In Search of Gender-sensitive Remedy before International Human Rights Bodies: The Case of Enforced Disappearances

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Human Rights M.A. Master's Thesis
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Executive Summary

This thesis explores the law and practices of three international human rights bodies - the European Court of Human Rights, the Inter-American Court of Human Rights and the Human Rights Committee – in relation to enforced disappearances. As a crime, enforced disappearances tend to be rather gendered wherever they occur, and the human rights violations that stem from it leave excessive burden on female relatives of the disappeared men. For this reason, this study is concerned with women who mobilized themselves in search of the disappeared and have acted as applicants before the three human rights bodies. Chapters I and II give background to the two issues at stake – women's activism as necessary for gendered violations, and enforced disappearances as human rights violations. While the former Chapter is concerned with the concepts of gender justice and mother-activism, the latter explains how different human rights bodies have accommodated this violation not explicitly mentioned in the conventions that give them mandates. The central argument, however, is that of reparations for these gendered violations and the need for them to be gender sensitive when ordered by the human rights bodies. In Chapter III, this thesis looks at the issues of standing that women as indirect victims have before three human rights bodies, and explores the variety of claims they bring on their own behalf and the ways in which the bodies have accommodated them. This analysis leads to Chapter IV where criteria for gender-sensitive remedy is presented, based on empirical work and feminist legal literature. Suggestions regarding what such reparations packages should include in order to appropriately address the gendered nature of this particular crime are followed by a thorough investigation into what reparations have been awarded in enforced disappearances cases coming from Guatemala in the Inter-American system, Turkey in the European system and Bosnia and Herzegovina in the UN system. Reparations are furthermore identified as feminist tools for transformation of status quo which led to these

human rights violations in the first place, and specific calls for increased gender-sensitivity in all three human rights bodies for the benefit of a less gender-discriminatory system are made. Lastly, Chapter V is concerned with how feasible these suggestions are, and looks in the three human rights systems in more detail to find the true state of gender-sensitivity, which requires scrutiny that expands beyond reading judgments through a gender lens. This more holistic gender reading of human rights system's reparations packages identifies the Inter-American Court as the most prominent one, since it orders the most comprehensive gender-sensitive reparations. It furthermore also acknowledges the limits of and suggests the improvements that can be made within the European system and the UN system to ameliorate gender-specific harms state parties have been perpetrating in the last several decades.

Acknowledgments

The idea for this thesis emerged long before I moved to Budapest, but it is the Legal Studies Department at Central European University that made it possible in at least five ways. Firstly, by accepting my research proposal although all of our faculty members are much more "lawyerly" than this thesis is and although it, honestly, did not match anyone's interests. Secondly, by putting me under the supervision of Professor Jeremy McBride who, even from afar, helped immensely with his ideas, comments, and through-provoking questions. I am so grateful and I hope I answered at least some of them (at least) partly. Thirdly, by awarding me the most unexpected research grant that I dreamed of, but never thought would happen at this stage. The grant was used to fund my research stay at Transitional Justice Institute at Ulster University in Belfast. Here, I will pause my thanks to CEU and CEU-affiliated people briefly to acknowledge the hospitality and expertise of Professor Catherine O'Rourke, who helped me think with more structure. Fourthly, by allowing me to learn from Professor Bard Karoly, my criminal justice and general life guru, and Polgari Eszter, my ECtHR and teaching guru. So much of what I have learned at CEU is because of you. Lastly, by contributing to the expansion of my international family, members of which helped me through each and every writer's block with love and Snickers bars, and agreed to proofread this long piece for free.

Abbreviations

ACHR – American Convention on Human Rights

BiH – Bosnia and Herzegovina

CoM - Committee of Ministers

CED – Committee on Enforced Disappearances

ECHR – European Convention of Human Rights

ECtHR – European Court of Human Rights

HRC – Human Rights Committee

IACtHR – Inter-American Court of Human Rights

ICC – International Criminal Court

ICTR – International Criminal Tribunal for Rwanda

ICTY – International Criminal Tribunal for the former Yugoslavia

ICCPR – International Covenant on Civil and Political Rights

PCIJ – Permanent Court of International Justice (now International Court of Justice)

UN – United Nations

UNWGEID – United Nations Working Group on Enforced or Involuntary Disappearances

Introduction

Gender specificities of conflict have increasingly found their place on the peace-building and transitional justice agendas in the international community. This success was greatly made possible by the tireless work of feminist legal scholars, activists, victims-survivors and other allies of gender equality.[1] Most of the discussion has been centered on one issue – namely, sexual violence - perhaps due to how widespread it was in recent conflicts in Bosnia and Rwanda.[2] Nonetheless, relatively novel concepts such as gender justice and gendered crimes expand beyond rape as a war tool. [3] They remind us that women experience conflict, as well as the subsequent transition differently *because* they are women and because of what being a woman represents, and that there are violations that are disproportionately pertinent to them. For instance, women in conflict zones are more likely to die of diseases or malnutrition, and they comprise a majority among civilian causalities and refugees.[4] These disparities have not only been noted and reflected upon by feminist legal scholars,[5] but they have also resulted in ideas that have been taken to the grassroots, mobilizing women across the globe to form activist groups or act as individual agents in different transitional justice processes, asking for truth, justice, and reparations.

[1] For further reference on women and conflict, see, for instance, Cynthia Cockburn, *From Where We Stand: War, Women's Activism, and Feminist Analysis* (Zed Books 2007); Dubravka Zarkov (ed*), Gender, Violent Conflict, and Development* (Zubaan 2008); Cynthia Enloe, *Globalization and Militarism: Feminists make the Link* (Rowman & Littlefield Publishers, Inc., 2007); Laura Sjoberg, *Gendering Global Conflict: Toward a Feminist Theory of War* (Columbia University Press 2013), among many others.

[2] See, for instance, Engle (2005) on wartime rape in Bosnia and Herzegovina, or Wells (2005) on sexual violence in Rwanda.

[3] In fact, authors like Franke (2006) have argued that singling out of sexual crimes might have impeded further development of gender justice, as the crimes and ways of dealing with them project a specific image of femininity, with insufficient agency attached to it. On various discussions on gender justice, see Ruth Rubio-Martin (2009).

[4] Cynthia Cockburn, 'Militarism and War', in Laura J. Shepherd (ed.) *Gender Matters in Global Politics* (Routledge. 2010),

[5] See, for instance, Cockburn and Zarkov (2002).

The act of making someone disappear or, enforced disappearances have been a common practice used to eliminate opponents and targeted communities in wars and conflicts around the world, mostly but not exclusively perpetrated by the state. Although most frequently related to Latin America, enforced disappearances have affected tens of thousands of people in more than eighty countries around the world in recent past.[6] It is a common strategy used to date, currently pervasive in countries such as Pakistan, for instance.[7] Even though the practice reached its peak in the 1980s, the crime and its illegality have seen the light of international criminal and international human rights law only recently. Despite the fact that the act was not explicitly mentioned in either the American Convention on Human Rights (ACHR) or the European Convention on Human Rights (ECHR), the two courts established through these conventions – namely the Inter-American Court for Human Rights (IACtHR) and the European Court for Human Rights (ECtHR) have both dealt with cases where the victims allegedly disappeared.[8] With fewer competences, the Human Rights Committee (HRC) has, under the International Covenant on Civil and Political Rights (ICCPR), also recognized enforced disappearances as a violation of rights protected under the Covenant in numerous cases.[9] With the especially speedy developments of international criminal justice in the 1990s, enforced disappearances remarkably grew to be recognized as a crime against humanity in the Rome Statute.[10] Most recently, the importance of protecting people from enforced disappearances

[6] Polly Dewhirst and Amrita Kapur, *The Disappeared and Invisible: Revealing the Enduring Impact of Enforced Disappearance on Women* (International Center for Transitional Justice 2015)

[7] In September 2016, the Working Group on Enforced or Involuntary Disappearances reported nearly 1,400 unresolved disappearances cases in Pakistan. See the Follow-up report to the recommendations made by the Working Group, Human Rights Council, A/HRC/33/51/Add.7

[8] Such as IACtHR Case of Velásquez-Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4.and ECtHR Bazorkina v. Russia, No. 69481/01, ECHR-2006 or Imakeyeva v Russia, Application No.7615/02, Judgment 9 November 2006.

[9] For instance, Mojica v. Dominican Republic. Communication No. 449/1991. 18 March 1993. CCPR/C/47/D/449/1991; María del Carmen Almeida de Quinteros et al. v. Uruguay, Communication No. 107/1981, U.N. Doc. CCPR/C/OP/2 at 138 (1990)

[10] See Article 7 para 1(i) of the Rome Statute (2002)

was stressed with the establishment of the International Convention for the Protection of All Persons from Enforced Disappearance in 2006.[11] With all these mechanisms in place, one would think enforced disappearances might be a crime of the past. Even if that were the case, its consequences are long-lasting and felt among the surviving next-of-kin for many years after the disappearance.

Little has been written about the gendered nature of enforced disappearances and even less about how it has (not) been accommodated by the most prominent human rights bodies and courts mentioned above.[12] The need for gender-sensitive accommodation does not necessarily arise in relation to the men who have disappeared, although, it is the existence of gender inequalities before and during the war which make them more likely to actively participate in conflict as combatants[13], and are therein more vulnerable to being abducted or arbitrarily detained by the opponent. On the contrary, the need to read and rule in enforced disappearances cases through a gender lens has primarily to do with family members of those who disappeared, namely, the women they leave behind. From the human rights perspective, the act not only essentially violates an array of rights of the disappeared person, as well as of his/her family members, but it also distorts family relations and leaves excessive burden on women who often assume the role of the breadwinner for the first time. The harms that these women experience in the aftermath of the disappearance - which is not necessarily the end of the conflict - have much to do with the conditions they lived in before the disappearance occurred, and the unchanged, patriarchal environment they stay in. To name a few harms, these women are often stigmatized by their communities for failing to protect their sons, lack the

[11] Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, United Nations (2006)
[12] This gap in literature has been identified in Dewhirst and Kapur 2015 (n. 6).
[13] Nadine Puechguirbal, 'The Cost of Ignoring Gender in Conflict and Post-Conflict Situations: A Feminist Perspective' (2012) Amsterdam Law Forum 4:1

skills or means to find employment and support their children and themselves, and experience severe psychological harm due to their husband's disappearance and the inability to bury his remains and mourn in accordance to their culture.[14]

Recognizing that these women are victims of grave human rights violations – mainly, but not only through their male relative's disappearance,[15] the discussion unavoidably leads to the issues of how these violations can be remedied. Expectedly, primary responsibility rests with national authorities to install sound reparation schemes, and allow for criminal prosecution of those responsible, as well as undertake truth-finding efforts that are not hostile but receptive towards these women. Women relatives of the disappeared have, in that regard, not only been active in the grassroots calling for these transitional justice mechanisms to be put in place, but have moreover entered the international public sphere when national authorities failed to fulfill their duties. This cross-border activism moves past the well-recognized form of women as witnesses before international criminal courts; their efforts as applicants before international human rights bodies, like the ECtHR, the IACtHR and the HRC are equally noteworthy.

All of the above taken into consideration, what this micro-study aims to do is the following.

1. The primary aim of the thesis is to establish whether and how these bodies make room for gender in their jurisprudence, and how they attempt to provide a gender-sensitive accommodation of women's needs and gendered realities they live in, by doing a

[14] Claudia Paz y Paz Bailey, 'Guatemala: Gender and Reparations for Human Rights Violations', in Ruth Rubio-Marin (ed.) *What Happened to the Women? Gender and Reparations for Human Rights Violations* (Columbia/SSRC 2006)

[15] See Margaret Urban Walker, 'Gender and Violence in Focus: A Background for Gender Justice in Reparations' in Ruth Rubio-Marin (ed.) *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge University Press 2009), who explains that women are in no better position when seen as mere extensions of their male relatives, and are frequently used as hostages. More specifically, these women often experience more direct violations of their rights, such as detention, torture, sexual violence, forced eviction, or harassment for either being related to the disappeared men, or accused of abetting 'the enemy'.

comparative analysis of the law and practices of three different international human rights bodies in enforce disappearances cases. The latter aim is observed through two aspects of international human rights law – firstly, the issue of standing, and allowing these women to have access to courts with or without direct violations committed to their bodies, and secondly, by awarding a remedy to them as both the victim's next-of kin *and* as separate victims. Gender-sensitivity is substantially more straightforward and easier to achieve in the former than the latter, however it is the latter that carries a great potential for social transformations.

2. Based on the jurisprudence of these three bodies, and on feminist legal scholarship, this thesis will then suggest a novel set of criteria for gender-sensitive redress in enforced disappearances cases, nonetheless with prospects of being applicable for other gendered crimes, as well. Being cautious about the differences in the operations of these three bodies that are not likely to undertake sudden changes, the thesis will, therefore, deal with designing a gender-sensitive platform that these bodies can adopt within (and in spite of) the limitations they face. In doing so, it aspires to prove that gender sensitivity is a rather achievable task in all three jurisdictions as they stand in their current forms.
3. Finally, the shape and role of women's activism will be observed throughout the thesis, with an aim to identify further implications this particular kind of activism has, via the international human rights arena, had in the respective national systems. Noting any impassable barriers women's calls for gender sensitivity have encountered at both international and national levels, this study will try to comprehend the institutional and political obstacles to better presence of women in reparations schemes for enforced disappearances.

Ultimately, this paper, inspired by prominent feminist voices, wishes to take a more practical approach to the issue at stake, and contribute with inputs that can help human rights

scholarship fill in the gaps that exist between what has been written on and what has been stated in different soft law documents, and the realities these real people face on the ground. This comparative analysis thus aspires to finds its place in the broader context the scholarship on gender justice, especially so since gender and enforced disappearances – and their intersection in law and practice of courts, remains largely under-researched.

Clarifications and delimitations

The multiple, yet similar legal definitions of **enforced disappearances** will be elaborated on in the further course of this paper; however, as understood here, disappearances are primarily used as a strategy to eliminate alleged and actual political opponents, and intimidate the population in order to keep them in check,[16] which, too, has a particularly harmful effect on their next-of-kin. The victims are often abducted, arbitrarily detained or secretly murdered. Disappearance terminates with a return of the disappeared – dead or living; therefore, cases where the victim had disappeared for a certain period of time but was later found dead are considered to be murder cases, are not central to this analysis. The human rights discourse adopted here sees 'disappearances' as confined to those persons taken under the control of a state, excluding those cases perpetrated by non-state actors[17], due to the inability to prosecute them before international human rights courts while holding states accountable only on procedural grounds.

For the purposes of this thesis, I define enforced disappearances as essentially gendered, without any intention to diminish the human worth of female victims who disappeared.[18] I

[16] Sarah Fulton, 'Redress for Enforced Disappearance: Why Financial Compensation is not Enough' (2014) Journal of International Criminal Justice 12 769,785

[17] Simon Robins, *Families of the Missing: A Test for Contemporary Approaches to Transitional Justice*. (Routledge, 2013)

[18] See, for instance, a recent case Maria Isabel Veliz Franco, a 15 year-old girl who disappeared in 2001 in Guatemala City, *Veliz Franco et al. v. Guatemala*, Judgment of May 19, 2014.

employ the term **gendered crime** to treat the crime of enforced disappearances in a binary in accordance with the research questions. Men are those who, by and large, disappear, women are those who, by and large, carry the burdens of these disappearances in the aftermath. Admitting that women disappear, too, and that men have looked for their missing male (and female) relatives, I nonetheless define enforced disappearances as a gendered crime because it disproportionately targets men over women.[19] However, this is done in a reverse manner from more well-known gendered crimes such as rape, as disappearances are not direct attacks on women's bodies, but nonetheless harm them in specific ways because of the social constructions that come with gender.

Although this thesis focuses on gender in conflict, proponents of **gender justice** engage in a variety of discussions, with a goal to correct the injustices found in gender relations in our societies – whether those are the lack of fair and equal treatment of women, unequal pay or oppressive social customs.[20] More specifically, here I mostly refer to gender justice that seeks gender relations that are more equitable after the conflict than those that existed prior and during the conflict.[21] I argue that reparations in the aftermath of a conflict or a dissolution of an oppressive regime should not only repair individual harm, but instead represent rights for a whole group (of women) that can either reinforce or diminish the structural inequalities and injustices that pre-existed the violations. Hence, gender-sensitivity (in redress and elsewhere) is framed as understanding these differences and working to ameliorate them.

[19] Men comprise between 70 and 94 per cent of those disappeared, ranging from 70 per cent in Argentina to 90 per cent in South Africa and 94 per cent in Chile. Reported by the UN Working Group on Enforced or Involuntary Disappearances, General Comment on Women, p. 2.
[20] M.V. Nadkarni, *Ethics for Our Times: Essays in Gandhian Perspective* (Oxford University Press 2014).
[21] Nikita Dhawan, 'Transitions to Justice' in Gender in Susanne Buckley-Zistel and Ruth Stanley (eds.) *Transitional Justice* (Palgrave Macmillan 2012).

Mother-activism in this text refers to the activism of groups of women who are mobilized due to the roles they have within the family – whether it is in order to protect their children, or bury their missing husbands. Having said that, in my analysis, I include female applicants who acted as mothers, wives and daughters, together or apart; it is their duty to perform the role outside the private sphere that is of interest. One of the limitations of this piece, therefore, is that it does not respond to all feminist concerns regarding patriarchy, which by and large remains unchallenged here – at least in the discourses of the activists, however not necessarily through the effects of their actions. I argue that, solely because mother-activism does not embrace feminism in its discourse, this does not mean that it has not served for the betterment of women's rights as human rights.[22] In fact, it is seeing grave crimes such as enforced disappearances through a gender lens that can allow both international courts and law-obeying governments to address the structural inequalities that preexisted the conflict, as they may find the post-conflict environment to be ripe for a transformation.

Adopting the premise that international law carries more potential for enforcement and progress with regard to particular gender issues than other law[23], I isolate three international human rights bodies that have extensively dealt with enforced disappearances cases throughout their jurisprudence, namely the ECtHR, the IACtHR and the HRC. There are at least three reasons behind choosing **human rights bodies** over criminal tribunals: firstly, the focus of this thesis is not on the criminality of and criminal liability for enforced disappearances, but rather on the many human rights violations that follow as corollary from it, vis-à-vis both the disappeared and his family members. Secondly, a further point of interest of this thesis is the

[22] Rubio Martin (2006 p. 57) adds that in the specific context of reparations, corresponding programs "must aim at gender justice where women themselves may not see this as a priority."
[23] See Catherine O'Rourke, *Gender Politics in Transitional Justice* (Routledge 2013)

agency women assume in response to these violations, not merely what they can contribute with their testimonies. Thirdly, international criminal tribunals have mandates to rule on individual culpability, whereas the task of international human rights bodies is to hold a state, an authority without a body and all weaknesses that come with it, and its entire apparatus accountable. In that sense, these family applicants, knowingly or not, stand against an entire establishment that a state represents, and the embodiment of patriarchy that stems from it.

Methodology

These three human rights bodies are chosen mostly because of their jurisprudence on this particular violation, but also their ability to encompass a great variety of cases, at least geographically. Their mandate, competences, and possibility for empowerment into apolitical and supra-political bodies becomes of relevance in a later part of the thesis, but it is important to recognize from the start that the HRC, perhaps unjustly, does not stand on an equal foot with the other two bodies due the lack of enforceability of its decisions.

