudoc.echr.coe.int/eng?i=001-58282>> accessed 7 January 2025.

86 Al-Shammari (n 4) 53.

87 *Tahsin Acar v Turkey* App no 26307/95 (ECtHR, 6 May 2003) para 84 <<https://hudoc.echr.coe.int/eng?i=001-61076>> accessed 7 January 2025.

88 Needham (n 6) 42.

The ECTHR's reliance on the standard of "beyond a reasonable doubt" to determine violations of Article 3 may not fully consider the suffering of the victim's family. This high standard of proof is often unattainable in enforced disappearance cases. This inadvertently gives perpetrators, such as governments, the opportunity to destroy direct evidence and avoid international accountability. In contrast, the Inter-American Court of Human Rights provides victims and their families a more accessible standard of evidence, enabling them to present persuasive proof that their loved ones were forcibly disappeared by the state.

It is evident that the ECTHR's jurisprudence in the realm of enforced disappearance is less developed than that of the Inter-American Court of Human Rights. Nevertheless, in several of its rulings, the ECTHR has moved away from the requirement of proof beyond a reasonable doubt to establish a violation of the right to life. In *Timurtaş v. Turkey*,⁸⁹ the ECTHR concluded that sufficient circumstantial evidence based on concrete elements could justify an assumption of the detainee's death while in custody. The ECTHR should consider reducing the evidentiary burden in cases of torture-related crimes to ease the process for families of enforced disappearance victims.

7 CONCLUSIONS

The study examined the concept and mechanisms of compensation for victims of enforced disappearance, focusing on how national legal systems and international courts have addressed this issue. It concluded with the following results and recommendations:

Although the UAE is committed to compensating victims, it does not provide specific provisions addressing redress for victims of enforced disappearance. Instead, it relies on general provisions that cover compensation for defined crimes under the law without extending to other forms of redress, such as guarantees of non-repetition, reparations, or rehabilitation programs. This reason, and the fact that it did not join the ICPPED, highlight a legislative gap that could impact the comprehensive protection of victims' rights and needs and make its experience lag behind other countries.

Comparative analysis revealed that international jurisprudence, particularly from the Inter-American and European Courts of Human Rights, offers valuable insights into crafting robust compensatory frameworks. While the European court maintains a stringent evidentiary standard, its reliance on American jurisprudence in several major cases highlights the American flexible, victim-centred approach, which is particularly effective in addressing the complexities of enforced disappearance. This interplay between the two systems could serve as a model for enhancing the UAE's judicial practices.

89 *Timurtaş v Turkey* App no 23531/94 (ECTHR, 13 June 2000) <<https://hudoc.echr.coe.int/eng?i=001-58901>> accessed 7 January 2025.

The study also highlighted the challenges of integrating international principles into UAE law. These include balancing cultural and religious values with global human rights standards and overcoming institutional and procedural barriers within a federal system. Addressing these challenges requires a tailored approach that respects local contexts while drawing from successful international practices.

The findings reaffirm the necessity for explicit legislative reforms in the UAE. These reforms should go beyond merely criminalising enforced disappearance in a general manner; they should also provide detailed mechanisms for compensation, rehabilitation, and prevention. Such reforms should ensure victims' right to legal recourse, in line with Article (41) of the Federal Constitution, and extend constitutional guarantees to victims of unlawful detention, torture, or cruel treatment. Additionally, amendments to Federal Law No. 38 of 2022 on criminal procedures are recommended to allow families of victims to file civil claims for damages resulting from enforced disappearance and other crimes.⁹⁰ To ensure justice, the study advocates removing statutes of limitations for such crimes, enabling victims and their families to seek redress without temporal restrictions.

The study strongly advocates for the UAE to join the ICPPED, a step that would significantly support the country's standing as a regional leader in human rights. By ratifying the convention, the UAE would demonstrate its commitment to international human rights standards, fostering greater trust and cooperation with global institutions. This would enhance the UAE's legal and institutional capacity to address the complex challenges associated with enforced disappearances by aligning national legislation with international principles. In doing so, the UAE would not only uphold human dignity but also set an example for other nations in the region, promoting collective progress in human rights protection.

