

## UNIVERSAL PERIODIC REVIEW – FOURTH CYCLE

### CONTRIBUTION TO ARGENTINA'S REVIEW

#### Victims of involuntary or enforced disappearances

1. Enforced disappearance was one of the main features of state repression during the last Argentine military dictatorship (1976-1983). Since the mid-1980s, the country has promoted and sanctioned or adhered to regulatory frameworks that seek to prevent the repetition of such disappearances and, in the event that they occur, to investigate them and punish those responsible.<sup>1</sup>
2. After several decades, we can conclude that this normative framework is necessary but not sufficient for enforced disappearances to be adequately investigated and for the State to comply with its obligations in terms of recovery, restitution, truth, and reparation.<sup>2</sup> At the same time, other phenomena lead to disappearances today. State responses to the dissimilar set of factors that cause them are deficient, disjointed, and discriminatory. Moreover, we do not have public policies that respect the rights of those who are looking for a disappeared person.
3. Numerous absences of persons who are criminally investigated as enforced disappearances persist as such, with the families having no certainty as to the fate of the person they seek. In many cases, the very nature of the enforced disappearance is surrounded by uncertainty as a result of the poor quality of the investigations.<sup>3</sup> In other cases, criminal convictions of state agents have been handed down, but the search for the disappeared has come to nothing and in practice has been abandoned, with no accountability or further explanation.<sup>4</sup> This situation leads to greater uncertainty concerning the State's capacity to investigate the crimes for which it may be responsible.
4. Because of its political implications and public repercussions, one of the most emblematic disappearance cases investigated as an enforced disappearance is that of Jorge Julio López, a political activist arrested and disappeared by the military dictatorship.<sup>5</sup> On September 18, 2006, during a trial for crimes against humanity in which he was a witness, he disappeared again. To date, the Argentine State has not provided an answer as to what happened to him. Nor has it given any explanation for several years about the lack of progress in the investigation. The Committee on Enforced Disappearances in 2013 and the Human Rights Committee in 2016 asked the Argentine State to make progress in the

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<sup>1</sup> Inter-American Convention on Forced Disappearance of Persons (1996), International Convention for the Protection of All Persons from Enforced Disappearance (2006), reform of the Argentine Criminal Code to include the crime of enforced disappearance (2011).

<sup>2</sup> [International Convention for the Protection of All Persons from Enforced Disappearance](#) Article 24.2 and 24.3

<sup>3</sup> We are referring to the disappearances of Mario Golemba, Sergio Avalos and Arshack Karhanyan, among others.

<sup>4</sup> We are referring to the disappearances of José Díaz, Miguel Bru and Daniel Solano, among others.

<sup>5</sup> Between October 27, 1976 and April 4, 1977; he was later held as a political prisoner until June 25, 1979.

investigation. Nothing changed in all the years that have gone by. On the 15th anniversary of his disappearance, the communication from the federal prosecutor's office in charge consisted of announcing that it would begin to review the graves occupied by unidentified deceased persons in the cemetery closest to Jorge Julio López's place of residence.<sup>6</sup> The national executive branch did not issue any communication regarding the investigation.

#### I. Lack of competent institutions

5. The guiding principles for the search for disappeared persons establish that “Each State in which cases of enforced disappearance occur or disappearances are committed by persons or groups acting without the authorization, support or acquiescence of the State should have competent institutions with the capacity to search for disappeared persons.”<sup>7</sup>
6. Despite being one of the countries that have led the international ranking of the crime of enforced disappearance and its active role played in the drafting of these Guiding Principles, Argentina has so far not developed a public policy to respond with a human rights perspective to the disappearance of persons at present: there are no agencies responsible for searching for the disappeared, no specialized units, and no comprehensive information on disappeared and found persons.<sup>8</sup>
7. There are multiple consequences arising from this: searches do not result from comprehensive strategies or work plans; they are abandoned a few months after they have been started when the most usual measures have not yielded any results; families are left adrift with no one to turn to; if the disappearance is not turned into a media case it is quickly forgotten; most of the discoveries of dead people occur by chance and not as a result of the measures taken; people who have been searched for years are found alive in state facilities,<sup>9</sup> among other serious issues.
8. At present, the phenomenon of disappearance in Argentina reflects different phenomena. State violence, gender violence, violence against children, crime, and a dysfunctional state bureaucracy, among other factors, explain the disappearance of persons. One of the central characteristics of present-day disappearance is that without a thorough investigation it is very difficult to know which of these phenomena is at the root of it. For, unlike disappearances that occur in the context of a systematic plan, the explanation for current disappearances cannot be deduced with a reasonable level of certainty from a pre-understood device: in most cases, more than one investigative hypothesis must always be exhausted before they can be clarified.<sup>10</sup>
9. Thus, even the phenomenon of enforced disappearance cannot be approached in isolation: if there is no public policy dedicated to all involuntary disappearances, in the best of cases only those with an evident hypothesis of direct state involvement will be investigated and,