That brings us to the choice of national jurisdictions. The scope and time constraints of this thesis would not allow for *all* enforced disappearance cases before *all* three human rights bodies to be examined. Furthermore, in order to observe the activism of these women as an organized effort on the home front, three countries where enforced disappearances were practiced during different stages of civil conflicts we chosen. The first case study, Guatemala, is one of the countries with the highest number of cases before the IACtHR,[24] and has had one of the most comprehensive transitional justice mechanisms in Latin America. Bosnia and Herzegovina counts a dozen enforced disappearances cases before the HRC, and nearly 10,000

[24] There have been more than thirty cases from Guatemala in the jurisprudence of the Court. Please see: http://www.corteidh.or.cr/CF/Jurisprudencia2/index.cfm?lang=es

bodies disappeared during the war in the 1990s have not been found to date.[25] It is questionable whether Turkey, especially the South-Eastern region where the disappearances in question occurred, can be categorized as 'in transition', considering that clashes between the Republic's army and Kurdish PKK continue. Nonetheless, the country was chosen because it counts the highest number of cases before the ECtHR (along with Russia), and the use of disappearances as a state policy is a contemporary suspicion among the Turkish public. What binds the three countries is perhaps implicit, yet intentional, and of monumental importance for this thesis. In all three conflict situations, the disappeared men came from the oppressed minority – the Kurds, the Muslims, the indigenous.[26] Therein, their next-of-kin, the female applicants and their applications stand as important channels of the less-heard, marginalized voices of non-Western, and more often than not, non-educated women. It is this *intersectionality* before international human rights bodies that this paper also wishes to explore.

Here, it is important to note that the UN Convention on Enforced Disappearance (2006) is not used as a common framework for several reasons: it is a young platform currently ratified by merely a quarter of the world (52 countries)[27] that is only starting to operate. In addition, the Committee on Enforced Disappearances (CED) was established under Article 26; however its mandate includes only hearing individual complaints regarding disappearances which occurred after the Convention entered into force for the state party in question. This, essentially, excludes all cases this thesis is interested in.

Keeping the above-mentioned delimitations in mind, for the purposes of this research, all enforced disappearances cases in respect to Turkey, Bosnia and Guatemala were singled

[25] As reported to the Committee on Enforced Disappearances by Bosnia and Herzegovina, 26 January 2015, CED/C/BIH/1

[26] Mostly referring to the Maya but not exclusively.

[27] United Nations Office of the High Commissioner for Human Rights, 'Status of Ratification' [2016] [online] < http://indicators.ohchr.org/> accessed 28 October 2016

out, and only those in which the applicant(s) were women were chosen for further analysis. Cases where applicants included male children, in addition to the wife, were also accepted, however, group actions where women merely represented one out of ten or more applicants were struck out. In total, 21 cases – seven (out of 44) from Turkey[28], eight (out of ten) from Bosnia[29], and six (out of ten) from Guatemala[30] - satisfied the criteria. In the case of the ECtHR, there is a number (37) of other enforced disappearances cases coming from Turkey, most of them concerning group claims that were not of interest for this research. On the other hand, nearly all enforced disappearances cases from Guatemala (6/10) and Bosnia (8/10) from brought single-handedly by mothers or wives and were, therefore, satisfactory. Other cases with somewhat different facts or applicants from the three countries and elsewhere, especially the landmark cases, were used to inform the study.[31] Needless to say, the reading of these judgments was inspired by a variety of legal documents, soft law in a form of general comments, recommendations, and declarations included.

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[28] *Cicek v Turkey* App No 25704/94 (ECtHR 05 September 2001); *Haran v Turkey*, App No. 28299/95 (ECtHR 6 Oct 2005); *Kurt v Turkey* App No 799/1002 (ECtHR 25 May 1998); *Meryem Çelik and Others v. Turkey* 3598/03 (ECtHR 16 July 2013); *Şarlı v. Turkey* App No 23657/94 (ECtHR 22 May 2001); *Tekdag v. Turkey* App No 27699/95 (ECtHR 25 November 1996);*Turkoglu v. Turkey* App No 34506/97 (ECtHR 17 March 2005)

[29] *Dalisa and Sakiba Dovadžija v Bosnia and Herzegovina* Communication No 2143/2012 (HRC July 2015); *Duric v Bosnia and Herzegovina*, Communication No. 1956/2010 (HRC July 2014); *Hamulić and Hodžić v Bosnia and Herzegovina*, Communication No 2022/2011 (HRC 30 March 2015); *Ičić v. Bosnia and Herzegovina* Communication No 2028/2011 (HRC 2015); *Kožljak v Bosnia and Herzegovina* Communication No 1970-2010 (HRC October 2014); *Selimović et al. v. Bosnia and Herzgovina* Communication No 2003/2010 (HRC 2014); *Tija Hero, Ermina Hero, Armin Hero v Bosnia and Herzegovina* Communication No 1966/2010 (HRC October 2014); *Rizvanovic v Bosnia and Herzegovina* Communication No. 1997/2010 (HRC March 2014).

[30] *Bámaca Velásquez* v. Guatemala (Judgment) Inter-American Court of Human Rights Series C No. 91 (22 February 2002); *Chitay Nech et al. v. Guatemala* (Judgment), Inter-American Court of Human Rights Series C, No. 212, (25 May 2010); *García and Family Members v. Guatemala* (Judgment), Inter-American Court of Human Rights Series C, No. 258, (29 November 2012); *Molina-Theissen v. Guatemala* (Judgement) Inter-American Court of Human Rights Series C No. 106 (4 May 2004); *Villagrán Morales et al. v. Guatemala* (the "Street Children" Case) (Judgment) Inter-American Court of Human Rights Series C No. 63 (19 November 1999), Tiu Tojín v. Guatemala (Merits, Reparations, and Costs) Inter-American Court of Human Rights, Judgment (26 November 2008).

[31] For instance, in the case of the ECtHR, I also looked into cases coming from Russia, and used other landmark cases that tackled some of the important issues, such as victimhood. Similarly, in the Inter-American system I could not avoid the most known decisions, or looking into slightly different cases from Guatemala. Finally, because cases coming from Bosnia and Herzegovina were so similar, I decided to look into other important enforced disappearances cases, most notably from Algeria, to see if they were treated any differently.

Furthermore, the very framing of research questions, as well as the corresponding findings and recommendations are informed by (feminist) legal scholarship,[32] the influence of which is spread out throughout each chapter. Finally, in the absence of fieldwork, domestic legislations and policies, scholarly articles, and the work of women's groups are used to form opinions on the more pragmatic changes that have been achieved on the ground.

Mapping out the Thesis

This thesis is divided into five major chapters, preceded by this Introduction, and followed by Concluding Remarks. Chapter I takes the concepts of *gendered crime* and *gender justice* and elaborates on them further, giving an overview of the women's activism that brought these concepts about, but also tackling the issues of mother-activism and the need for it in the specific context of enforced disappearances. Chapter II provides an essential overview of the law and politics of enforced disappearances, introducing the role of and effect on women during and after the violation. The overview of the jurisprudence of the three human rights bodies in relation to enforced disappearances, and the similarities and differences in procedure and substance, is based on the case-law from the three countries. It presents some of the accommodations made towards female applicants and furthermore serves as a foundation for the practical recommendations on gender-sensitivity these bodies could adopt that will be elaborated on towards the end. Chapter III offers a comparative study of the first criterion for the accommodation of gender, namely the requirements for standing before each of the three bodies. It furthermore explores what female family members as indirect (and direct) victims has meant, how this has influenced the different claims they raised, and how far these claims been accepted by the three bodies, if at all. Noting that the claims raised and accepted have an

[32] Here, I am mainly referring to prominent feminist voices in the field of transitional justice such as, inter alia, O'Rourke and Bell (2007), O'Rourke (2013), Ni Aolain (2006, 2009), Rubio-Martin (2006, 2009).

impact on the remedy awarded, Chapter IV moves on to introduce the right to an effective remedy in the law and practice of the three bodies. It is this chapter that will establish the criteria for gender-sensitive remedy, and look for gender in the each of the types of remedy awarded. Finally, it is Chapter V that aspires to understand the differences in the practices of the three bodies, and spark changes in these trends, however constrained by the obstacles that exist and persist in the laws these three bodies adhere to. This final Chapter also debunks certain myths which cause misbeliefs that a) these human rights bodies are not meant to be (gender) sensitive and b) their decisions do not have much impact on the state of human rights domestically, by exploring in more details the obstacles the efforts for gender sensitivity have encountered.

Chapter I

"We're talking about your own blood, a child you carried for nine months and gave birth to… The child that was then taken away from you and who you know nothing of. How can you, as a mother, keep living?"

– S. looking for a son who disappeared in 1992[33]

Women have always been participants in conflicts, and have since time immemorial assumed a variety of active and more passive roles in civil wars and unrests.[34] Being largely absent from armed forces as active combatants, their more subtle roles and the impact thereof have largely been ignored. In fact, it is only very recently that the specificities of women's experiences in conflict have been discussed in academia and elsewhere. As a consequence, a rise in literature on how women organize and mobilize themselves during and after conflict is very much noticeable.[35] Women's groups tend to promote pacifism, reconciliation, interfaith and interethnic dialogue and specifically tackle notions that disproportionately harm women in conflict such as sexual and domestic violence and migration. This first chapter gives a brief overview of how concepts such as *gendered crime* and *gender justice* emerged, and what they actually mean, to provide evidence of the urgent need for awareness and sensitivity that exists in human rights law. Furthermore, this chapter will elaborate on why women's activism in these particular contexts is absolutely necessary, and what it more specifically means in less conventional gendered crimes such as enforced disappearances.

[33] In: Maja Šoštarić, "Život u sjeni: žrtve rata i rodno osjetljiva istina, pravda, reparacije i garancije neponavljanja u Bosni i Hercegovini." (2012) Impunity Watch, 30 <http://www.impunitywatch.org/docs/Gender_IW_BiH_report_%28BCS%29.pdf > accessed 1 December 2016

[34] Laura Sjoberg, Gendering Global Conflict: Toward a Feminist Theory of War (Columbia University Press 2013)

[35] Cockburn (2007), or more recent literature on Tunisia – Daniele Guilia "Tunisian Women's Activism after the January 14 Revolution. Looking within and towards the Other Side of the Mediterrenean."(2014) Journal of International Women's Studies, 15(2) 16, 32

Gender justice for a gendered crime

In the 1990s, as numerous societies were emerging from violent wars and conflicts, the need of the feminist circles operating within the international criminal legal arena was to first and foremost establish that gendered forms of harm exist, and as such leave great impact on each of the two sexes differently. Unsurprisingly, then, discussions about gendered crime and gender justice have largely focused on the issues of sexual violence and rape, that is, those crimes where women have suffered more than men due to their gender. Indeed, it has now been widely acknowledged that one of the major successes of the ad-hoc international criminal tribunals established during that period, namely the International Criminal Tribunal for former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), was recognizing sexual violence against women as a grave war crime. Consequently, sexual violence was included in the subsequent Rome Statute of the International Criminal Court (ICC) as both a war crime and crime against humanity, and has received much political attention since, especially in the United Nations.[36]

But sexual violence is not the only way in which war and conflict affect women. As a matter of fact, the sole focus on that particular crime removes the visibility of other crimes and consequences thereof that detrimentally affect women more than men. Gender justice, as Mayesha Alam defines it, means that both *"men and women deserve equal protection and equal redress […] and that any redress should be based on their experiences in conflict and their needs in transitioning […] to peace"*[37]. In this specific, post-conflict context, gender justice means understanding that violence can be economic, racial, sexual, but also gendered, and that all of them together, intertwined, result in oppression that leaves different

[36] Art 8 (xxii) and Art 7(g), respectively, of the Rome Statute (2002)

[37] Mayesha Alam, *Women and Transitional Justice: Progress and Persistent Challenges in Retributive and Restorative Processes* (Palgrave Macmillan 2014) 21

consequences on men and women, and should be addressed as such.[38] Than and Shorts argue that gender becomes of relevance in at least another two crimes against humanity: persecution, where sex is the basis for singling one group out, and enslavement.[39] The United Nations Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women in 1995 explains that women and girls in conflict situations are affected in a whole array of ways, namely, by suffering "*displacement, loss of home and property, loss or involuntary disappearance of close relatives, poverty and family separation and disintegration*", all resulting with "*life-long social, economic and psychologically traumatic consequences of armed conflict*".[40] In this the latter part of this definition the paper will work with in the specific case of enforced disappearances.

Like sexual violence, enforced disappearance have been a gendered crime wherever they occur, however, this is done in a rather reversed way. Admitting that men can frequently be victims of rape and sexual violence in war, women have, in a similar manner, also disappeared in conflicts around the world[41]. Nonetheless, just as women tend to be targeted for sexual violence more often than men, men tend to disappear in much larger numbers than women. That being said, the crime of enforced disappearances is thus inevitably gendered, as men are those who disappear and women are left behind marginalized, and are much more vulnerable to the consequences of the crime.

[38] Dhawan (n.21) As civilians, women are more likely to become displaced, or injured by landmines, precisely because they assume duties such as fetching water or growing food.[38]
[39] Claire de Than and Edwin Shorts, International Criminal Law and Human Rights (Sweet & Maxwell 2003) 348
[40] Para 135, UN Beijing Declaration and Platform for Action 1995.
[41] Particularly in Latin America more often than in, for example, Bosnia and Herzegovina, where complete gendercide occurred in 1995. Here, I refer to the Srebrenica genocide in July 1995, where women were clearly singled out and deported rather than being killed with all the men capable of carrying a gun.

A word on the law and gendered harms

Taking these notions into consideration, one could argue that the development of international criminal law in the past couple of decades failed to address gendered crimes with less direct attacks on women's bodies during the war, such as disappearances. Therein, women's experiences in conflict are heard by the international legal arena only when they relate to men (e.g. rape) and not so much as "stand-alone" experiences.[42] Much of the feminist scholarship on international criminal law has noted that both theory and practice of international criminal and transitional justice has roots in the assumption that men and women mean the same by (in)security.[43] Furthermore, guilt and responsibility are embodied in a single (or a handful of) individual being tried before the ICC, or one of the ad-hoc tribunals, and the gendered, state-centered order is reinforced. As Doris Buss points out, it is the regime that is being prosecuted and humiliated; the state that hosted it lives on[44]. For these reasons, this paper focuses on women who took their activism onto a different level and went against not one individual that needed to be blamed for a grave crime, but against the state as an apparatus that not only failed to prevent, but actively hosted these gendered violations. This has been made possible through the international human rights system.

The discussion about this kind of women's activism is essentially one not only of (international) criminal justice, but of transition, too. Trying a handful of high-ranking perpetrators, albeit necessary, does not accommodate the needs of a community going through a post-conflict transition. On the contrary, more transformative, substantial and empowering measures such as economic reparations, but also apologies, reforms, and reconciliation

[42] Alam (n. 37), 50
[43] Ibid
[44] Doris Buss, 'Performing Legal Order: Some Feminist Thoughts on International Criminal Law' (2011) International Criminal Law Review 11 409,423

initiatives, *inter alia*, are needed for both individuals and their society to move on as a whole.[45] International human law steps in to play an important role here, with its bodies mandated to order corresponding reparations. Feminist priorities in transitional justice have been identified as: recognizing gender-specific harms against women in transitional justice processes, with a critique that these tend to privilege technical over transformative feminist gains; ameliorating structural gender-inequalities due to which women are particularly vulnerable to harms that men are not; and participation of women in different transitional justice processes and institutions.[46] All these pillars of a feminist reading of post-conflict processes are kept in mind and demanded from human rights bodies, too, and their capability to trigger social transformations through reparations.

The need for women's activism

Women have increasingly been seen as important actors of change by the international community, both in organized groups and as individuals. This has been recognized through numerous initiatives starting with the UN's Fourth World Conference on Women in Beijing in September 1995, and continuing with projects such the Women, Peace and Security (WPS) agenda institutionalized by the UNSC Resolution 1325.[47] Nonetheless, the understanding of how gender plays a role in conflict is far from unified, even amongst feminist theorists. On the one hand, gender relations within a society can be seen as the most important factor that shapes how women experience a particular conflict – for example, why they are much more likely to survive than men. On the other hand, gender divisions could be perceived as only one of many other crucial factors, gender being one layer of the main causes of conflict, along with ethnic,

[45] Catherine O'Rourke, 'Dealing with the Past in a Post-Conflict Society: Does the Participation of Women Matter? Insights from Northern Ireland' (2012) Wm & Mary J. Women & L. 35

[46] Catherine O'Rourke, 'Feminist scholarship in transitional justice: a de-politicising impulse?' (2015) Women's Studies International Forum 51 118,127

[47] Valentine M. Moghadam, 'Transnational Activism' in Laura Shepard (ed) *Gender Matters in Global Politics: A Feminist Introduction to International Relations* (Routledge 2010)

ideological and economic disparities. In either case, where a gender-sensitive analysis of the conflict is lacking, the subsequent post-conflict attempts to deal with the past can go hand-in-hand with an array of issues that affect women and girls without acknowledging them as a consequence of the conflict – e.g. mental, physical health, sexual violence, increased prostitution and trafficking.[48] Disappearances cases do not fall outside the scope of this particular argument.

The absence of men in a predominantly patriarchal society can create new spaces for women's leadership, both within their household, as well as on a larger community scale.[49] At the same time, the omnipresent stigmatization and societal disapproval of these newly-acquired roles can discourage, or even actively prevent women from assuming agency and push them back towards the more restrictive gender roles that pre-existed the conflict. The United Nations Working Group on Enforced or Involuntary Disappearances (WGEID), a monitoring body which coexist with the CED to report on the practice of enforced disappearances, admits that these perceptions put additional burden on women as mothers of the disappeared who, regardless of whether they resort to activism in their attempts to find their missing children, are inevitably stigmatized in their patriarchal societies, as they are seen as having failed to take proper care of their children.[50]

This disruption of family relations often leads to psychological damage and social stigma, exacerbated in cases where women affected already belong to marginalized groups such as ethnic minorities or poor communities, like women in this study do.[51] To give an example, interviews with widows in Turkey show that many of the women were intimidated

[48] O'Rourke (n. 45)
[49] Ibid
[50] General Comment on enforced disappearances (n. 44)
[51] Ibid

when going to the municipality, or did not go immediately after the disappearance because their in-laws forbade them, they had to look after the kids, did not speak Turkish, or did not have money for the road.[52] Furthermore, the average age at which these Kurdish women married was 15.[53] This seriously disturbs the notion of "standard widowhood"[54], as these women become widows at much younger age then in cases where the cause of death is natural, and are sometimes left without a husband and with two or more children by the age of 20. They have a number of defendants to support, and do not enjoy the care of the community that older widows would.

The state often buttresses these newly-created hardships by putting forward legislation that makes it impossible for these women to obtain any benefits as victims of war, especially so when in absence of their husband's or son's death certificate. The legal status is crucial in order to have access to social services, but also ownership over husband's accounts and assets, if applicable.[55] Even when mechanisms that would enable some benefits exist, due to the already-mentioned structural obstacles and disadvantages in education and financial independence, the women in question are simply not able to take advantage of what they are entitled to. More precisely, when they decide to mobilize, these women lack education about their political options and rights, and the traditional spaces adequate for political action may simply not be available to them.[56]

[52] Hatice Bozkurt and Özlem Kaya, *Holding up the Photograph. Experiences of the Women Whose Husbands Were Forcibly Disappeared* (Truth Justice Memory Center 2014)
[53] Ibid
[54] Ruth Rubio-Marin (ed.) *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge University Press 2009) 74
[55] Dewhirst and Kapur (n. 6).
[56] General comment on women (n. 19).