Furthermore, the study recommends the UAE draw from the practices of the Inter-American and European Courts of Human Rights when crafting legislation to criminalise enforced disappearance. These courts provide well-established policies for defining and addressing this crime, which could help align Emirati law with international human rights standards. The study also highlights the importance of fostering international judicial cooperation between these courts, encouraging exchanges of case law, joint workshops, and conferences. Such initiatives could enhance the European Court's legal doctrine by leveraging the extensive experience of the American Court in handling enforced disappearance cases.

Finally, the study proposes the establishment of a national compensation fund, modelled after the ICC Fund for Victims, tailored to the UAE's economic and legal framework. This fund would provide financial and non-financial compensation to victims, including necessary medical and psychological support.

90 Federal Decree Law no (38) of 2022 'Promulgating the Criminal Procedures Law' [2022] Official Gazette 737.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

КОМПЕНСАЦІЯ ЗА ЗЛОЧИНИ НАСИЛЬНИЦЬКОГО ЗНИКНЕННЯ: ПОРІВНЯЛЬНЕ АНАЛІТИЧНЕ ДОСЛІДЖЕННЯ В КОНТЕКСТІ МІЖНАРОДНОГО ПРАВА ТА ПРАВА ЕМІРАТІВ

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АНОТАЦІЯ

Вступ. Злочин насильницького зникнення є одним із найсерйозніших порушень прав людини, оскільки він завдає серйозних страждань жертвам та їхнім родинам. Цей злочин передбачає таємне позбавлення людини її свободи та основних прав без будь-якого офіційного визнання, залишаючи жертву жити в постійній ізоляції та тривозі. Боротьба з цим злочином стала не лише юридичним, але й моральним обов'язком держав і міжнародного співтовариства щодо захисту жертв і забезпечення справедливості. Сучасна кримінальна політика приділяє особливе значення жертвам злочинів, не лише караючи злочинця, але й прагнучи досягти правосуддя за допомогою справедливої компенсації жертвам та їхнім сім'ям. Такий підхід відображено в міжнародному та національному законодавстві, а також в тенденціях діяльності міжнародних судів з прав людини. Важливість цього дослідження полягає в аналізі правових засад компенсації за злочини насильницьких зникнень з погляду порівняння міжнародного права, законодавства ОАЕ та інших законодавств з метою оцінки адекватності цих законів для захисту жертв і забезпечення їхньої компенсації.

Методи. У цьому дослідженні використовуються описові, аналітичні та порівняльні методи для визначення компенсації за злочини, пов'язані з насильницьким зникненням, визначення осіб, які мають на неї право, та вивчення різних форм компенсації. Крім того, було здійснено аналіз рішення міжнародних судів щодо компенсації за злочин насильницького зникнення, вивчено відповідні положення законодавства Еміратів і зіставлено їх із відповідним правовим регулюванням інших юрисдикцій. Порівняння законодавства Іспанії, Філіппін, Ємену, Катару та Венесуели з законодавством ОАЕ

підкреслює прогрес і прогалини в підході ОАЕ до компенсації жертвам злочинів насильницького зникнення. Цей метод забезпечує правову модель, яку законодавець ОАЕ може використовувати для розробки та розширення правових основ компенсації за вищезгадані злочини.

Результати та висновки. У результаті дослідження було зроблено кілька висновків, найбільш значущим з яких є недостатність чинного законодавства ОАЕ для комплексної компенсації жертвам насильницького зникнення, на відміну від інших порівняльних законодавств. Суди з прав людини, такі як Міжамериканський та Європейський суди з прав людини, відіграли вирішальну роль у встановленні принципів повної компенсації за злочини, пов'язані з насильницькими зникненнями. Дослідження рекомендує скасувати термін давності для позовів про компенсацію, дозволяючи жертвам або їхнім родинам домогтися справедливості незалежно від того, коли стався злочин. У статті також було запропоновано використовувати міжнародні судові тенденції та успішний глобальний досвід у розробці національного кримінального законодавства, пов'язаного з криміналізацією насильницького зникнення.

Ключові слова: насильницьке зникнення, жертви насильницьких зникнень, компенсація, особи, які мають право на компенсацію, законодавство Еміратів.