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<sup>6</sup> Agencia Télam, [Búsqueda de Jorge Julio López: Relevaron 66 tumbas NN en el cementerio de La Plata \[Search for Jorge Julio López: 66 NN graves found in La Plata cemetery\]](#), September 28, 2021.

<sup>7</sup> CED/C/7, principle 10.1, the underlining is ours.

<sup>8</sup> See [CED /C/ARG/CO/1](#) Observation 19.

<sup>9</sup> We are referring to the cases of Claudio Alberto Alvear and Gabriel Coll, found in neuropsychiatric institutions after 9 and 13 years of hospitalization, respectively..

<sup>10</sup> See CED/C/7, principle 6.4.

most likely, if this hypothesis is found to be weak, the investigation will be quickly abandoned or minimized and the disappearance will remain unresolved<sup>11</sup>

10. In this field, the deficits are so huge that today it is not even possible to know precisely how many people are reported as disappeared in Argentina because the State has not been able to build an exhaustive and updated registry of the reports. Logically, this means that there is no database for reliable cross-referencing between people reported disappeared and people found alive or dead.<sup>12</sup>

## II. Identifying the deceased

11. Despite the country's recent history, Argentina has a structural deficit in the identification and management of information on deceased persons whose identity, for various reasons, cannot be determined at the time of their death.<sup>13</sup>
12. As a consequence, the malfunctioning of certain state bureaucracies produces disappearances. Many high-profile cases showed that persons who had been missing for years, even decades, were buried unidentified in state cemeteries.<sup>14</sup>
13. Despite these cases and the assessment of the situation, the State has failed to implement a policy to identify the deceased. The archives where this information is stored are not properly dealt with. They are not centralized and incomplete for the most part. Moreover, accessing them is a bureaucratic odyssey. This situation persists even though there are already numerous technological developments that would make it possible to implement an identification plan, build databases, and/or make this information accessible in a system that would make it possible to search for people instead of having to submit requests to dozens of institutions scattered across different jurisdictions (morgues, cemeteries, civil registries, hospitals, prosecutors' offices) every time there is a search for a person.

## III. Differential focus

14. In Argentina, persistent disappearances of women are frequently connected to femicide. Although the country has made progress in transforming criminal policy with respect to this crime, the disappearance of women for prolonged periods continues to occur.<sup>15</sup> Hundreds of women are reported missing in Argentina. In many cases, men have been convicted of their murders, despite the absence of the body. This is often valued, however, it is a concern that the justice system rules that a conviction turns a disappearance into a solved case and deems it a sufficient response to the affective community of the

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<sup>11</sup> See the case of the [child Alejandro Flores](#), for example, whose disappearance was investigated for 17 years as a case of human trafficking of minors. . When his dead body was found by chance, it was determined that two police officers were directly involved in his disappearance.

<sup>12</sup> See **CED/C/7**, principle 11.2.

<sup>13</sup> We avoid using here the expression "N.N." (an abbreviation of the Latin *nomen nescio* meaning literally "I do not know the name") because it naturalizes the idea that people "have no identity" when in fact they do and it is the State that has failed to determine it.

<sup>14</sup> We are referring to the cases of Mariela Tasat, Salomé Valenzuela and Luciano Arruga, among many others.

<sup>15</sup> We are referring to the disappearances of Roxana Villalba, Diana Colman, Norma Carrizo and Gloria Valenzuela, among many others.

disappeared person. As the Guiding Principles state: "The comprehensive search process for missing persons should be initiated and conducted with the same effectiveness as the criminal investigation".<sup>16</sup>