Gender inequality and disappearance do not necessarily begin at the same time, but they both lie on a "continuum", and their ramifications are felt for the rest of one's lifetime.[57] In a way, they also serve as a "push" factors for each other – the imbalance of power in gender relations identified men as primary targets, whereas a disappearance of a man further stigmatizes the widowed woman. In a nutshell, what disappearances, like other forms of organized large-scale violence, do is disturb gender relations in a community, however, not for the benefit of otherwise less privileged women, but to their detriment. In Guatemala, the surviving widows were often forced into "marital" unions by the military and paramilitary alike, and then exploited sexually.[58] The status of widowhood in particular drove Guatemalan women to a state of "extreme vulnerability", which must be understood in the light of the drastic imbalance in relations that pre-existed the conflict, where only the Mayan men owned the land, had inheritance rights and spoke the language of the administration.[59] Where an absence of great numbers of men is felt, like in Bosnia, economic activity of women who are now breadwinners for the first time has to increase rapidly and immediately.[60] In reality, the conditions are never ripe for it, due to these women's lack of qualifications and/or the overall state of economic depression of a post-conflict economy, so the women and their children find themselves in utmost poverty, vulnerable to earning a living wage through dangerous or illegal means. In Turkey, the mothers and wives of the illegally detained, tortured and secretly executed. Kurdish villagers have often been forced to migrate within or outside the country on

[57] This is not to disregard that many new harms emerge in the context of a conflict, pre- or after it.
[58] Paz y Paz Bailey (n. 14) 98
[59] Paz y Paz Bailey (n. 14) 99
[60] Patricia Justino et al., 'Women Working for Recovery: The Impact of Female Employment on Family and Community Welfare after Conflict' (2012) UN Women.

a short notice, due to threats from state authorities or the fear of being harmed because of their familial affiliation with "the enemy."[61]

These and many other examples have perhaps been ignored by states but have not remained unnoticed by women who had already been activists or have become activists during the conflict, nor by those who agreed to strategic litigation afterwards. The ideas of pinpointing to this evidence of gendered harms to ask for better accommodation of the applications coming from female applications have been picked up by a number of human rights advocates and international institutions, transforming female family members of the disappeared into activists.

Why women's activism?

In her work on gender and transitional justice, Catherine O'Rourke established four claims that aim to describe why women's activism matters in dealing with the past.[62] According to the *justice* claim, women's activism matters because women amount to half of any society's population and would thus simply be unjust to exclude them from decision-making. This claim does not offer a very insightful analysis of more systemic reasons for the lack of women's participation, but rather argues that physical presence of women, one that fulfills a quota, suffices. The *different agenda* claim expands the analysis further to argue that gender is instrumental in determining one's economic and social status, as well as roles and responsibilities within a society. Excluding women from politics means that their interests are less likely to be on the political agenda, and the omnipresent differences in representations and burden within the family are prolonged. Next, the *larger dream* claim sees women's

[61] Total numbers are estimated to have reached up to a million over the period of clashes between the PKK and the national government, although not all for the same reason. See more at: https://www.ictj.org/sites/default/files/ICTJ-Brookings-Displacement-Reparations-Turkey-CaseStudy-2012-English.pdf

[62] O'Rourke (n. 45).

participation as essential for broader goals such as enhancing democracy by allowing new agendas to emerge once the key players are changed. Moreover, as women tend to dominate civil society organizations and grassroots politics, these changes will allow all citizens to feel empowered enough to express their views on democracy in their society. It is the sum of all three that this paper acknowledges and adopts. Yet, the last of the four claims is the one this paper is interested in most and that is *the politics of care* claim, which adopts an essentialist view, calling for reordering of political systems so that they resemble to the relationship of care that is present between every mother and her child. Women's political activism would then strip the political arena of self-interest and individualism and coat it with selflessness and cooperation, resulting in higher morale. These narratives are frequently used in post-conflict women's activism, where mothers from opposing sides unite through their shared pain of having lost their children. In more practical terms, despite different experiences women have acquired in wartime, the sentiments expressed in the aftermath essentially resemble to one another.[63]

This study looks for traces of politics of care, in noting that the claims wives and mothers of the disappeared bring before international human rights bodies on their own behalf are frequently the same in substance and that they may appeal better to governments since they are based on the undisputable motherly love. At the same time, the larger dreams claim is, too, analyzed in this case study, to note any changes this particular kind of women's activism has brought for women (and men) domestically, even if the claims brought by activist mothers and wives are completely stripped of needs that are not closely tied to the disappearance.

[63] Ibid

A mother, a wife, an activist

Women relatives of the disappeared have in all countries affected by disappearances emerged as activists demanding truth, justice and accountability, and leading local, national and transnational women's organizations that aim to fulfill these goals.[64] Disappearances, therefore, almost universally create new social roles for many women, regardless of whether these women enter the public arena with such a goal or not. Many of these women are 'accidental' activists who had originally met at hospitals, morgues or police stations, while looking for information,[65] and have continued to operate within the politics of care.

In three countries observed here, women's civic participation increased after disappearances, although most of it has been carried out under the umbrella of motherhood or widowhood. Even the famous Madres of the Plaza de Mayo *performed* motherhood in order to achieve the incredible goals that they have achieved with respect to their missing loved ones.[66] Women's activism in that sense then becomes a "natural" maternal reaction, more so than a political response, and as such is bound to receive wider support from the public, domestic and international, as it is no longer seen as a movement of women that failed to be proper mothers, but instead an act of proper motherhood in itself.[67] As Cynthia Bejarano reports, some of these mothers in Latin America have even been called *madres dolorosas*, mothers of sorrows, and in the eyes of others, their marching bodies in fact embodied pain they felt due to the disappearance of their children and husbands.[68] The sorrow was not communicated to the public only in a passive way; on the contrary, it often included active civil disobedience. More

[64] Ibid
[65] Ibid
[66] Jenny Edkins, *Missing Persons and Politics* (Cornell University Press 2011)
[67] Dewhirst and Kapur (n. 6).
[68] Cynthia Bejarano, 'Las Super Madres de Latino America: Transforming Motherhood and Houseskirts by Challenging Violence in Juarez, Mexico, Argentina and El Salvador' in Arturo Aldama (ed) *Violence and the Body: Race, Gender, and the State* (IUP 2003)

than any other *misbehavior* coming from women activists, this disobedience has been accepted by patriarchal institutions and agents, because it came with a certain legitimacy and authority – that of a mother. The cases of Madres and Majke Srebrenice (Mothers of Srebrenica)[69], the Saturday Mothers and a number of Kurdish women's groups[70], and groups of widows in Guatemala[71], only serve as a few examples of such activism which to date remains the most dominant and the most successful one in terms of impact on domestic authorities when it comes to disappearances.

These women, while resorting to the rhetoric of victimhood, perhaps ironically make a good use of the privileged place they hold in the society as grieving mothers bearing the ultimate sacrifice, and have been involved in different forms of political mobilization at the local level. All of them operate in rather patriarchal societies, as well as patriarchal states, so the activism they undertook may be the only one with any prospects for success.

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[69] With over 8,000 men and boys being murdered within the course of a few days in and around Srebrenica, women were systematically singled out and kept alive, perhaps punished not by death, but by being forced to continue living without their men, therein seen as unworthy. Majke, like Madres, adopted non-violent methods of seeking truth and justice as early as in 1996, and have been particularly active in lobbying for more prosecutions and accountability. They made sure to stress that their activism is one a mother, not a feminist, uniting women across the region in their shared pain and fight to know where their loved ones are.

[70] Already in 1995, a group of mothers, now known as the Saturday Mothers, began to gather just outside the Galatasaray High School in Istanbul for a silent ritual. This act, repeated every week, represented a form of protest against enforced disappearances, and indeed, all of them had members of their families who had disappeared in the wave of disappearances in 1994. These women were arrested week after week, attacked with tear gas, and beaten up until they eventually gave up, at least on occupying the public arena. They have since returned, demanding the release of information about their missing family members, as well as trials for the violations perpetrated by the state. Women started voicing their experiences of what was happening in Turkey during the peak of the crisis, and published extensively in feminist Kurdish women's journals. At the same time, they mobilized in a great number of organizations such as Don't Touch My Friend, Mothers of Peace, Women's Initiative for Peace, Women's Meetings for Peace, and It is Time, most of them founded in the 1990s and early 2000s. See Bozkurt and Kaya (n. 57).

[71] CONAVIGUA (Coordinadora Nacional de Viudas de Guatemala), a group of women united in an organization under the umbrella of widowhood rather than motherhood in 1988. Similarly to the Saturday Mothers and Majke Srebrenice, these women claim to have come together over their shared pain and suffering in need to speak up against grave injustice and marginalization. The group today fights to push the government to ensure education and economic support for the widows and their children, and more specifically provide the bare necessities women and children need, such as medicine, clothes, food, etc. Their greatest struggle is one of providing their disappeared husbands with a proper Christian funeral, and addressing other grave human rights violations of the indigenous people, for which a special Justice branch was established in 1995.

Needless to say such engagements do not come without a cost or a grave risk. It is quite frequent that female relatives of political opponents or generally those seen as "the enemy" are targeted by military and other oppressive regimes for their familial affiliation and harassed, detained, tortured, or even murdered in order to give information.[72] For instance, female activists in Guatemala have constantly lived under threat. Nineth Montenegro, the wife and activist behind the landmark Garcia case[73], has repeatedly reported on being harassed in her search for her disappeared husband; Maria Mejia from CONAVIGUA was assassinated in 1990; Myrna Mack, another activists was killed in the same year, whereas Maria Rumualda Camey from Grupo de Apoyo Mutuo (GAM) disappeared a year before.[74]

Despite all obstacles within the family and their local communities, sometimes these women adopt other rationales as to why women's activism is needed beyond their motherly care and progress to hold respected positions among national and international authorities. Notable individuals like Nineth Montenegro from Guatemala and Pervin Buldan from Turkey took public offices after their disappearances cases in courts, sending their activism across borders. While the narratives these women clothed themselves with in order to enter the public international arena are important, they should not serve as the determinant of how feminist these women's claims are before international human rights bodies are or how truly gender-sensitive and transformative the reparations awarded by the bodies can be. What is of greatest importance is the outcome of their activism. Boundaries, both symbolic and material, between public and private spheres are blurred every time these women occupy public spaces – squares, streets, Parliaments and courts - and resistance towards the patriarchal state is shown.[75] Perhaps

[72] Rubio-Martin (n. 54)
[73] Garcia and Family Members v. Guatemala (n.30).
[74] Paz y Paz Bailey (n. 14)
[75] Ibid

mother-activism succeeds in achieving these goals more than other forms of women's activism precisely because it carries labels acquired before the transition such as motherhood; however, this cannot be done without simultaneously transforming these deeply-rooted roles within the family and society in a way that the feminist movement has demanded for so long.

Overall, developments in the international women's movement and the spread of civil society have increased the hopes that gender justice is to be achieved through women's activism rather than via formal state institutions. Essentially, gender justice yields for a transformation of the state and the establishment of an adequate legal system which would enable (or rather push) the judiciary to accommodate gender justice at all times. The upcoming analysis presents proofs of such convergence of the activism of mothers and wives before international human rights bodies and, although often minimal, state efforts to comply with the subsequent judgments and orders for reparation, enabled by international human rights law.

Chapter I has set the scene for more specific elaborations of gender-sensitive reparations different human rights bodies award to female applicants in disappearances cases. In sum, this Chapter has given important background information on gender specificities of enforced disappearances, the activism developed so far, and the need for such activism. These are some of the social implications to be kept in mind when thinking about what gender-sensitive reparations for these women should encompass; yet they would be utopian without a thorough understanding of the law that applies to enforced disappearances as human rights violation, and the current state of jurisprudence of human rights bodies in that regard.

Chapter II

Enforced disappearances do not happen by coincidence nor in isolation; they are a part of a carefully planned strategy with a clear purpose, and those subject to it are not accidental victims, but targeted individuals. The jurisprudence on this crime of both human rights courts and international criminal courts is quite recent and still developing, with more expected to come with the novel operation of the CED. Yet, even without being mandated by their corresponding treaties to prosecute this particular violation, human rights courts and committees have found ways to link enforced disappearances to a range of other rights. Before this alone is examined in the following chapters, the present Chapter II discusses some of the elements that need to be fulfilled in order for any of these human rights bodies to even hear a case in the first place. Accomplishing any of them is not an easy challenge for female applicants due to different gender-discriminatory realities at home, particularly so when considering the impact enforced disappearances have on gender relations. In addition to tackling this issue and noting several accommodation that made the applications process easier for women, this Chapter also seeks an internationally accepted definition of the act, and elaborates more on women's role in the development of human rights bodies' jurisprudence in this regard.

How do women play a role?

Leaving the bodies of targeted enemies beyond legality causes different forms of disempowerment for their relatives and communities, especially so since they were left there because of who they are and where they come from.[76] On a more individual level, it torments their families' minds, and often bodies, too. At a larger scale, it socially excludes and

[76] Simon Robins (n. 17).

dehumanized entire communities who are now seen as the enemies within. Due to such marginalization, when demanding for truth and justice, the relatives of missing people find it difficult to achieve the required standard of proof, and most frequently cannot point out to individual criminals that ought to be held accountable.

In each of the three countries in question, a vast majority of family members who mobilize in search of the missing bodies are women. It may not be too exaggerated to say that the jurisprudence of these bodies regarding enforced disappearances would not be nearly as developed if it were not for the female relatives who keep playing an instrumental role in securing the rights of disappeared people. Yet, it remains even more challenging for them to achieve these standards set by human rights bodies due to their vulnerability to harassment and sexual abuse.

The effects of enforced disappearances on the lives of the surviving mothers, wives, daughters and sisters have only been recognized recently by the UN WGEID[77], and the body of literature has just started to increase in the past few years. Despite these late developments, international human rights bodies seem to be somewhat understanding of the disadvantageous positions female applicants find themselves in vis-à-vis male applicants. The differences between the conditions surviving wives, for instance, face in comparison to rare examples of surviving husbands, are well-embedded in social and economic inequalities present in their societies. In addition to the existing discrepancies in conditions and opportunities, enforced disappearances of men add to psychological damage, social stigma and financial difficulties which all arise with the subsequent disruptions of family structures,[78] as established in Chapter

[77] General comment on women (n. 19).
[78] Ibid. For example, the mothers of the disappeared are often blamed for not fulfilling the role of a "good", caring mother, which adds to emotional distress. As enforced disappearances tend to affect marginalized groups in the society more often, women who are left behind are frequently illiterate, under schooled and unemployed, and find

I. Since the overarching theme is to see how the gender aspects of the crime, the claims, the reparations and, essentially, the activism itself, have been accommodated by these three bodies, if at all, the grand question at present is where is *gender* in the jurisprudences of the ECtHR, IACtHR and HRC?

Before embarking on a search for gender in reparations awarded by the ECtHR, the IACtHR and the HRC, we shall first examine some of the legal notions that may serve as an obstacle or as an impetus for female applicants in enforced disappearances cases.

The law of making someone disappear

The jurisprudence of the three human rights bodies has developed significantly in the past couple of decades, especially taking into consideration that none of the relevant conventions, namely, the ICCPR, the ECHR and the ACHR explicitly include enforced disappearances as grounds for a violation. The HRC recognized enforced disappearances in an "extended sense" where disappearances may not only be triggered by a state party, but also groups that are "independent of or hostile to" the state party.[79] In dealing with enforced disappearances cases from several countries, most notably Algeria, the HRC has in the past several years been relying on its own General Comment No. 31 to establish the failure to investigate claims of gravest violations such as enforced disappearances as a possible separate breach.[80] In the meantime, distinct instruments dealing with this issue in isolation have emerged. The interpretation by the HRC is, for instance, compatible with the Rome Statute's Art 2-7(i) under which the crime is committed with "*the authorization, support or acquiescence*

themselves particularly vulnerable and more exposed to crimes, trafficking, and poor health, with an evident lack of access to their guaranteed rights.

[79] Kožljak v Bosnia and Herzegovina (n. 29).

[80] General Comment No. 31 on The Nature of the General Legal Obligation Imposed on States Parties to the, Covenant CCPR/C/21/Rev.1/Add. 1326 May 2004, para 18.

of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons".[81] This claim is identical to that in the Convention on Enforced Disappearances.[82] Similarly, the IACtHR identified three constituent elements of enforced disappearance prior to the creation of the Convention, which include: *" (a) deprivation of liberty; (b) the direct intervention of State agents or their acquiescence, and (c) the refusal to acknowledge the detention and to reveal the fate or the whereabouts of the person concerned"*.[83] These elements, indeed, are shared by all cases examined in this paper.

Although enforced disappearances are not explicitly mentioned in the ECHR, the ECtHR has dealt with many enforced disappearances cases in the past few decades, mainly coming from Turkey and Russia.[84] In developing its jurisprudence regarding enforced disappearances, the ECtHR has made reference to a variety of human rights instruments and institutions, as well as specific landmark cases from other jurisdictions. In doing so, the ECtHR relied on the United Nations Declaration on the Protection of All Persons from Enforced Disappearance to establish enforced disappearance as a crime against humanity which violates rights to legal recognition, liberty and security, life and freedom from torture.[85] For this reason, violations stemming from this crime have been linked to a number of articles found in the Convention, such as right to life (Art 2), freedom from torture (Art 3), fair trial rights (Art 6) and right to remedy (Art 13). The IACtHR has, on the other hand, referred to the UN WGEID

[81] Rome Statute (2002) of the International Criminal Court
[82] See Art 2 of International Convention for the Protection of All Persons from Enforced Disappearance (2006)
[83] Garcia and Family Members v. Guatemala (n. 30) para 97
[84] For example, Osmanoğlu v. Turkey, no. 48804/99, 24 January 2008; Akdeniz v. Turkey, no. 25165/94, 31 May 2005; İpek v. Turkey, no. 25760/94, ECHR 2004; Akdeniz and Others v. Turkey, no. 23954/94, 31 May 2001; Taş v. Turkey, no. 24396/94, 14 November 2000; Timurtaş v. Turkey, no. 23531/94, ECHR 2000; Ertak v. Turkey, no. 20764/92, ECHR 2000-V; As regards Chechnya see Imakayeva v. Russia, no. 7615/02, ECHR 2006; Baysayeva v. Russia, no. 74237/01, 5 April 2007; Aslakhanova and Others v. Russia; 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, § 122, 18 December 2012
[85] Kurt v Turkey (n. 28)

to establish that the permanent nature of enforced disappearances results in multiple violations of other rights, putting the victim in a state of complete defenselessness and a situation of vulnerability.[86] To that extent, the Inter-American Court has also found violations of other, less commonly-evoked rights, such as freedom of expression, freedom of association and right to participate in public affairs, which specifically concern women activists who occupy public spaces in their search for the missing.[87]

Even though the claims examined before these three human rights bodies in relation to enforced disappearance are repetitive to a great extent, the analysis of each of these bodies' jurisprudence in that regard does not fall short of distinctions. Departures arise not only in procedural matters, but also in relation to some elements that carry great weight in the determination of the subsequent reparations and how receptive of women's needs they might be, such as linking enforced disappearances to torture, establishing the state party's responsibility, and presuming the victim to be dead.

Exhausting domestic remedies

Exhausting domestic remedies is a well-known pre-requisite for admissibility before any of these three bodies, however, there are exceptions. In the ECtHR's jurisprudence, a complete absence of any effective investigation into the complaints brought by the applicants before state authorities counts as a special circumstance due to which exhausting domestic remedies is not necessary.[88] This strategy has helped several female applicants bring a case against Turkey, repeatedly claiming its unwillingness to investigate enforced disappearances

[86] Report of the Working Group on Enforced or Involuntary Disappearances E/CN.4/1983/14 of 21 January 1983, paras. 130 to 132. See also, García and Family Members v. Guatemala (n. 30) para 96, 107
[87] See, for instance, Case of Chitay Nech et al. v. Guatemala (n. 30).
[88] Akdivar and Others v Turkey E.C.H.R. (99/1995/605/693), para 65–69. Kurt v Turkey (n. 28) para 83

cases. The IACtHR confirms that the state is "the principal guarantor of human rights" and therefore implementation of the ACHR must be guaranteed at the local level by domestic authorities first.[89] While most states will raise the non-exhaustion of domestic remedies claim[90], the burden of proving that any available, adequate, appropriate and effective remedy remains rests on them. Here, like in the jurisprudence of the ECtHR, some exceptions persist[91], one of which is of particular importance for the victims of disappearances. Namely, the IACtHR has also allowed for exceptions in cases where the applicant could not find a lawyer due to fears of governmental reprisals.[92] Such a practice is beneficial for Guatemalan female applicants, considering that the political scene in Guatemala is still largely unstable. At the same time, it could also be of help for, for instance, Turkish applicants, if the ECtHR embraced similar principles, as some have reported harassment by state officials in the process of exhausting domestic remedies.[93]

The case-law of the HRC also suggests that futile remedies do not need to be exhausted, when they have "no prospect of success".[94] In all Bosnian cases observed by the HRC, the applicants exhausted all relevant domestic remedies by submitting applications to the Human Rights Commission of the Constitutional Court of BiH, mostly claiming violations of Articles 3 and 8 of the European Convention.[95] The Constitutional Court would then conclude that the applicants - normally multiple applications were joined together - did not have an obligation to

[89] Jo M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* 2nd ed. (Cambridge University Press, 2003) p. 92.
[90] See, for instance, García and Family Members v. Guatemala (n. 30) Preliminary Objections, para 28.
[91] Pasqualucci (n. 89) p. 97 writes that exceptions to the principle are available when: "1. due process law does not exist for protection of the right allegedly violated; 2. local authorities deny access to or prevent a party from exhausting such remedies; 3. there is unwarranted delay in the rendering of a final domestic judgment", according to the Rules of Procedure.
[92] Ibid.
[93] See, for instance, *Süheyla Aydın v. Turkey*, 25660/94 E.C.H.R. (2005) where both the applicant and her husband were taken into custody and tortured, but only the applicant was later released.
[94] Pratt and Morgan v Jamaica (210/86, 225/87) HRC, para 12.3
[95] Kožljak v. BiH (n. 29) para. 2.10.

exhaust remedies before ordinary courts in the absence of a specialized institution that could solve enforced disappearance cases effectively.[96] By doing so, the Court was able to order the authorities to investigate and provide information within a certain time frame, albeit to no avail, but not to award any compensation to the victims. Once the government of BiH failed to comply with the Constitutional Court's decisions, the applicants gained a free pass directly to the HRC. Surely, these particular actions by the BiH Constitutional Court contributed to the fact that the number of Bosnian enforced disappearances cases before the HRC increased in the past years, saving otherwise valuable time and resources to the women wanting to pursue their cases.

Ratione temporis

The passage of time between the crime and the application before a human rights body is known to be problematic in a number of cases, especially when family members are unaware of international protection of their rights or are unable to access it. Temporal jurisdiction in enforced disappearances cases has not been raised as an objection by Turkey before the ECtHR, as Turkey has been one of the Convention's earliest signatory parties, having ratified the document in 1954.[97] The ECtHR has furthermore reiterated a number of times that the six-month rule from the date that the act was complained of, may not apply provided that there were no remedies available or were ineffective, and only so in exceptional circumstances. What this means is that applicants must not wait years to become aware of the situation of ineffectiveness, but become aware of it in the meantime. Yet, the very finest of the Court's gender sensitivity portrayal was performed here, when the Court stated that what distinguishes

[96] See, for instance, Dalisa and Sakiba Dovadžija v Bosnia and Herzegovina (n. 29).
[97] University of Minnesota, Human Rights Library, 'Ratification of International Human Rights Treaties – Turkey' < http://hrlibrary.umn.edu/research/ratification-turkey.html > accessed on 4 June 2016

these cases from others was the fact that applicants were rural women who were illiterate and did not speak the language of the administration, and furthermore had to abandon their village and live as refugees for years.[98] For them, *ratione temporis* did not apply.

HRC has traditionally made exceptions for admitting cases that occurred before the Committee had jurisdiction over the crime, when their nature is continuing.[99] More precisely, Bosnia and Herzegovina are being held responsible for crimes that in many cases occurred before its ratification of the ICCPR since the HRC defines a disappearance of a person "a continuing violation" of multiple rights, and as such, punishable *ex post facto*, not subject to the principle of non-retroactivity.[100] The jurisprudence of the IACtHR established the same principle, well-buttressed by the reports of the UN WGEID.[101] These practices have allowed the two bodies to admit a significantly higher number of cases, to the respective states' great discontent. At the same time, these accommodations are manifestations of a recognition of the grave impact disappearances have on family members and communities, even decades after they happened, and of the obstacles women in particular may face in becoming active agents in their otherwise gender-imbalanced societies.

State responsibility

Establishing that a person has disappeared, was illegally detained, tortured and potentially murdered is an initial step undertaken by the three human rights bodies; however, these do not mean much unless they are connected to the accused state party. Attaching the

[98] Er and Others v. Turkey (23016/04 decision of 31 October 2010), Concurring Opinion, Judge Sajo
[99] Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights, Cases, Materials and Commentary* (Oxford University Press, 3rd ed. 2013)
[100] Report of the Working Group on Enforced or Involuntary Disappearances A/HRC/16/48/Add. 1 para 57
[101] Case of Chitay Nech et al v. Guatemala (n. 30), para. 82, and Case of Tiu Tojin v Guatemala (n. 35), para. 52. See also the Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/35, of 22 January 1981, para. 4

disappearance of the person in question to the responding state is of utmost importance, for otherwise, none of these human rights bodies would have jurisdiction over the case. These links are more often than not made on the procedural grounds and, perhaps surprisingly, not finding the state responsible for the acts or omissions regarding enforced disappearances has rarely been a problem in the cases observed. Such an accommodation is beneficial for female applicants as they more often than not lack the resources to point out to state responsibility for the violation in substance.

How did this procedural obligation come about? Although none of the international treaties which established these three human rights bodies explicitly mention the word *investigate*, it is read as a positive obligation to the right to life by the ECtHR.[102] This applies even in cases where the alleged acts are committed by private actors, as each state has an obligation to protect human life and, if possible, prevent any violations of it. The Inter-American Commission also connects such obligations to right to life, as well as the right to legal protection (Article 18), and finds the absence of an effective investigation to be in violation of it.[103] State parties to the ICCPR must take an array of positive steps such as investigating claims of human rights violations in order to give effect to the right to remedy, as enshrined in the Covenant.[104] Furthermore, the UN Basic Principles, too, vest with states a duty to investigate, submit to prosecution and punish, if found guilty, for gross violations of international human rights law.[105]

[102] Lech Garlicki, 'Relations between Private Actors and the European Convention on Human Rights, in The Constitution in Private Relations' in András Sajó & Renáta Uitz (eds.) *The Constitution in Private Relations: Expanding Constitutionalism* (Eleven international publishing, 2005) 129, 136.
[103] R. J. A. McQuigg, 'Domestic Violence and the Inter-American Commission on Human Rights: Jessica Lenahan (Gonzales) v. United Sates' (2012) Human rights Law Review 12:1, 122,134.
[104] Joseph and Castan (n. 99)
[105] See 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, UN Doc. A/RES/60/147 2006 Section III para 4

States have been quite careful to hide any grounds to believe that such an obligation exists, but international human rights bodies have, luckily, acted much smarter than that. The ECtHR, for instance, has been very clear that a distinction between being taken into custody and for "mere observation" is rather arbitrary, adding that the fact that someone's name does not appear in the police custody registrars is not a guarantee that he was not taken by state agents.[106] The HRC links the crime to state obligations via a pattern that relies on the work of other UN bodies. For instance, the Convention on Enforced Disappearances clearly assigns each state party with obligations to investigate the acts of disappearances even when they did not occur as a direct consequence of state agents' actions.[107] Similarly, the UN WGEID proclamation that responsibility to investigate rests with the state[108], arising from the duty to protect all individuals under its jurisdiction from violations committed by private actors as well, seems to be of monumental importance.[109] This obligation, as interpreted by the HRC is one of means, not results, shaped as such in order to avoid imposing an unachievable or disproportionate burden on the state party.[110] While this principle always results in the HRC not finding a violation of Art 2(3) on its own[111], it is also invoked to find violations of the right to life, freedom from torture and right to liberty and security in conjunction with Art 2(3) regarding the missing victim, in a pretty standard pattern, at least as far as the cases from Bosnia and Herzegovina are concerned.

[106] Çiçek v Turkey (n. 28).
[107] See Art 3 of the CED under which state parties "take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice".
[108] Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, Question of Enforced or Involuntary Disappearances. Commission on Human Rights, Reported submitted by Mr. Manfred Nowak. E/CN.4/1996/36 March 1996, para 78
[109] Kožljak v BiH (n. 29) para 3.2, Hamulić and Hodžić v BiH (n. 29) para 3.3
[110] Kožljak para 9.5 (n. 29), Tija Hero, Ermina Hero, Armin Hero v Bosnia and Herzegovina (n. 29) para 9.5.
[111] See, for instance, individual concurring opinion by Anja Seiber-Fohr in Hamulić and Hodžić (n. 29), where it is established that according to the Committee's jurisprudence, Art 2(3) is not to be evoked on its own, but in conjunction with other violations of a substantive right.

The Inter-American Court uses a less limiting language by not only stating that state parties have a duty to open an investigation *ex officio*, but also to look into the power structures which allowed for this grave crime to happen.[112] If such orders are complied with, then the same structures that foster gender bias and discrimination will also be re-examined. Furthermore, in its jurisprudence, it has been established that "the systematic practice of forced disappearance" represents a failure to respect the obligation of the state party to establish an apparatus that can effectively protect the Convention rights.[113] States, therefore, have an obligation to not only investigate, but also punish, establish the truth about what happened, locate the body and afford adequate reparations to family members, in line with what these family members ask for.

At the same time, however, it seems to be rather challenging for these bodies to find states responsible for violating the right to life on substantive grounds due to lack of concrete evidence (or, in this case, the body), refusing to go beyond the principles of domestic criminal law. Gender sensitivity is manifested here, too, noting that disadvantaged women would rarely have access to the evidence concealed by a state establishment. The difference between a substantive and procedural violation of right to life does not lie in the amount of money awarded through reparations. Yet, it would have a symbolic value on the individual level by clearly identifying the perpetrator, and furthermore a potential to call for more comprehensive policies at the national level if the state apparatus was singled out as the one committing grave violations against its own people, and not solely shielding the perpetrators.

[112] García and Family Members v. Guatemala (n. 30) para. 150
[113] Case of Velásquez Rodríguez v. Honduras (n. 8).

On the presumption of death

Following from the discussion on state responsibility, one must, therefore ask: is it rightful and righteous (not) to presume that the victim died, with or without establishing that this act is likely to have happened in the hands of state agents? Although the ECtHR has been reluctant to point to a systematic, planned policy of enforced disappearances in South-east Turkey, it did take the frequency at which these crimes occur into consideration when deciding whether the disappeared victim could be rightfully presumed dead.[114] The ECtHR has previously reasoned that the more time without any news about the disappeared, who had originally been detained, passes, the more likely it is that he had died.[115] That being said, the ECtHR has previously presumed a missing person to be dead when there had been no news for period ranging from four to more than fifteen years.[116] This is arguably done in order to make it easier to find a violation of Art 2, in line with the practices of Turkish authorities.[117] The HRC, on the other hand, took an issue with the Federation Law on Administrative Procedure and Art 21 of the Bosnian Law on the Rights of Demobilized Soldiers and their Families, both of which require family members of the disappeared to declare them dead before a local court in order to obtain a pension.[118] In the Committee's opinion, doing so while the investigation is on-going "made the compensation dependent on a harmful process" and as such amounted to

[114] Çiçek v Turkey (n. 28) para 146-7

[115] Irum Taqi, 'Adjudicating Disappearance Cases in Turkey: An Argument for Adopting the Inter-American Court of Human Rights' Approach'. (2001) Fordham International Law Journal Vol. 24 940,986

[116] Background paper for seminar Opening of the Judicial Year January 2016, International and National Courts Confronting Large-scale Violations of Human Rights, Council of Europe, 2016

[117] There are several ways in which women whose husbands disappeared can benefit from the social benefits, including through the Social Assistance and Solidarity Foundations, which give aid to those who do not have social insurance prescribed by law. In any of these scenarios, the status of the disappeared husband must not left 'unknown', so there are two ways these women can go about it: they can either obtain a decision for absence through a judicial process, or have a death certificate issued through a much more simplified procedure where a simple notice of death would suffice. However, declaring one death in order to obtain social benefits later prevents these women from having their case opened or re-opened, as it is not seen as a forced disappearance matter any longer. Consult Truth Justice Memory Center's reports.

[118] See, inter alia, Hero v BiH para 9.7 (n. 29)

inhuman treatment, violating Art 7, alone and in conjunction with Art 2(3). Consequently, presumption of death remains one of the biggest points of departure in the practices of the two human rights bodies, although they both aim to accommodate victims' needs better, at least in the short-run. In the landmark *Velásquez-Rodriguez v. Honduras* case, the Inter-American Court concluded that a reasonable presumption of death can be made due to the fact that the victim had remained disappeared for seven years, taking into consideration the context in which he disappeared, and a complete absence of knowledge about his fate.[119]

What is at stake if one is presumed death? The principle as established by the IACtHR is of great importance, as it further lead the Court to find Honduras in violation of Article 4(1) on substantive grounds in the *Velásquez-Rodriguez case*, presuming that the victim was killed in the hands of state authorities. Furthermore, being connected to what violations are going to be recognized, such a proclamation has an impact on the reparations awarded by the Court, as well as on the overall allocation of guilt, both of which are matter greatly for female applicants, symbolically and materially. Yet, in the *Cicek* case before the ECtHR, a concurring opinion of Judge Maruste revealed that are voices among the ECtHR judges who think that declaring a disappeared person to be dead would be premature, as long as there is uncertainty about his faith.[120] He instead suggests the use of terms 'presumed' or 'possible' death, as well as 'disappeared' as a determinant of a special status in law, which points of to the failure of authorities to protect life. Finally, this act of "killing" the missing relative could be the psychologically most tragic aspect for a female applicant[121], although it is difficult to contrast

[119] Case of Velásquez-Rodriguez v. Honduras (n. 8).
[120] Çiçek v. Turkey (n. 28), Concurring Opinion of Judge Maruste
[121] Bozkurt and Kaya (n. 57).

its gravity in relation to life-long ambiguity where a person is considered to be “disappeared”, having been denied both his life and an ending to that life.

The above-examined legal aspects of enforced disappearances as an act of violation of human rights, as practiced by international human rights bodies all have a gender dimension to them, meaning that more rigid regulations could disproportionately harm female applicants. Chapter II has looked for practices and exceptions thereof that ameliorate the legal process for female applicants, and at least implicitly show understanding of the position these women are in. At the same time, the Chapter has also noted distinctions in jurisprudence of three human rights bodies, and attempted to understand the politics behind enforced disappearances as a state-sponsored policy. These notions, along with a comprehensive understanding of mother-activism, the need for it and its potential as presented in Chapter I will now allow for a comparative study of claims and reparations these female applicants have raised and received before international human rights bodies.

Chapter III

It has been established that each of the three human rights bodies analyzed in the preceding Chapter has produced a substantial case-law on enforced disappearances, and that they together have actively served as the most appropriate arenas to address these violations otherwise clothed in secrecy and supported by state organs. In addition, it is also evident that women around the globe have mobilized in search for truth, justice and reparations for their missing relatives, and that a handful of them have taken their cases to the highest international level, once the domestic remedies were exhausted. Nonetheless, apart from a few cases where these mothers and wives were tortured or harassed along with the disappeared or due to their affiliation with the disappeared, by and large, these women are not seen as conventional, direct victims of human rights violations. Their suffering is, first and foremost, personal and psychological, caused by the perpetuated uncertainty and not knowing what happened with their loved one. This harm is, however, also public and caused by societal and cultural norms about marriage, family and widowhood, and this can further result in economic hardship and complete marginalization. Have international human rights bodies recognized these harms? Chapter III aims to elaborate on the very first criterion for adopting a more gender-sensitive viewpoint and that is allowing these women to have a standing and bring claims, both with regard to the disappeared, but also to themselves. This Chapter looks at who is allowed to bring a claim, who actually brings a claim and what claims they bring. Different practices by the three human rights bodies will point out at their willingness to be gender-sensitive, and raise questions and concerns about any further implications such actions have on the lives of these women.

On victimhood

Women, as a rule rather than an exception, carry the primary responsibility in social structures[122] as mothers, wives, daughters and, overall, caregivers. Civil conflicts observed in three case studies all affect women individually, their position and relationship with their family, as well as their community, and therein have the power to cause harms that have multiple layers. Whether it is through physical or psychological harm or by leaving the family economically destitute, the grave crime of enforced disappearance inevitably affects (female) family members and causes suffering.[123] In his work on disappearances in Nepal and Timor-Leste, Simon Robins found that the emotional distress that the next of kin feel is more related to the disappeared person and his absence, rather that the very event of disappearance.[124] This phenomenon serves to confirm the continuous and deleterious nature of the harms enforced disappearances bring upon families, demanding that each of them is seen as a victim as long as the body is not found.

Wives and mothers of the disappeared are affected by this continuous harm more than the rest. Because of the social and familial structures that are present and operative in these societies – Bosnia, Turkey and Guatemala included, women tend to be haunted by not being able to fulfill their traditional roles as mothers and wives and provide care for their missing relative.[125] This mental distress goes much beyond how the women feel in their own private space, and is followed by grave stigmatization in public.[126] Moreover, economic hardships remain grave without the main provider of the family. Many of the families are reduced to

[122] Rubio-Marín (n. 54)
[123] Ruth Rubio-Marín, Clara Sandoval and Catalina Diaz, 'Repairing Family Members: Gross Human Rights Violations and Communities of Harm' in Ruth Rubio-Marin (ed.) *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge University Press 2009) p. 215
[124] Simon Robins (n. 17) 104, 105
[125] Ibid
[126] Robins (n. 17) reports on the widows of the disappeared in Nepal who are being called names (prostitute, witch etc.) by their in-laws.

begging[127]; furthermore, women engage in prostitution or trafficking[128], and overall tend to be trapped in conditions of serious poverty after the disappearance of the sole breadwinner. These women are not *direct* victims, but are instead mothers, wives and daughters of those who disappeared – and thus can be deemed to be *indirect* victims. In order to award any remedy that may be sensitive to the gender specificities of the crime in question, the international human rights bodies must first determine whether someone who is not harmed directly but, more often than not, suffers merely psychologically as a consequence of a human rights violation has a standing.