15. On March 11, 2021, Tehuel de la Torre, a young trans male, disappeared. Although his absence has become a high-profile case, after almost a year and a half since his disappearance, the investigation has not provided an answer to his fate. Currently, there are two people charged with his murder. The judicial search is still open, something that was only possible due to the advocacy of the family and the human rights organizations involved since the first decision of the prosecutor's office in charge was to close the investigation once the case was brought to trial. To date, no judicial or executive agency has developed a search plan for Tehuel de la Torre. In the course of the investigation, we have been able to detect the extent to which state bureaucracies are not prepared to investigate the disappearance of a transgender person. To give just one example, during the initial weeks of the investigation, they searched for de la Torre alternately as a "male" and a "female".<sup>17</sup>
16. On June 14, 2021, Guadalupe Lucero, a five-year-old girl, disappeared. To date, the judicial investigation has not achieved any certainty as to what happened to her. According to journalistic information published one year after her absence, the judicial hypothesis is "that the minor was kidnapped (by someone known or unknown) or that she suffered an accident."<sup>18</sup> In other words, in one year it has not even been possible to narrow down the investigation hypotheses in a case that, as the *Guiding Principles* state, is one of "extreme vulnerability."<sup>19</sup>
17. These particular effects are even more acute when the disappeared persons and their families or loved ones belong to the working-class sectors. Countless searches show how extremely difficult it is for mothers, fathers, brothers, sisters, partners, and friends to contact executive and judicial authorities if they do not have an organization to accompany them or an acquaintance within the institutional system. This situation is contrary to all the recommendations on the special protection that searchers should receive and on their right to participate in searches and to receive adequate information and dignified treatment.<sup>20</sup>
18. The poor quality of judicial work also means that certain groups are subjected to situations that would be unacceptable if they happened to sectors with greater economic and social resources. To cite just one recent example: Mayra Benítez is an 18-year-old girl who disappeared in the province of Chaco in December 2016. In August 2019, human remains were randomly found and given to Mayra's family with a positive identification report. The

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<sup>16</sup> See **CED/C/7**, principle 13.1.

<sup>17</sup> See **CED/C/7**, principle 4.5. For more details about the case, see CELS-CIAV, *¿Quién está buscando a Tehuel?* [Who is looking for Tehuel?], [March 8, 2021](#).

<sup>18</sup> See [Diario Perfil, June 13, 2022](#).

<sup>19</sup> See **CED/C/7**, principle 4.2.

<sup>20</sup> Art.19 and 24 of the International Convention for the Protection of All Persons from Enforced Disappearance and **CED/C/7**, Principle 2, among others.

girl's mother distrusted those results and after much insistence managed to get the intervention of the Argentine Forensic Anthropology Team accepted. After more than two years, her mother found out in December 2021, that the remains that were given to her belonged to a male person and therefore were not Mayra. To this day, the young woman is still missing and the identity of the male found in 2019 remains unknown.

#### **IV. Conclusion**

19. The main consequence of this state deficit in responding to the search for persons is the persistence of the figure of the "disappeared-disappeared" in Argentine society. These are people of all ages whose absence is denounced by their loved ones. In most cases, what explains the persistent disappearance is the poor quality of the investigations combined with the fact that the functioning of many state bureaucracies is not prepared to allow the search for people.
20. The lack of competent institutions and public policies aimed at responding to disappearances combined with the absence of a policy for the identification of deceased persons leads to searches being abandoned and left to chance, without clarity as to which state agency is in charge of providing a response or information on what steps are being taken to clarify them.

#### **Questions for the State**

1. Why do the state agencies created at national and provincial levels to "search for people" only perform registration tasks instead of designing search strategies?
2. What is the Argentine State's plan with respect to the disappearance of Jorge Julio López, investigated as an enforced disappearance?
3. What reforms in the systems of registration of wanted and found persons is the Argentine State planning in light of the lessons learned from the search for trans youth Tehuel de la Torre?

#### **Recommendations**

1. That the Argentine State create specialized search units with the necessary capacities to design search strategies and carry them out per the provisions of the guiding principles for the search for disappeared persons.
2. That the Argentine State reopen the investigations of persons who disappeared in the past and whose disappearance continues to be protested by family members or persons close to the disappeared person.
3. That the Argentine State implement a policy to determine the identity of unidentified deceased persons (referred to as "N.N" by official entities) since December 11, 1983.
4. That the Argentine State develop a comprehensive, updated, and public database of disappeared persons in Argentina.

5. That the Argentine State develop an exhaustive, up-to-date and public database on the persons found alive and dead whose identities have not yet been determined.
6. That the Argentine State prepare a report on disappearances investigated as enforced disappearances that have taken place in the country since December 11, 1983, systematizing the status of each investigation. In the cases in which the person remains disappeared, the State should initiate the process to design a search plan.