In most cases, women are unable to point out to physical or mental harm that was directly and intentionally perpetrated against them by the state, although there have been allegations of torture and harassment of the applicants themselves by state agents.[129] Yet, that women do not physically suffer as much as men as a consequence of a civil war or conflict can be refuted by at least two arguments. Firstly, women are more prone to both sexual violence and domestic violence before, during and after the conflict.[130] Secondly, their harms spread over a longer period of time, and aggravate after the war, with additional losses and harms[131], particularly manifested in enforced disappearance cases, it being a crime that lies on a continuum. As the primary purpose of these women's applications before international courts is the act of disappearance and the consequences thereof, and not the harm inflicted upon them,

[127] Ibid
[128] Rubio-Marín, Sandoval, Diaz (n. 123)
[129] See, for instance, *Süheyla Aydın v. Turkey*, 25660/94 E.C.H.R. (2005) where both the applicant and her husband were taken into custody and tortured, but only the applicant was later released. Also Margaret Urban Walker reports that, when seen as mere extensions of their male relatives, these women have frequently been used as hostages, or were detained and tortured in order to obtain information or prevent them for spreading information. (n. 15).
[130] Consult, inter alia, Italo A. Gutierrez and Jose V. Gallegos, 'The Effect of Civil Conflict on Domestic Violence: The Case of Peru' (2016) Rand Labor and Population, WR-1168
[131] Margaret Urban Walker (n. 15) refers to the harm inflicted as "gender-multiplied".

this allows them to act in at least three ways: as representatives of the disappeared, as indirect victims who have suffered because of the disappearance, and as direct victims when applicable.

National and international authorities have not dealt with this matter too differently. In national reparation schemes, countries such as Chile, Argentina and Brazil had from the beginning delineated potential beneficiaries in disappearance cases. For instance, pensions as a form of redress for the disappearance of a family member were given to children, spouses and partners in Chile, in addition to awarding special educational benefits to the children of the disappeared.[132] In Timor-Leste, widows of the disappeared were seen as a more vulnerable group, with special priority given to repairing their harms.[133]

The UN Basic Principles of Reparations define the term 'victim', and therefore someone entitled to reparations as:

> […]persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law.[134]

Furthermore, the same article states that, when applicable, and if in accordance with national law, victims also include family members or other dependents of the victim as defined above, as well as anyone who might have suffered while trying to help the victim.[135] International human rights bodies seems to be in accord with these principles, and the CED has also recently confirmed that the victim status belongs to anyone who has suffered as a

[132] Rubio-Marín (n. 54)
[133] Simon Robins (n. 17).
[134] UN Basic Principles (n. 105).
[135] UN Basic Principles (n. 105).

consequence of a disappearance and that national authorities which fail to recognize this are in breach of the Convention.[136] Therefore international law suggests that family members of a disappeared person are always victims, without an exception.

Comparison of standing: the HRC, the IACtHR and the ECtHR

All three international human rights bodies have allowed the relatives of the disappeared to bring charges against their respective states for the harm done to their family members and any personal harm that resulted from such actions. Qualifying as a family member is, therefore, of utmost importance for these female applicants, because otherwise they would not be recognized as victims, which means they would not be able to bring a case in the first place, and would most certainly not be entitled to reparations.[137]

Individual communications before the Human Rights Committee were allowed through the ratification of the First Protocol[138], which states:

> A State Party […] recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. […][139]

These do not only included applicants who had experienced a violation of the ICCPR on their body, but since the 1990s, the HRC has increasingly been accepting applications from indirect victims as well.[140] In disappearances case, the HRC asks the applicant to establish a

[136] See the Case of Yrusta v. Argentina before the Committee on Enforced Disappearances, First Views adopted on 12 April 2016, CED/C/10/D/1/2013
[137] Rubio-Marín, Sandoval, Diaz (n. 123)
[138] Dinah Shelton, *Remedies in International Human Rights Law* (OUP 3rd ed. 2015)
[139] Article 1 of the First Optional Protocol to the International Covenant on Civil and Political Rights, which entered into force on 23 March 1976.
[140] Rubio-Marín, Sandoval, Diaz (n. 123)

sufficient link between themselves and the disappeared victim. Close family relations extending beyond nuclear family normally suffice that criterion.[141] Starting with one of the landmark disappearance cases *Quinteros v. Uruguay* where the applicant was the mother of a disappeared daughter, and recognizing that her suffering amounted to inhumane treatment, the HRC has hosted a great number of relatives of the disappeared from countries with systemic practices of disappearances like Algeria and Bosnia. In the analyzed Bosnian cases, the family members who brought the claim and were accepted by the Committee normally included wives and/or mothers[142], and infrequently children[143] or sisters[144] of the disappeared. Importantly, these indirect victims, too, were able to bring claims regarding violations of their own rights, and not only serve as a spokesperson of the disappeared.

Nearly all states which ratified the ACHR recognized IACtHR's contentious jurisdiction in accordance with Article 62[145] of the Convention and access to the Court for all persons, groups of persons and non-governmental organizations[146], albeit only through the Inter-American Commission or a state party.[147] The first time the IACtHR treated the next of kin of a disappeared victim as victims themselves was in *Blake v. Guatemala*, where the family of the disappeared American journalist took the case to the highest level.[148] The IACtHR then found that the victim's parents and brothers could all stand as autonomous victims for having suffered due to the violations of their right to human treatment (Art 5), their fair trial rights (Art

[141] Joseph and Castan (n. 99)
[142] In all cases observed.
[143] Kožljak v Bosnia and Herzegovina (n. 29), Hero v. Bosnia and Herzegovina (n. 29)
[144] The following cases included the disappeared's sister as an applicant, although always together with the mother: Hamulić and Hodžić v. Bosnia and Herzegovina (n. 29), Dovadžija v. Bosnia and Herzegovina (n. 29)
[145] Such recognition is to be made upon ratification or at "any subsequent time" (Art 62(1) of American Convention).
[146] Shelton (n. 138)
[147] Art 61 of the American Convention on Human Rights.
[148] Rubio-Marín, Sandoval, Diaz (n. 123)

8), and judicial guarantees (Art 25).[149] In the absence of effective investigation, prosecution or reparation, the IACtHR found a violation of the family members' fair trial rights, but it also, more importantly, established that the very circumstances of a disappearance inevitably cause suffering, anguish, feelings of insecurity, frustration and impotence, all amounting to cruel, inhuman or degrading treatment.[150] From that case alone, it became clear that family members of a disappeared person can, being awarded standing before the IACtHR, exercise all three roles – if not more: they will represent the disappeared and bring claims against violations of his rights, they will show that a myriad of their own rights had been violated as a consequence of the disappearance (i.e. fair trial rights, rights of the family), and they will be seen as autonomous entities worthy of remedy for the suffering they have felt.

The *Bámaca Velásquez* case against Guatemala, brought before the IACtHR by Mr. Velásquez's American wife Jennifer Harbury, further buttressed these ideas. In his concurring opinion, Judge Sergio García Ramírez elaborated on types of victims in more detail.[151] Namely, he reminded that the only direct victim is the disappeared while his family members, including Mrs. Harbury, are indirect victims. Nonetheless, in the law and practice of the Inter-American Court both are equally protected, and that does not mean that indirect victims cannot suffer from separate violations of the rights enshrined in the ACHR because of the disappearance of the direct victim. In this concurring opinion, it was established that the next of kin can suffer cruel, inhuman and degrading treatment whenever the state fails to comply with its duties to reveal the truth regarding the disappearance and identify the remains of the disappeared. Furthermore, the psychological harms and sentiments that arise due to one's disappearance can

[149] *Case of Blake v. Guatemala* (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 48, (22 January 1999)
[150] Ibid para 115
[151] Bámaca Velásquez v. Guatemala (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 70, (25 November 2000)

also infringe other rights of family members, for instance, their social and familial relationships, and can further stigmatize them and estrange them from their indigenous culture, which plays a particular role in all Guatemalan disappearances cases.[152]

In the ECtHR's jurisprudence, Article 34 has been cited as allowing direct victims of violations of the Convention to submit their applications[153], stating as follows:

> The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto.

In cases where this was not possible due to death or disappearance, the ECtHR has allowed the next of kin to represent the victim[154], and this has been practiced extensively in the disappearances cases coming from Turkey, some of the counting more than a dozen applicants.[155] The names of indirect victims – and therefore applicants, must be included in the application, or else other relatives who might have been affected by the disappearances will not be eligible for reparations.[156] That said, familial relationships to the disappeared victim have included parents and spouses[157], children, siblings[158] and partners[159].

In conclusion, all three human rights bodies allowed wives and mothers of the disappeared to have standing before them, and at least have a possibility to bring separate

[152] This was established in the Chitay Nech et al. v. Guatemala case (n. 30).
[153] Jan, Schneider, *Reparation and enforcement of judgments: a comparative analysis of the European and Inter-American human rights systems* (Berlin : epubli GmbH, 2015).
[154] See, inter alia, Deweer v. Belgium 1989; Yasa v. Turkey 1998.
[155] For instance, the application in Er and Others v. Turkey (n. 98) was lodged by nine applicants.
[156] Rubio-Marín, Sandoval, Diaz (n. 123)
[157] Akkum and Others v. Turkey 21894/93 ECHR 24 June 2005, Çiçek v. Turkey (n. 28), Kurt v. Turkey (n. 28), Aydin v. Turkey 57/1996/676/866 ECHR 25 September 1997
[158] Sibling alone in Akkum and Others (n. 57), Meryem Çelik and Others v. Turkey (n. 28).
[159] See Meryem Çelik and Others v. Turkey (n. 28).

claims on their own behalf. A comparative analysis of the selected cases, however, shows that the ways in which the bodies dealt with the claims brought vis-à-vis the applicant differ significantly, particularly so reading the claims through a gender lens.

What do women have to say for themselves?

Depending on the human rights body which hears the case, and oftentimes on the case itself, female applicants have claimed a variety of violations in respect to the disappeared victim, but also to themselves. A common theme that spreads across all jurisdictions is the alleged violation of the woman's freedom from torture and cruel, inhuman and degrading treatment;[160] however, not all of the applicants have triggered it.

Judging from the Bosnian cases, the HRC can be expected to find a breach of Articles 6 (right to life), 7 (freedom from torture) and 9 (right to liberty)[161] with regard to the applicant's disappeared relative in all disappearances cases. What is of great importance is that the HRC has also found a violation of freedom from torture (Art 7), read alone and/or in conjunction with Art 2(3)[162], with respect to the applicant(s) in all Bosnian cases analyzed, acknowledging the cruel, inhuman and degrading treatment the applicants go through due to the very nature of this crime. More precisely, some other landmark disappearances cases that were brought before

[160] Art 3 in the ECHR, Art 5 in the ACHR, Article 7 in the ICCPR.

[161] Namely, the right to life, freedom from torture and cruel, inhuman or degrading treatment, and the right to liberty.

[162] Article 2(3) of the ICCPR vests obligations in state parties and reads as follows:

> *"Each State Party to the present Covenant undertakes:*
> *(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*
> *(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*
> *(c) To ensure that the competent authorities shall enforce such remedies when granted."*

the HRC by female applicants, such as *Quinteros v. Uruguay*, the Committee, too, found a violation of Art 7 vis-à-vis the mother of the disappeared, stating that the applicant had the right to know what happened and that not knowing brought her anguish and stress.[163] As a default, the HRC sees that the crime of enforced disappearance amounts to an inhuman treatment to the victim and his relatives the moment it happens, as well as for many years to follow. At the same time, this seems to be the main, if not the only claim Bosnian female applicants bring before the HRC on their own behalf on the account of anguish and suffering, stigma and discrimination, frozen grief and economic consequences, all of which have grave effects on their family lives and can be described as torture and inhumane treatment under Article 7.[164] The applicants argued that these have all resulted from disappearance and "the acts and omissions of the authorities" over a prolonged period of time, as well as due to the lack of "appropriate reparations"[165], so it is rather important that such a claim is recognized.

The ECtHR seems to be more likely to find a violation of Art 3 (freedom from torture) with respect to the applicant than to the applicant's disappeared relatives. This was the case in both *Kurt* and *Çiçek*, where it was up to the applicants to prove that their arbitrarily detained relatives were tortured in the hands of state agents, while recognizing the pain and suffering the uncertainty over the disappeared's fate caused them. Later case-law suggests that for the ECtHR there must be a clear negative reaction or attitude (if not abusive or oppressive behavior even) of state authorities towards the indirect victims in order for breaches of Article 3 to be found, whereas this serves as only one of the factors that enhance the suffering of the family members in the eyes of the IACtHR, for instance.[166] What this means is that the woman

[163] Quinteros v. Uruguay (n. 9)
[164] Personal correspondence with Adrijana Hanušić Bećirović from TRIAL International.
[165] Hamulić and Hodžić (n.29) para 3.9
[166] Rubio Marín, Sandoval, Diaz (n. 123)

standing before the ECtHR will have an opportunity to be remedied only if abused by the state. While assessing whether or not a family member is a victim of a violation of Article 3, the ECtHR will take into consideration the following: the proximity of family ties, the extent to which the family member witnessed the events in question, the involvement of family members in the attempts to obtain information about the disappeared and the way in which families responded to those enquiries.[167] The act of disappearance and the uncertainy that follows do not suffice; it is rather the attitudes of the authorities and other *special features* that will make this suffering different from the inevitable distress that is caused by losing a family member. The psychological harms caused by the disappearance and because she is a *woman*, contained within the community and her family will have little to no place in the ECtHR's jurisprudence. So for these reasons, in the *Haran* case, Mrs Haran's distress was not acknowledged because she did not witness the event nor did she pursue enough requests and petitions to find her husband, as the Court evaluated her efforts.[168] Instead of making her vulnerability visible and understanding why a Kurdish woman looking for her disappeared husband is a more disadvantageous situation than a majority citizen, the ECtHR punished her for it.

On the contrary, in the eyes of the IACtHR, mental harm caused to the woman in whatever sphere of her life will inevitably follow because of the nature of the crime. The Inter-American Court found violations of Art 5 (freedom from torture) in respect to both the victim and the applicant(s) in different landmark disappearances cases from Guatemala.[169]For instance, in *García and Family Members*, the applicant, Mrs. Nineth Montenegro referred to the abuse she and her family suffered from the government and the public as a "systematic

[167] Haran v. Turkey (n. 28) para 82
[168] Ibid
[169]García and Family Members v. Guatemala (n. 30), Bámaca Velásquez v. Guatemala (n. 30), Molina-Theissen v. Guatemala (n. 30)

campaign" meant to degrade, marginalize, and isolate the family. This did not only harm her, Mr. García's daughter Alejandra and the rest of his family, but also, according to the applicant, the daughter that she had with another person years after García's disappearance. While the Court did not accept the child who had no blood relationship to the victim as a victim herself, it did acknowledge the suffering of Montenegro and García's daughter Alejandra, even though Alejandra was only an infant at the time García disappeared and did not remember her father. The violation of her rights did not only stem from the fact that she grew up without a father, but also because she had been psychologically tormented in an environment which stigmatized her and rejected her for being a guerilla's daughter.[170] Violation of the right to personal integrity protected under Art 5(1) and 5(2) of the Convention was therein found vis-à-vis all of the recognized indirect victims.

Inhuman treatment is not the only human rights violation these women experience in the aftermath of a disappearance, however, it does remain the mostly frequently brought claim. In the jurisprudence of the HRC and the ECtHR, female applicants will rarely bring other claims on their behalf, knowing that the human rights body is unlikely to recognize it and/or describing all of the harms they suffered as a violation of freedom from torture.[171] In Bosnian cases, for instance, the applicants systematically brought Art 10 (rights of those deprived from liberty) and Art 16 (recognition before the law) claims on behalf of the disappeared[172] before the Human Rights Committee, and the HRC, equally systematically, refused to examine them without further elaboration, deeming the freedom from torture violation to be sufficient. Claims other than Art 7 vis-à-vis the applicants appeared in only two cases. In the *Hero* case, Tija

[170] García and Family Members v. Guatemala (n. 30) paras. 165-166
[171] Personal correspondence with Adrijana Hanušić Bećirović from TRIAL International.
[172] Namely, the right to be treated with humanity and with respect to dignity when deprived of liberty, and the right to be recognized before the law. Art 10 claims were brought in four cases, while Art 16 claims came about in all cases.

Hero, the wife of the disappeared, invoked an Art 24 (rights of the child) [173] claim vis-à-vis her children, but this was not observed by the HRC.[174] In the *Dovadžija* case, the two women went step further, and claimed that, because their family life was disrupted, article 6,7,9 and 16 were violated in conjunction with articles 17 (right to private life) and 23 (rights of the family), all of which the HRC decided not to examine separately.[175] The applicants here raised an important claim that relates to the stigma around widowhood and fatherless children present in the Bosnian society. More precisely, they argued that the fact that the family had been prevented to bury their loved one in accordance with their customs and religious convictions, as well as the lack of information about the disappeared caused anguish to both the widow and her daughter. The daughter furthermore suffered psychologically in her childhood for not being able to help her mother and for being deprived from enjoying family life, finding herself in a particularly vulnerable position.[176] Such marginalization is very present, but not much discussed before the HRC, which failed to adopt a more sensitive view and recognize disruption of family life the crime of disappearance causes.

In Strasbourg, the second most commonly raised claim as far Turkish female applicants are concerned is right to remedy, protected under Art 13 of the ECHR. A violation of right to remedy was found in each case such a claim was raised, except in the *Haran* case, where the Court thought that the procedural aspects of right to life covered the substance of the right to remedy, i.e. the right to an effective investigation.[177]The remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be

[173] Rights of children, as listed in the ICCPR.
[174] Hero v. Bosnia and Herzegovina (n. 29)
[175] Dovadžija v. Bosnia and Herzegovina (n. 29)
[176] Ibid para. 3.8-9.
[177] Haran v. Turkey (n. 28)

unjustifiably hindered by the acts or omissions of the authorities of the respondent State.[178] Remedying a violation of Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and including effective access for the complainant to the investigation procedure.[179] What this means is that a female applicant who successfully raises a right to remedy claim before the ECtHR could not only obtain more money from the state, but also point out to specific vulnerabilities related to her gender, as she is likely not to be taken seriously by the authorities and excluded from the investigation process.

Perhaps due to the long-lasting oppression of indigenous people in Latin America, and the recognition before the law that they are now enjoying for the first time, the IACtHR has reflected on applicants' claims regarding family life in accordance to religious and cultural beliefs to a great extent. In the *Molina Theissen* case, for instance, upon forwarding the application to the Court, the Inter-American Commission claimed violations of an array of rights, yet, the applicants added the Art 17 (rights of the family) claim to after the Commission's submission[180]. The IACtHR, unlike the HRC, later on found a violation of this right in relation to both the victim and his family. This departs from the decision made in the *García* case, where the Court held that it was not necessary to examine Art 17 claim which, again, was made by the applicants as a supplement to what the Commission had submitted. The reasoning behind this was that, in IACtHR's view, the same harm has been elaborated on in relation to the breaches of the right to personal integrity of the family under Art 5.[181]

[178] Kurt v. Turkey (n. 28).
[179] Tekdag v. Turkey (n. 28).
[180] In accordance to Art 28 of the Rules of Procedure of the Inter-American Commission on Human Rights.
[181] García and Family Members v. Guatemala (n. 30), para. 170

Concerning other claims commonly raised by the applicants, the right to a fair trial (Art 8) and judicial protection, that is, remedy (Art 25) appear in a couple of cases, with the Inter-American Court always finding a violation.[182]

In specific cases where female applicants were also at the same time very prominent activists motivated by their husband's disappearance, other violations more unique to their specific context were remarkably recognized by the IACtHR. Such was, for instance, the breach of freedom of association (Art 16) found in relation to García's daughter Alejandra who claimed that she had been unable to accompany her mother in the search for her disappeared father[183], and freedom of thought and expression (Art 13) vis-à-vis Jennifer Harbury, as a form of the right to truth.[184] Accepting these and other claims brought by applicants affirms that the Inter-American Court recognizes them as autonomous victims whose human rights and freedoms can be violated not only because they were left without someone they loved, but also because what it means to be left without a husband or father in their respective societies. A substantial part of gender sensitivity and gender-sensitive remedy lies precisely in those very first steps.

Part of the reason why female applicants do not bring many claims on their own behalf before the HRC and the ECtHR might be in the fact that they perceive their multiple harms as one grand violation – torture. This changes in the Inter-American system, noting that the IACtHR is generally more receptive of multiple violations of the ACHR and willing to issue more comprehensive orders for reparation. That being said, if other two human rights bodies are aware of what a violation of freedom from torture encompasses truly – not only grief, but

[182] Tiu Tojin v. Guatemala (n. 30), Bámaca Velásquez v. Guatemala (n. 30)
[183] García and Family Members v. Guatemala (n. 30) para. 185
[184] Bámaca Velásquez v. Guatemala (n. 30)

stigmatization and breakups of family life, then the reparation orders should correspond to these harms, and go beyond mere monetary compensation for such a complex human rights violation.

Traces of intersectionality

Very little discussion has followed over the fact that these applicants are not female but also from minority groups (indigenous Maya, the Kurds, the Muslims), and that alone might put them in a vulnerable position. The claims of potential violations of the non-discrimination clause[185], enshrined in the ACHR, ECHR and the ICCPR have only been brought in the European context.

The ECtHR's case-law suggests that state parties must enable all applicants to communicate freely with the Court once the application is made, and that they are free from any pressure to amend or withdraw their application.[186] Allegations of being subject to that kind of pressure were made in a number of disappearances cases coming from Turkey.[187] Such pressures can also pinpoint to the abuse of power that the majority group exercises on one or more ethnic minorities, so these claims often came hand-in-hand with the non-discrimination claim under Article 14.

Although the ECtHR never accepted to see it as a common, systemic practice, it did importantly stress that such pressure did not involve only direct coercion and intimidation, but also any indirect acts of dissuasion or discouragement of family members who are applicants

[185] Non-discrimination clauses can be found under Art 14 of the ECHR, Art 1 of the ACHR and Art 26 of the ICCPR.

[186] Under former Art 25(1), which states that the states which, through a declaration, recognize the competence of the Commission to hear individual complaints *"undertake not to hinder in any way the effective exercise of this right."*

[187] Salman v. Turkey App No 21986/93 (ECtHR 27 June 2000), Aydin v. Turkey (n. 157), Kurt v. Turkey (n. 28)

or potential applicants, and their legal representatives.[188] For instance, in *Kurt v. Turkey*, the fact that state authorities made pressures on the applicant to make a statement regarding the case, and threatened to criminally prosecute her legal representative, had she failed to do so were deemed to have amounted to a breach of Article 34 on the right to individual petition of the ECHR.[189] In another Turkish disappearance case, *Aydin v. Turkey*, however, the ECtHR could not make a clear connection between the alleged harassment of the applicant by state authorities and direct attempts to make her change or withdraw her application, therein preventing her to exercise her right to individual petition.[190] Consequently, no breach of Art 34 was found. In *Salman v. Turkey*, the principles behind these decisions were elaborated in more details, as it was said that decisions were made on individual, case-by-case basis, taking into consideration the vulnerability of the applicant, as well as the "susceptibility to influence" as performed by authorities.[191] In that regard, the ECtHR took into consideration the social context the applicants came from, however failing to mention the specific vulnerability of *female* and Kurdish applicants, but nonetheless accepting that in the rural environments they live in, fears of reprisals upon being questioned by the authorities on no legal grounds is expected.

Bravely, a couple of applicants before the ECtHR attempted to point out to Turkey's systemic practice of torture, arbitrary detention, killings and hampering access to remedy, as evident due to the number of cases coming from South-East Turkey and the common, Kurdish profile of the victims.[192] For instance, in the *Akkum* case, the applicants called this "a practice of conducting inadequate investigations into the killings of individuals in south-east Turkey

[188] Kurt v. Turkey (n. 28)
[189] Kurt v. Turkey (n. 28)
[190] Aydin v. Turkey (n. 157)
[191] Salman v. Turkey (n. 187) paras. 126-133.
[192] This had been claimed in Suheyla Aydin v. Turkey (n. 152) as an alleged practice by the authorities of infringing Articles 2,3 and 14 of the Convention, as well as in Akkum and Others (n. 177), and Salman v. Turkey (n. 187).

[…] and a practice of failure to prosecute those responsible."[193] Some have raised Art 14 claims, arguing that their disappeared relatives and they themselves had been treated poorly and violently because of their ethnic origin.[194] More specifically, they believed that the men were arbitrarily detained and potentially murdered because they were Kurdish, and that then the women were prevented from accessing effective remedy and/or harassed because they were Kurdish, too.

To date, a more elaborate discussion on this matter before the ECtHR is necessary and would be meaningful for several reason. Firstly, it would matter because it could potentially result in an acknowledgement of the systematic persecution of an ethnic group a member-state of the Council of Europe has been pursuing in the past decades. Once that is achieved, it could, secondly, trigger more direct action from the Council of Ministers to urge Turkey to change its oppressive policies towards its Kurdish population. Thirdly, and more closely related to the scholarship on gender justice, these claims represent traces of intersectionality[195] – the applicants are not only more vulnerable because they are female, but also because they are female *and* Kurdish. As such, their claims inevitably call for an approach by the ECtHR that would be sensitive to these specific positions of vulnerability in relation to other non-minority female applicants. Sadly, the ECtHR failed to take these concepts further and has not reflect on a great number of disappearances cases with similar facts coming from the same region in Turkey, refusing to even consider the allegations in all cases except one.[196]

[193] Akkum and Others v. Turkey (n. 177) para. 267.
[194] Also brought in Akkum and Others v. Turkey (n. 177), Çiçek v. Turkey (n. 28), Meryem Çelik v. Turkey (n. 28), Suheyla Aydin v. Turkey (n. 28)
[195] For more discussion on intersectionality and human rights bodies, see Siobhan Curran, 'Intersectionality and Human Rights Law: An Examination of the Coercive Sterilisations of Romani Women' (2016) The Equal Rights Review 16 132, 159
[196] See Çiçek v. Turkey (n. 28)

While the social context the applicants live in seems to be of relevance to the ECtHR, at least when the right to an individual application is concerned, not much place is given to assessing a particular claim in relation to what it means to be a woman in, let alone what it means to be a Kurdish woman in the very same social and cultural context with an added burden of having a disappearance disrupt the family and communal relations. Therefore, discrimination claims, or allegations of infringements upon private life[197], and any compensation awarded due to the inhuman treatment performed by the state is seen as sufficient, without much elaboration of what other harms (harassment, discrimination, etc.) such compensation could suffice for.

The monumental importance of having a standing

Whether these international human rights bodies allow standing to women as secondary and primary victims will matter for a number of reasons. Looking at domestic post-conflict policies, women tend to be disproportionately present in reparation schemes precisely because they are seen as secondary victims to the men who were murdered or had disappeared.[198] Oftentimes, the particular phenomena that harm women more than men fall outside the scope of reparations to begin with. For instance, forced displacement has not been included in most implemented reparations programs, whereas illegal detention – which affects men more than women – has.[199] Allowing widows and mothers of the disappeared to appear before international human rights bodies, when the state had failed to respond to their queries, can in itself alleviate some of the harms caused by the crime. Once they have a standing, the

[197] Such as in the Meryem Çelik case (n. 28), for instance.
[198] O'Rourke (n. 23)
[199] Rubio-Marín (n. 54)

reparations awarded to the women and their families will depend on the kind of claims they bring, and the violations the human rights body will find. While there is no hierarchy in human rights, it is clear that cruel, inhuman and degrading treatment or torture will at least call for higher financial compensation than a qualified right such as freedom of speech, for instance.[200] What is awarded to the applicant for her own suffering will often amount to more than the compensation given in respect to the disappeared victim. In the *Tiu Tojin* case, for instance, compensation for non-pecuniary damages awarded for future medical and psychological expenses of the next of kin amounted three times more than compensation for pecuniary damages.[201] That is why it is important to note a trend of recognizing these "more serious" violations of women's rights, not only as a symbolic victory but also as something that can through reparations make substantive changes in these women's widowed or childless lives. Needless to say, such more serious violations can also embrace the "lesser" violations to result in a more comprehensive remedy.

In identifying who else, apart from the disappeared, has been harmed by the disappearance individually or collectively, these human rights bodies are finally able to enhance their gender-sensitivity, and accommodate redress for harms that are specific to women[202], shifting away from the narrow interpretation of redress as retribution.[203] Therefore, although there is to "human right not to be widowed",[204] the gender specific harms that emerge from the kind of widowhood triggered by a disappearance may find its place in the international arena, when these women are recognized as not only representatives of the disappeared, but

[200] In Cicek v. Turkey, 40,000 GBP was given for non-pecuniary for violation of Art 3 in respect to the application while in Belge v. Turkey Application No. 50171/09, 5,000 EUR was awarded for a violation of freedom of expression (Art 10).
[201] GTQ 1,475,000 non-pecuniary in relation to GTQ 525,000 pecuniary. (n.30)
[202] Rubio-Marín (n. 54)
[203] O'Rourke (n. 23)
[204] Rubio-Marín (n. 54) 31

also victims themselves. If a reparation scheme or redress awarded by an international human rights body wishes to use its capacity to trigger changes in the structure that hosts inequality, it is of great importance for these female applicants that they are seen not only as "successors" of those no longer living, or as their representatives, but as separate victims, too[205].

The experience of appearing before an international court as an applicant and winning a case as an autonomous victim can have further effect on the state of women's activism at the national level. When there is a room for progress domestically, mobilization of these women can also help them feel like they are in control of their lives and their missing relative's fate, and give them space to think about all the structures of hierarchy and inequality that made them feel powerless and marginalized.[206] Wives of the disappeared who have in the meantime become active political actors serve as some preliminary evidence to the feasibility of this argument.[207] Furthermore, this kind of activism then serves to push for transition, but also to end this transition by asking for and obtaining structures that will be more accommodating of the right to an effective remedy at home. [208] As a result, it could therefore ensure that not only the few who have their case heard before an international court receive reparations, but that this unique opportunity serves as an impetus to trigger legislative and policy changes for all wives, mothers and women in general, through international human rights law.

This Chapter has shown that female relatives of the disappeared perceived their harms in similar ways and adjust the way they present them depending on the practice of the international human rights body in question. Seeing what these women have to say for themselves is not the only reason why raising different claims, or presenting a comprehensive

[205] Ibid 32.
[206] Robins (n. 17)
[207] Revisit Chapter I on the discussion about individuals such as Nineth Montenegro in Guatemala and Pervin Buldan in Turkey.
[208] The application of this argument in the three case studies is further discussed in Chapter V.

statement about one grand claim matters. International human rights bodies will order reparations based on the violations found, which means that what the female applicants receives as a remedy for her harms and how gender-sensitive that package is will largely depend on what claims she raised. The following Chapter explores the law and practice behind these reparations packages, but also demands more meaningful actions from each of the three human rights bodies, even when the female applicant herself might not present such an encompassing claim.

Chapter IV

"My son was not a cow. I don't want money. What I want is justice.[209]*"*

The previous Chapter explored the claims female applicants have brought before international human rights bodies in enforced disappearances cases, and established that the reparations awarded will depend on the accepted claim. Nonetheless, this is not the only decisive factor, as the mandates and, to an even greater extent, the practices of the three bodies differ significantly. From that it follows that the ECtHR is likely to award much different remedy than the IACtHR for the very same violations. The HRC will, too, often recommend something that does not quite reflect the practice of neither of the courts. What Chapter IV intends to do is comment on the theory and practice of reparations of each of the bodies, and then identify these differences based on the selected cases. Through such identification, essential questions such as: *How do international human rights bodies see women applicants? How does this particular measure affect women? Where are women completely absent?* It furthermore seeks to introduce a gender reading of reparations in general, and more specifically propose working criteria for gender-sensitivity when awarding reparations in enforced disappearances cases. The questions that these brief suggestions have been motivated by are: *How should international human rights bodies see women applicants? How would a particular measure affect women? Would it matter if women were completely absent from this measure?* The criteria were shaped based on the gender specificities of the crime of disappearances, but also by the practice of human rights courts so far. They were furthermore inspired by the work

[209] Viviana Krsticevic, Comment, in Conference, 'Reparations in the Inter-American System: A Comparative Approach', (2007) 56 AM. U. L. REV. 1375, 1419(quoting a mother of one of the victims in the case of *El Amparo v. Venezuela*, Merits, Inter-Am. Ct. H.R. (ser. C) No. 19 (Jan. 18, 1995)).

of Ruth Rubio-Marin and feminist authors who worked with her on gender and reparations[210], as well as by the non-binding Nairobi Declaration created at the International Meeting on Women's and Girls' Right to Remedy and Reparation in 2007.[211] The Declaration sees just gender-sensitive reparations as necessary for the transformation of a society, and impossible to achieve without women's activism and participation.[212] The idea behind proposing such criteria is that all three bodies could incorporate them within their mandates as they stand today, leaving room for any adjustments that will depend on the particular context. Even without stretching judicial activism a bit too much, the argument here is that every international human rights body could and should look at this violation, and any other, through a gender lens.

Reparations as a feminist tool for transformation

The victim status of women relatives of the disappeared is recognized by international human rights bodies, and therein the existence of harm is acknowledged. The rights enshrined in different human rights conventions do not always capture the harm caused or the redress needed – for instance, most conventions do not codify the right to know, i.e. to learn the truth about your missing relative, and, as shown in Chapter III, tend to acknowledge the violation of freedom from torture as the only harm. For this reason, awarding reparations requires general sensitivity towards the particular realities in the present case.

More precisely, the power and importance of reparations after grave harms stretches beyond them being a manifestation of the recognition of victimhood, as they carry a potential to be the symbol of a new political order, one that shall be responsible for any similar actions

[210] Ruth Rubio-Marin (ed.) *What Happened to the Women? Gender and Reparations for Human Rights Violations* (Columbia/SSRC 2006)
[211] The Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation (2007)
[212] Dewhirst and Kapur (n. 6).

or omissions.[213] Having been awarded by the state, reparation programs are a good target for activists, enabling space for advocacy and influence on the state, but also on the society.[214] More specifically, a state that allocates material resources, and frequently so in an economy that is in transition, for reparation schemes manifests that rights of the victims and the harms inflicted upon them are taken seriously.[215] Further acts such as symbolic reparations in a form of apology or building public monuments, glorify the memory of the victim, invest in education of the community, and contribute to a feeling of democracy in which such violation ought not to be repeated.

As previously established, in the aftermath of a conflict, privileged violations tend to be those visible on the bodies of the victims, such as murder or torture, and other civil and political rights violations that are disproportionately committed against men.[216] Although women play a promising, oftentimes leading role in transitional justice initiatives such as searching for the remains of the disappeared, they tend to fall under the cracks of national redress designs and be excluded from reparation schemes.[217] For instance, in a case where rehabilitation of lost property or land is emphasized, women are disproportionately left out as they tend to be underrepresented as land owners. The potential these national reparations schemes carry has been demonstrated in case studies other feminist legal scholars have written about; however, not by reshaping gender inequalities but perpetuating them. For example, compensation was conditional on conciliation between the victim and the perpetrator in Colombia, which served as a further demonstration of unequal relations, failing to declare that all victims, and especially women who were in inferior positions anyway, deserved dignity and

[213] Rubio-Marín (n. 54)
[214] O'Rourke (n. 23)
[215] Ibid
[216] Rubio-Marín, Sandoval, Diaz (n. 123)
[217] Rubio-Marín (n. 210)

trust in their claims.[218] One of the further complications is that, even when formally equality and respect for dignity is guaranteed to all, these principles may remain under-enforced in a culture of gender inequality and informal gender constraints.[219] Paradoxically, examples from Morocco's Equity and Truth Commission show, including 'gender' in national reparation programs is not a taboo anymore.[220] Nonetheless, it is frequently flawed by the belief that reparations can only be engendered through recognizing harms related to sexual violence, omitting to read other widespread violations such as torture and disappearances through a gender lens.

Reparations discussed here are inevitably seen as complex, comprehensive, impactful and with a great potential for transformation. For female applicants in these cases, measures of satisfaction and pecuniary damage may make the most sense in the immediate course of events, as they aim to improve the financial situation of the family immediately.[221] While these are the most commonly evoked reparation claims in the cases observed, the discussion does not and should not stop there, at least not as concerns the international human rights system. In part, this stems from the fact that women applicants have increasingly been seeking to be awarded medical treatment as a form of rehabilitation.[222] At the same time, from an activist feminist-driven perspective, which is not necessary to be interpreted as contradicting victims' stand, much more is needed not only for the sake of gender equality, but also in order for guarantees of non-repetition to hold. Therein, the reparations awarded either through national reparation

[218] O'Rourke cites this example in her primary research on Colombia and Chile (n. 23).
[219] Ibid.
[220] Rubio-Marín (n. 210)
[221] Rubio-Marín (n. 210) 26 reports that domestically at least, women tend to prioritize measures such as monetary compensation, and rehabilitation of property, as well as medical and psychological treatment.
[222] Seen in two cases from Bosnia and Herzegovina before the HRC, namely Hamulić and Hodžić and Ićić, also see *Saygi v. Turkey* App No 37715/11 (ECtHR 27 January 2015), Akkum and Others v. Turkey. The Inter-American Court will always award such reparations.

schemes or per an international human rights body's order, can tell much about how a society perceives gender relations, the position of women in public, private and political spheres, and their significance.[223] By doing so, they can also spark reconstruction of these perceptions and realities, however minimal, or can serve to reinforce these structural inequalities that pre-existed the conflict.[224] They can also enact norm-setting processes in a society, and be used as a tool for sociopolitical change.[225] In the absence of empirical data from the grassroots, I argue, in line with Rubio-Marin's writings, that *"reparations programs must aim at gender justice where women themselves may not see this as a priority."*[226] What this means in this particular context is that international human rights bodies ought not to wait for the applicant to challenge the disadvantaged position she was put into after the crime – in relation to a man in a similar situation, but acknowledge the relevant gender specificities of the situation, and use their mandate to trigger more substantial changes in that particular society. Following sections serve to prove that not much has been done in that regard.

Theory and practice of reparations

Remedies are, by dictionary definition, *"the means by which a right is enforced or the violation of a right is prevented, redressed or compensated"*.[227] These contain procedural aspects, which are the processes through which violations claims are heard and decided, and substantive aspects, that are the outcomes of these proceedings and the relief awarded.[228] Remedy, then, is a sort of response to the violation which occurred or threatens to occur, having a moral weight in attempting to restore the reality to the balance that existed before the

[223] Rubio-Marín (n. 54)
[224] Rubio-Marín (n. 210)
[225] Robins (n. 17)
[226] Rubio-Marín (n. 210) 57
[227] Black's Law dictionary (1990) 1294
[228] Shelton (n. 138)

violation, as well as a task of deterrence.[229] On the international level, the decision on the *Chorzow Factory* case by the then Permanent Court of International Justice (PCJ) is often cited as marking the establishment of mandatory reparations for violations of international law, stating that by awarding reparations, the situation that existed before the act of violation must be restored.[230] The challenge of gender sensitive reparations lies precisely here, where the pre-existing conditions fostered inequality, discrimination and, arguably, contributed to the occurrence of the crime as well.

This study builds upon the types of reparations found in the UN Basic Principles, namely restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition[231], however replacing restitution – which remains impossible in disappearances cases - with symbolic reparations that have traditionally been awarded by the IACtHR and have found a very meaningful place among the victims of systemic violence. By doing so, the paper recognizes all the kinds of remedies needed to address the myriad of violations female applications bring or ought to bring before international human rights bodies.

While pecuniary damages are meant to represent the monetary equivalent of the loss suffered due to the violation to the biggest possible extent, non-pecuniary damages, which can still be monetary, are compensation for violations of dignity, including mental distress, humiliation and fear.[232] Each of these can be read through a gender lens in relation to grave human rights violations in general, and enforced disappearances more specifically. Many of them, especially monetary ones, will depend of what victims are selected, and which of the

[229] Shelton (n. 138)
[230] Chorzow factory case, PCIJ, Publications of the Court, Series A, No. 17, p. 47, which states that *"reparation must, as far as possible, wipe out all consequences of the illegal act and reestablish the situation which would, in all probability have existed if that act had not been committed."*
[231] Articles 19-23 of the United Nations Basic Principles (n. 105)
[232] Shelton (n. 138)

victims' claims are accepted. For instance, there may not be monetary or other compensation awarded for medical costs and psychological treatment of the applicant as a consequence of the disappearance if the human rights body does not accept that there had been a violation of freedom from torture and cruel, inhuman and degrading treatment with respect to the applicant.

In order to look for ways in which international human rights bodies can address gender inequalities and the specific harms women experience in disappearance cases through remedy, it would be wise to first look at where each of the bodies gets its mandate to award reparations from. It is this brief overview that will then allow us to think about gender sensitivity in remedy, and furthermore understand the evident differences in how sensitive awarded reparations have been.

The European Court of Human Rights

Awarding just satisfaction in cases where breaches of the European Convention are found is envisaged in the ECtHR's mandate.[233] In *Papamichalopoulos and Others v. Greece*, the ECtHR held that the ECHR requires state parties to do more than compensate, and rests with them an obligation to end the breach and attempt to restore the situation so that it resembles to what pre-existed the breach.[234] The manner in which this is done is up to the state, as the means of doing it fall outside the ECtHR's mandate.[235] When *restitutio in integrum*[236] is not possible, like in disappearances cases, the ECtHR normally opts out for awarding monetary

[233] Art 41 of the European Convention, which reads:

> *"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."*

[234] Para. 34 of the Papamichalopoulos v Greece (Series A, No 260-B; Application No 14556/89) European Court of Human Rights (1993)

[235] Shelton (n. 138)

[236] Restitution or restoration to the previous condition, Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.

compensation for both pecuniary, that is material, and non-pecuniary, or moral damages, as well legal costs and expenses.[237]

The Inter-American Court of Human Rights

Upon finding a breach of the ACHR, the IACtHR may request that a fair compensation is paid to the victim by the state.[238] Similarly to the principles of the ECtHR, the Inter-American Court aspires to achieve *restitutio in integrum* and, where this is not possible, awards compensation for pecuniary and non-pecuniary damages, as well as legal costs and expenses.[239]

While the *travaux preparatoiries* does not reveal anything about the scope of Art 63(1) which codifies the authority to order reparations, the IACtHR's case-law has shown that it goes beyond awarding compensation for serious violations of human rights.[240] Reparations in an individual disappearance case, for instance, can be so complex and costly that they may serve as a basis for the otherwise unwilling state party to create a new or improve the existing reparations program.[241] Therefore, it is a common practice of the IACtHR to award a reparations package that demands financial costs, legislative changes, new policies, concrete action and symbolic measures all together for an individual disappearance case.

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[237] Rubio-Marín, Sandoval, Diaz (n. 123)

[238] Art 63(1) of the American Convention on Human Rights which reads:

> *"If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."*

[239] Rubio-Marín, Sandoval, Diaz (n. 123)

[240] For instance, see the separate concurring opinion of Judges A.A. Cançado Trindade and A. Abreu-Burelli (para 5) in the Loayza Tamayo v. Peru case (Reparations) 42 IACtHR that says:

> *"Contemporary doctrine, furthermore, has identified distinct forms of reparation (restitutio in integrum, satisfaction, indemnizations, rehabilitation of the victims, guarantees of non-repetition of the harmful facts, among others) from the perspective of the victims, of their needs, aspirations and claims3. In fact, the terms of Article 63(1) of the American Convention on Human Rights4 disclose to the Inter-American Court of Human Rights quite a wide horizon in the matter of reparations."*

[241] Rubio-Marín, Sandoval, Diaz (n. 123)

The Human Rights Committee

The ICCPR imposes positive and negative duties on state parties, including an obligation to award appropriate redress to victims of violations of the Covenant, regardless of whether the harms were inflicted by private or state actors.[242] To clarify what this redress encompasses, the HRC adopted General Comment No. 31 on Article 2 in which it is stated, *inter alia*, that the right to an effective remedy under Article 2(3) cannot be practiced without awarding reparations to individual victims of violations.[243] Furthermore, the right to compensation is also enshrined under Article 9(5)[244] which protects against unlawful and arbitrary detention, relevant in the present case.

Importantly, the General Comment No. 31 clarified that the reparations envisioned by the ICCPR include:

> *"[…]restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations."*[245]

[242] Article 2(3) of the ICCPR reads as follows:

> *"Each State Party to the present Covenant undertakes:*
> *(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*
> *(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*
> *(c) To ensure that the competent authorities shall enforce such remedies when granted."*

[243] General Comment No. 31 (n. 80) para. 16.

[244] Article 9, para 5 of the ICCPR:

> *"Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."*

[245] Para 16. of the General Comment No. 31.(n. 80).

All these types adhere to the UN Basic Principles. However, in judgments, the HRC will only refer to these different types of remedies in general terms, rather than addressing each type separately.

Different types of remedies and the criteria for gender-sensitivity

Having established that female relatives of the disappeared are, by and large, eligible to apply before international human rights bodies for the violations of their relatives' rights, as well as the harms they themselves suffered (See Chapter III), a gender reading of these different forms of reparations will now be presented. In other words, the following sections will first revisit what each kind of remedy is and how it could be gender-sensitive, while seeing if any of them have been gender-sensitive so far.

1. Monetary Compensation

Drawing from the evidence on economic hardships, women relatives of the disappeared find themselves in economically difficult positions, since they constitute the majority of the poor and the illiterate. That said, at the first glance, monetary compensation seems to be above necessary. However, a series of problems arises from it.

1.1.Gender-sensitive monetary compensation

What would a gender-sensitive monetary remedy include? Because of the patriarchal structure in which nearly none of these female applicants have ever assumed employment, the loss of lifetime earnings of the disappeared should and first and foremost be taken into consideration when determining the final sum of money awarded. This does not only bring women as victims into the picture, but also repairs for the loss of life of an individual due to an act or omission of the state. In case the disappeared's adult children and/or parents are also

entitled to compensation, the surviving spouse should be entitled to fifty per cent of the final sum, acknowledging the particularly vulnerable situation widows find themselves in. Furthermore, the woman's loss of earnings in rare instances where she had to leave her job due to harassment or in order to search for her missing relatives must also be compensated for.

With regards to the non-pecuniary aspect of monetary reparations, moral damages, such as psychological pain and distress, that are experienced by the woman because she was put in this particular situation as a woman ought to be recognized.[246] Money can certainly make a change in the living conditions of these female applicants, at least for a little while, but it will not go much beyond that. Despite its great importance, monetary compensation for non-pecuniary damages, therefore, must not be the only measure of reparations awarded because of its short-sightedness and inability to make any substantial impact in either individual lives or communities or change the gender discriminatory status quo.

1.2.Practices of international human rights bodies

Under pecuniary damages, the ECtHR importantly recognizes material loss of earnings that was created as a result of the disappearance, as well as earning potential. Nonetheless, this will happen only when the disappearance or murder was performed by state agents beyond reasonable doubt, and therefore the violation of Article 2 on substantive grounds is found.[247] The amounts of money awarded are typically lower than what the family members claimed[248], and no clear explanation as to why a particular sum of money is given, and not the other is included in the judgment, therein coming across as inconsistent.[249] Taking into consideration

[246] In the *Godinez-Cruz* case, for example, the Inter-American Commission produced expert psychiatric testimony as to the psychological problems suffered by the wives and children of the men who had disappeared to influence the compensation awarded.
[247] Rubio-Marín, Sandoval, Diaz (n. 123)
[248] Normally ranging anywhere between 20,000 and 50,000 EUR
[249] Although this is not unique for Articles 2 and 3 cases.

that getting one's case heard before the ECtHR and having the judgment delivered takes years in the overburdened European system, and is above all, costly, the money awarded is never something that can give the family members a clear start, or help the women alleviate the economic hardship they found themselves in.

Moral damages are awarded when proven that the disappeared victim's freedom from torture and cruel, inhuman and degrading treatment had been violated by state authorities, for which the ECtHR holds a high threshold for the burden of proof, unlike the IACtHR.[250] The disappearance itself is not sufficient for an Article 3 violation to be found. When Art 3 violation with regard to the applicant is found, however, the ECtHR will award a certain sum of money on the basis of the government's failure to assist the applicant, rather than her own emotional pain.[251] Other important factors such as locating and identifying the remains of the victim, or paying the funeral costs are never added to the judgment.

In the Europeans system, reparations seem to evolve around financial compensation almost entirely. Costs and expenses, when claimed, will be covered for. When not claimed, the ECtHR will refuse to award financial compensation for the costs acquired by the applicant, failing to see how that could serve to her detriment, being in the vulnerable situation that she is.[252] As stated, the amounts will vary, but the money awarded, however, could barely be considered sufficient to make any significant changes in the woman's life.[253]

The Inter-American Court established that anyone being subject to aggression or abuse is bound to have experienced moral suffering, and as long as a violation occurred, mental harm

[250] Rubio-Marín, Sandoval, Diaz (n. 123)
[251] 10,000 EUR in Çiçek v. Turkey (n. 28), Kurt v. Turkey (n. 28)
[252] See, for instance, Saygi v. Turkey (n. 222)
[253] 20,000 EUR as awarded for the woman's suffering in *Tanis and Others v. Turkey* App No 65899/01 (ECtHR 30 November 2005), Saygi v. Turkey (n. 222).

follows as corollary.[254] Moreover, the framework that the IACtHR has practiced eases the burden of proof by relying on presumptions about the damage that took place, which in the context of enforced disappearances sometimes is the only thing that can be done. On the other hand, the ECtHR requires evidence (such as on allegations of torture) that an otherwise harassed and marginalized female applicant can very rarely obtain, and therefore serves to the detriment of the victim, not paying any special focus to the interests of justice and the very nature of the violation in question.[255]

The ways in which female applicants in disappearances cases have benefited from this unique reparations scheme of the IACtHR are numerous. In *Loyaza Tamayo v. Peru*, the Inter-American Court contributed greatly to the jurisprudence of international human rights courts on reparations by recognizing and accepting that the loss of opportunities and enjoyment of life of a deceased or disappeared victim are to be included in the damages awarded.[256] This principle, now known as *proyecto de vida*, represents reasonable expectations of what the victim would have achieved in the future.[257] When calculating the amount of lost earnings of the victim and therefore the part of what will be awarded to the family, the IACtHR will take into consideration the persons age at the time of disappearance, the life expectancy in the country and calculate how much he would have earned had the violation not happened.[258] It furthermore became a common practice to presume that the relatives of the disappeared acquire costs in pursuing the truth about the whereabouts of their relative.[259]

[254] Rubio-Marín, Sandoval, Diaz (n. 123)
[255] Ibid
[256] Loayza Tamayo v. Peru (n. 240) para. 144.
[257] Shelton (n. 138)
[258] Rubio-Marín, Sandoval, Diaz (n. 123)
[259] Ibid

Undoubtedly, the IACtHR appears to be more generous than the ECtHR when awarding monetary compensation, often requesting the responding state to allocate ten times more than what it would have for the same violation in the European system. To manifest this, the total sum of money, sometimes amounting to a few hundred thousands of US dollars is compiled of a variety of components. Not only pecuniary damages are taken into consideration, but also non-pecuniary damages are awarded for repairing the *"pain and suffering caused to the direct victims and to their loves ones for the discredit to things that are very important for [them] […] that cannot be measured in monetary terms, and for the disruption of the lifestyle of the victim and his family.*"[260] In the *Blake* case, for instance, the IACtHR recognized the particularly grave context of disappearance as a violation which inevitably causes suffering and anguish to the victim's family, as well as frustration and feelings of impotence when the state authorities fail to provide proper investigation, therein awarding financial compensation for these moral damages.[261]

In the *Bámaca Velásquez* case [262], in which the total amount of money awarded came up to $498,000, the IACtHR took into consideration the following:

1. The victim's lost wages from the date of disappearance to what is expected he would have lived (*proyecto de vida*);
2. The wife's lost income for the period while she was looking for her husband since she was out of work force;[263]
3. The expenses of the wife's search;

[260] Cantoral Benavides Case, Judgment of August 18, 2000, Inter-Am Ct. H.R. (Ser. C) No. 69 (2000) para. 53.
[261] Shelton (n. 138)
[262] See Bámaca Velásquez v. Guatemala (n. 30)
[263] In the Molina Theissen case (n. 30), this expanded to the loss of income of the victim's mother, deceased father, and sister.

4. The costs of the medical expenses the wife of the disappeared had undergone and will have undergone in the future due to his disappearance;
5. Compensation for the mental and physical pain the victim supposedly suffered while held in illegal detention;
6. Compensation for the anguish, cruel and inhumane treatment, and emotional trauma suffered by the wife due to the her husband's disappearance and the inability of the state to identify his remains;
7. Economic support to the father of the disappeared (mother had died earlier), taking into consideration that the disappeared was supporting his parents in accordance with their Mam culture;
8. Economic support to the victim's three sisters, taking into consideration that the disappeared was supporting them, too, in accordance with their Mam culture and
9. Costs and expenses.

Other decisions reflected some or nearly all aspects incorporated here, however the *Bámaca Velásquez* case remains the most comprehensive decision when it comes to monetary compensation for the variety of harms inflicted onto the family by Mr. Bámaca's disappearance. Such decisions are truly essential since they can not only help the woman restore what she had lost in the aftermath of the crime, but also provide her with the above-essential sum of money she will need to shift the otherwise set in stone gender role to her benefit and become the breadwinner.

As far as Bosnian enforced disappearances cases are considered, the HRC adopted a very broad approach and vague language in awarding compensations to the victims. The HRC would often recommend that Bosnia provides "effective reparation to the authors, including

adequate compensation and appropriate measures of satisfaction" (own emphasis).[264]. Being a UN treaty body rather than a regional treaty body like the IACtHR and the ECtHR, the HRC has fewer competences, as none of the permanent UN treaty bodies has legal power to *order* compensation or other remedies, for that matter.[265] What the HRC does upon delivering a judgment is *express views* to the state party against which the claim had been made. Arguably, this space can be used to make declaratory statements that are more specific and accommodating of female applicants, to say the least, however, it is only recently that the HRC started to commit to a more comprehensive follow-up procedure.[266] The exact sum of money to be awarded was not specified in any of the Bosnian case, and the expression "adequate compensation" was cited repeatedly.

While the Inter-American Court is to be praised for awarding great sums of money for a variety of harms, many of the aspect taken into account by the IACtHR are related to the very nature of enforced disappearances, and therefore, HRC and the ECtHR could deliberate on their merits, too, without going against the specificities of their distinct jurisprudence.[267] As all three seem to award some sums of money for both moral damages and in order to compensate for the loss of life, and could therefore develop more sensitivity both in terms of narratives they present and the actuals sums they award.

[264] Hamulić and Hodžić (n. 29) para. 11.
[265] Shelton (n. 138)
[266] Shelton (n. 138)
[267] For instance, the ECtHR is not likely to find a violation of Art 3 with respect to the disappeared, as it does not acknowledge that illegal and prolonged detention in itself constitutes at least a degrading treatment. This remains one of the main differences in comparison to the HRC and the IACtHR that could have an effect on the monetary compensation awarded.

2. Measures of satisfaction

Oftentimes female relatives of the disappeared take their cases to the international arena not because they seek monetary compensation, but because they want to find and/or receive concrete things: the body, the truth, an apology. Any orders for reparation that aim to bring these about are known as measures of satisfaction.

2.1. Gender sensitive measures of satisfaction

Although the list of possible measures of satisfaction remains impressive as applied by human rights bodies, very few measures can be said to have a specific gender dimension to it, and would harm women more than men if omitted. Ordering the state party to locate and identify the victim, and arrange a proper funeral in accordance with the victim's religious beliefs free of change has a gender element to it, depending on the society in which disappearances happen. Mothers can often be seen as "failing'' to perform their parental duties without properly burying their soon, and as a result suffer even greater stigmatization in their communities. Finally, women everywhere by and large find themselves in grave financial situations after the disappearance, and are not able to pay for a proper burial. This may, while certainly causing psychological harm, put them in an even more vulnerable position of having to earn money through other, illegal and/or degrading means. Other measures of satisfaction like issuing death certificates or identifying the remains of the disappeared are not only beneficial for offering closure and alleviating emotional pain to some degree, but also for restoring relations in the family and community, particularly in societies like Nepal[268] where the widow's identity is frequently dependent on solving the fate of the missing. In sum, such

[268] Robins (n. 17).

gender sensitive measures of satisfaction may also require great awareness of the cultural specificities of the given society.

2.2. Practices of international human rights bodies

Again, the Inter-American Court has applied the biggest variety of corresponding measures of satisfaction, some of which were specifically crafted to be gender sensitive. In terms of complexity, the *García and Family Members* judgment remains at the forefront. What the IACtHR ordered as measures of satisfaction to the Guatemalan government to award to the García family was the following:

1. Continue and conclude investigations into the disappearance, so that the context in which this systemic human rights violations occurred is taken into consideration;
2. Abstain from amnesties, statutes of limitations or the non-retroactivity principles for this particular crime and therein
3. Identify the perpetrators and mastermind of the crime and
4. Punish those responsible;
5. Ensure that authorities which are competent and well-resourced conduct investigations *ex officio*;
6. Ensure that the authorities do not obstruct the investigative process;
7. Introduce disciplinary, administrative or criminal actions against the authorities who might have obstructed the process prior to the delivery of the judgment;
8. Ensure proper security arrangements for the investigative authorities, as well as the victims, witnesses, and their representatives;
9. Provide full access and legal standing to the next of kin at all stages and
10. Publish the results of the proceedings to inform the public.

While the IACtHR tends to request an effective and thorough investigation as a measure of satisfaction in all disappearances cases, in the *García* case, the judges also took time to ensure that the victim's family, that is his wife and daughter are involved in and protected during the process. Other measures of satisfaction that came up in different Guatemalan cases include locating and recovering the remains of the disappeared[269], paying for the burial of the remains[270] according to their tradition[271], ensure that the next of kin understands the process of investigation, as well as legal proceedings, at all times by hiring an interpreter for her, and making sure that it is not too hard for her to access the centers for investigations[272].

The other two human rights bodies have dealt with measures of satisfaction in somewhat different ways, albeit both having the capacity to at least recommend that an effective investigation is taken. The ECtHR did not use that space at all, linking effective investigation with potential violation of the right to remedy under Art 13.[273] The HRC, on the other hand, continued using its vague language to recommend measures of satisfaction that Bosnian government ought to undertake. For instance, a typically phrased recommendation would urge the state party to continue "its efforts to establish the fate or whereabouts of" the disappeared, as already prescribed by the domestic law.[274] Whenever the HRC recommended that the state does something related to the procedures of its institutions and conduct of its officials, it always

[269] Bámaca Velásquez v. Guatemala (n. 30)
[270] Chitay Nech et al. v. Guatemala (n. 30).
[271] Molina Theissen v. Guatemala (n. 30)
[272] Tiu Tojin v. Guatemala (n. 30)
[273] See Kurt v. Turkey (n. 28) where an arguable claim for a violation of Art 13 is found, reparations will, in addition to compensation, include a thorough and effective investigation, potentially leading to punishment of those responsible, and which the relatives of the disappeared have access to.
[274] Kožljak v Bosnia and Herzegovina (n. 29), para. 11.

made sure that it relates into an already existent law, such as for instance, the Law on Missing Persons, or the National War Strategy.[275]

That being said, measures of satisfaction do not only have symbolic value for the women, but they also serve to trigger necessary institutional changes domestically, and gender sensitivity certainly demands that those are made, too. Even though measures of satisfaction do not fall outside the scope of any of these human rights bodies, yet they are rarely explored in more depth in the European and the UN context, perhaps due to the wishes to stay within the boundaries of what is realistic to be expected from a disobeying state party.

3. Rehabilitation

Mental suffering comes as an integral consequence of a family member's disappearance, exacerbated by the gender structural inequalities that continue to exist both in societies and state structures. Hence, any claims for rehabilitation female applicants have raised ought to be well-received by international human rights bodies. In practice, however, there are fundamental differences.

3.1. Gender sensitive measures of rehabilitation

The potential rehabilitative measures have for the betterment of women's lives cannot be debated. Addressing the psychological (and physical) suffering of the woman by offering professional treatment to her seems to be of utmost importance for her future healing and healing of the group she is a member of. This treatment must be individualized, specialized and

[275] See, for example, in Hamulić and Hodžić v Bosnia and Herzegovina, (n. 29), para 11, where the court ordered the following:

> *"a) Strengthening its investigations to establish the fate or whereabouts of Mr. Hamulić, as required by the Law on Missing Persons 2004, and having its investigators contact the authors as soon as possible to obtain information from them, so that they can contribute to the investigation;*
> *(b) Strengthening its efforts to bring to justice those responsible for his disappearance, without unnecessary delay, as required by the national war crimes strategy."*

free of charge at a public facility nearest to the victim's place of residence.[276] Once her mental suffering and trauma are tackled effectively, the woman will be able to carry on with her life to the best of her capabilities. Considering that such women represent great number in these oppressed minority communities, their health will add to the overall well-being of the community.

Another gender-sensitive rehabilitative measure that has not been addressed by any of these international human rights bodies is the possibility of covering educational expenses and/or training for these female victims. The fact that the women found themselves in a grave economic situation has largely to do with the government action. It becomes of particular relevance to provide education and skills training in order to obtain meaningful employment[277] in situations where such government action was systematic and disadvantaged an entire community. For instance, a UN research has found that women-led households represent a quarter of all households in BiH, widows being 78.5% of them.[278] In many of the cases observed here, the female applicants were illiterate, or had never worked before. Even when they had employment, they often had to abandon it and move because they were harassed by state officials or bullied by the police for being related to the disappeared man. Undoubtedly, any reforms along these lines would go straight to the root of gender inequality that pre-existed the conflict and continued to exist in the aftermath thereof, and should therefore come as a priority. Such reforms contribute to structural transformations of the society while it is still prone to reconstruction, and show a more forward-looking, long-term-oriented and sustainable outlook by domestic authorities.

[276] Chitay Nech v. Guatemala (n. 30), para 256
[277] Rubio-Marín (n. 210)
[278] See Justino (n. 60)

3.2. Practices of international human rights bodies

The three human rights bodies have, again, dealt with rehabilitative measures in rather distinct ways. The IACtHR would sometimes, however not always, request the responding state to provide free medical and psychological treatment of the victims[279], instead of[280] or in addition to assigning a specific amount of money for the mental suffering inflicted. In other cases, it deemed that the rehabilitation had already been covered by the compensation for pecuniary damages.[281] Although several female applicants asked to be provided for medical and psychological care "immediately and free of charge"[282], the HRC only rarely recommended that Bosnia provides or pays for medical services. Remarkably, this was done in the *Dovadzija* case, where one of the recommendations included "psychological rehabilitation and medical care" to be provided for the harm suffered in the context of disappearance.[283] The ECtHR has not offered a single measure of rehabilitation in any of the cases analysed in this study.

A further problematic practice that must be elaborated on is issuing death certificates for those whose bodies have not yet been found. Presumption of death is treated differently by the three human rights bodies (see Chapter I). On the national level, it is not rare that a legal limbo is created for those who wish not to declare their husbands dead, and are therefore neither widowed, nor married, and face difficulties qualifying for a pension, or inheriting property and so on.[284] In Argentina, just like in Bosnia, wives of the disappeared showed resistance towards being issued death certificates for their husbands without knowing what happened to them. As groups of extremely vocal local activists, these women pushed the government to solve their

[279] In Chitay Nech et al. v. Guatemala (n. 30), for instance.
[280] In Molina Theissen (n. 30) the Court ordered the state of Guatemala to pay for the documented costs of medical and psychological treatment of the relatives.
[281] See Tiu Tojin v. Guatemala (n. 30)
[282] Hamulic and Hodzic para. 3.10 (n. 39); Icic and Bosnia and Herzegovina (n. 29).
[283] Dovadžija v. Bosnia and Herzegovina (n. 29), para. 13.
[284] Rubio-Marín (n. 210)

issues related to custody, property and remarriage, without calling their husbands dead by issuing certificates of "absence by forced disappearance".[285] The HRC seemed to follow the same rationale in urging Bosnia not to demand death certificates. Furthermore, a recommendation that stands on its own among Bosnian cases and the one which has the biggest appeal to the betterment of the otherwise gender-unequal system is the one from the *Duric* case, repeated in the *Hero* and *Rizvanovic* cases. There, the HRC ordered the government of Bosnia to change the legal framework so that it does not require obtaining a death certificate for the disappeared as a condition for being awarded a pension or compensation as his mother, wife or daughter.[286]

Measures such as identifying the remains of the disappeared, or allowing the family to return to their place of residence after leaving out of fears of prosecution can be as rehabilitative as psychosocial treatment.[287] Yet, rehabilitative measures discussed here in particular carry great gender-transformative potential to promote women's autonomy after the violation,[288] as they have the greatest potential to target the harms which are specific for a woman who is a relative of a disappeared. Awarding reparations for the purposes of rehabilitation in enforced disappearance cases solely focuses on the applicant, and allows her to cope with the pain and damage the crime has brought.

4. Guarantees of Non-Repetition

Guarantees of non-recurrence have become a part and parcel of the reparations package awarded by international human rights bodies, although it remains quite unexplored

[285] Bejarano (n. 68) 112, 113.
[286] Durić v Bosnia and Herzegovina (n. 29)
[287] Rubio-Marín (n. 210)
[288] Ibid.

precisely what state actions they trigger as reparations. Due to the avoidance of the return to status quo that feminist legal scholars seek, there is a quite important gender reading of these guarantees as well.

4.1 Gender sensitive guarantees of non-repetition

Gender-sensitive guarantees of non-repetition are crucial because women are subject to new forms of vulnerability in the aftermath of a conflict, and they in addition often experience a heightened re-emergence of old harms, such as domestic violence. In this specific context, some form of capacity-building that would aim to prevent future harms but also facilitate access to remedy is essential. This could include human rights and gender equality training for the police and other public authorities[289], with a goal to avoid threats and harassment as tools to scare these female applicants off. Furthermore, legislative reforms that are in line with international standards will be necessary to avoid some specific harm related to disappearances, such as the signing of death certificates in BiH, or other cases where inheritance or pension laws may create obstacles for widows or mothers to receive benefits. These obstacles do not only leave the women without financial support they need, but also perpetuate the psychological damage and can even furthermore diminish their capacity to work.

4.2. Practices of international human rights bodies

When it comes to thinking about a long-lasting legacy and more substantial and systemic changes that could serve to help prevent similar violations in the future, the IACtHR has made remarkable progress by not only thinking about ways to amend domestic laws[290], but also ordering states to adopt international human rights laws and align their national laws

[289] As ordered by the IACtHR in Cantuta v. Peru.
[290] For instance, in the Street Children case, Guatemala was ordered to implement legislative, administrative and other measures to adapt its legislation to Article 19 of the American Convention.

accordingly. For instance, upon the judgment in the *Bámaca Velásquez* case, Guatemala was obliged to adopt human rights and humanitarian law norms in its domestic law so that systemic enforced disappearances like that do not happen again.[291] In *García and Family Members*, Guatemala agreed to continue advocating for the creation of a law on the National Commission for the Search for Victims of Forced Disappearance and other Forms of Disappearance.[292] In *Molina Theissen*, importantly, Guatemala was urged to practice presumptions of death in enforced disappearances cases to ease parentage, inheritance and reparations[293], without issuing official declaration of death, a particularly gender-sensitive measure. The IACtHR has become vocal about adopting a gender-sensitive approach to all judicial and criminal matters in its judgments as well as in concurring opinions of individual judges, and particularly so in the context of violence against women. In the *Veliz Franco* case, for instance, Guatemala was *recommended* to adopt "comprehensive public policies and institutional programs" that are shaped in such a way to eliminate not only violence against women but also "discriminatory stereotypes" about women's position and role in the society, and socio-cultural patterns that prevent women from having full access to justice.[294]

The Human Rights Committee would always make sure to add to the reparations awarded that the state party carries an obligation to afford effective prevention of similar violations in the future, however, it would not go beyond that. This merely symbolic mention of the principle of non-repetition, nonetheless, is arguably much more than not saying anything in that respect, which is a common practice of the ECtHR.

[291] Bámaca Velásquez v. Guatemala (n. 30)
[292] García and Family Members v. Guatemala (n. 30)
[293] Molina Theissen v. Guatemala (n. 30)
[294] Maria Isabel Veliz Franco et al. v. Guatemala (Merits) Judgment of November 3, 2011, Inter-Am. Ct. H.R. Case 12,578 (2011); Recommendations para 8.

Without a doubt, any conversation about what ought to be done so that the same violations are not repeated in the future must include a thorough analysis of the conditions that brought the violations about in the first place. In that process, the underlying structural causes should be identified through a clear gender lens capable of determining what broader institutional and legal reforms need to be passed so that indeed, husbands and sons do not disappear, and mothers and wives are not left poor, ill, and stigmatized.[295] Accepting that the mandates of the international human rights courts are not – and may well never be, as broad and as omnipotent to eradicate the systemic subordination of women at domestic level, they can arguably begin the dialogue by awarding gender-sensitive guarantees of non-repetition.

5. Symbolic reparations

Symbolic reparations are known for their application by the IACtHR and are starting to develop as claims before and views issued by the HRC. For this reason, this section makes no definite conclusions, but instead wishes to spark further research on gender and symbolic reparations among feminist legal scholars.

5.1. Gender-sensitivity for symbolic reparations in enforced disappearances cases: a special case

The field of gender and symbolic reparations remains largely under-researched, particularly so when considered in relation to crimes other than sexual violence. Symbolic reparations such as apologizes can have great value for women victims of sexual violence, giving them due recognition and showing that the violation they suffered is not a private

[295] Rubio-Marín (n. 210)

matter.[296] In fact, the most well-known movement of women who mobilized on issues of reparation and sexual violence, the so-called "comfort women" from South Korea did not want to accept monetary compensation without a symbolic measure such as official acknowledgment of state responsibility.[297]

In cases of enforced disappearances, it is rather debatable to argue for a gender-sensitive symbolic reparation without any empirical research, although in any case gender has been greatly absent from the initiatives to give symbolic reparations. Symbolic reparations, as ordered by the IACtHR for instance, carry incapacity to address structural inequality, and in general challenge dominant social hierarchies.[298] On the contrary, an imaginary monument to all indigenous Guatemalan mothers whose children disappeared could only further perpetuate the system of patriarchy that exists. At such collective level, symbolic reparations could, at least indirectly, present how a society understands gender relations, only to confirm that they are uneven.[299] UN WGEID suggested, for instance, that women should not only be represented as caregivers through symbolic reparations, but also as crucial actors in the fight against enforced disappearances.[300] Nonetheless, as a form of personal satisfaction – whether it is an apology, a statute or a name, such acts might be relevant.

5.2. Practices of international human rights bodies

The Inter-American Court has not awarded symbolic reparations in each and every disappearance case, but it did choose some of the most famous ones where the Guatemalan government was more willing to cooperate to ensure that the crimes are acknowledged, known

[296] Rubio-Marín (n. 210)
[297] Ibid 115.
[298] Brandon Hamber and Ingrid Palmary, 'Gender, Memorialization, and Symbolic Reparations' in Ruth Rubio-(ed.) *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge University Press 2009) 328
[299] Rubio-Marín (n. 210)
[300] General comment on women (n. 19).

of and remembered. In the *García* case, for that matter, a number of symbolic reparations were requested from the government. They were the following:

1. Promote construction of commemorative and cultural spaces in which the victims will be dignified;
2. Name a street after Edgar Fernando García;
3. Change the name of a public school so that it is named after Edgar Fernando García;
4. Organize a public act in which Guatemala's international responsibility will be recognized (in agreement with the next of kin);
5. Offer a public apology and
6. Study grants and necessary funds for the García family so that they can designate and deliver them.

Some of these elements were incorporated into a number of other cases[301], whereas others had an additional element of erecting a statute in the memory of the victim(s)[302]. Both the HRC and the ECtHR have been silent on this particular aspect of reparations. In the case of the ECtHR, this could stem from the fact that the execution of judgments and, therefore whether or not a state is going to publicly disseminate it along with an apology, is left up to the Committee of Ministers (CoM).

When thinking within the specific context of enforced disappearance, it is hard to envisage what symbolic reparations may mean for female relatives without actually asking for their opinion. Surely, they can be recognized as mothers who suffered, but can assume that they as mothers will want their children's suffering to be recognized first and foremost. Rubio-Marín

[301] For instance, Molina Theissen v. Guatemala (n. 30)
[302] See Tiu Tojin (n. 30) after which a monument that shows a mother holding a child in her arms and has a commemorative plaque, with the text as agreed with the next of kin was built.

(2006) has pointed out that there is a variety of ways in which women suffer in conflict – as freedom fighters and civilians, so merely "reducing" them to nurturing, self-sacrificial entities does not seem to serve justice for the state of gender justice. For this to be taken into consideration before any of the human rights bodies, much greater victim participation would be necessary.

In this Chapter, a number of disappearances cases that appeared before the three international human rights bodies in which applicants were mothers and/or wives of the disappeared were singled out. Having examined the claims they brought on the behalf of their disappeared relative, as well as on their own behalf, this Chapter looked at the reparations the ECtHR, the IACtHR and the HRC awarded to them in response to both kinds of claims, and searched for any signs of sensitivity towards the fact that this is a gender-related issue and a gendered violation. Merely by looking at the judgments, the three human rights bodies portrayed very different levels of gender sensitivity, which is reasonable, considering that they traditionally have practiced their mandates in quite distinct ways. In brief, the differences in the theories of reparations these three human rights bodies adhere to are not vast; it is in practice that each of the bodies has developed their signatory reparation schemes. Monetary compensation is a must before the ECtHR, however, it often does not represent an incredible amount of money that could foster substantive changes in the applicant's life. On the other hand, the HRC will also ask for an appropriate monetary compensation without ever stating how much money that may be, leaving the applicant at mercy of the state. In addition to recognizing a whole wider range of harms to women's rights, the IACtHR also takes a more victim-centered approach when it comes to reparations and applies more comprehensive measures of satisfaction, rehabilitation and guarantees of non-repetition, particularly manifested in enforced disappearances cases.

Taking into consideration what has been done in the case-law of these bodies, as well as what the literature on gender and reparations suggests could be the practice domestically or internationally, criteria for gender sensitive remedy each of these bodies could employ in their judgments has been included. Some of these include general measures which do not need to include the word 'gender' or 'women' to benefit women more because they had been put in a more disadvantageous position, whereas others tend to be more specific. Moreover, some of them, such as training and education initiatives, are never claimed by women applicants themselves. Others, like psychological treatment and commemoration of the disappeared in public spaces are increasingly taking over the international human rights space. All of them relate to the unequal relations of power that exist, and hope to serve as a tool for transforming such unbalanced structures, as well as women's individual lives. Before concluding why these measures ought to be adopted, we must first look whether they *could* be adopted within the mandates of these three bodies, as they stand today.

Chapter V

"[R]eparations for human rights violations only provide the victims the means to attenuate their suffering, making it less unbearable, perhaps bearable."[303]

By and large, gender sensitivity is an underdeveloped concept in the jurisprudence of international human rights bodies and has only started to appear recently in cases where courts acknowledged that violence happened to women because they were women, and because of the culture of female inferiority.[304] With these thoughts in mind, it is hard to expect human rights bodies to have developed significant case law in which gender emerges as a decisive concept, particularly where physical violence is nearly completely absent. Simply because the vocabulary employed by these human rights courts and committees is not that specific does not, however, mean that these bodies are not capable of applying more gender-sensitive remedy, nor that they have not done so in the past. Furthermore, arguments arising as to how effective the requests and recommendations of human rights courts and committees are seem to be never-ending. Keeping these discourses in mind, Chapter V attempts to scratch below the surface and move beyond simply reading judgements to see what international human rights bodies have done and what they could do within their mandates of monitoring compliance. Such more inclusive and comprehensive actions, practice has shown, do matter for the state of

[303] Bulacio v Argentina, IACtHR Judgment of September 2003, Reasoned Opinion Judge Cançado Trindade, para 25

[304] See, for instance, the Cotton Field Case against Mexico, i.e. Gonzalez, Monreal and Monarrez ("Cotton Field") v. Mexico, IACtHR 2009.

human rights and women's rights domestically.[305] Before doing so, this Chapter will discuss the applicability and practicality of the criteria for gender-sensitive remedy as discussed in Chapter IV.

Is the criteria for gender-sensitive remedy too far-fetched?

No wishful thinking about what international human rights bodies ought to do could ever bring about any meaningful change for future female applicants who will seek justice for the disappearances currently taking place in a number of countries around the world. Noting the practice, the law these bodies adhere to, and the contexts in which they operate as of today, are any of the above-mentioned comprehensive recommendations for gender-sensitive remedy feasible?

This study has shown that the European Court of Human Rights relies nearly exclusively on monetary reparations. Nevertheless, the power of the ECtHR goes beyond simply awarding financial compensation, and it has in the past, ruled on and triggered legislative amendments in a number of national systems,[306] including Constitutional amendments.[307] What that means is that applying some or all of the suggested gender-sensitive reparations like measures of satisfaction, for instance, would not necessarily fall outside the scope of the ECtHR's mandate.

It matters greatly that certain kind of reparations such as guarantees of non-repetition have not been addressed at all by the ECtHR in these chosen cases. Requesting a state party to provide merely monetary compensation may to some extent remedy the violation that occurred

[305] See Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009)
[306] For instance, the Netherlands modified its Code of Military Justice after the Engel and others case, while Ireland created a system of legal aid following the ECtHR's decision in Airey v. Ireland (1979 32 E.C.H.R.)
[307] See the landmark *Sejdic and Finci v. Bosnia and Herzegovina* No. 27996/06 E.C.H.R. (2009)

in the sense that it offers a recognition of the crime, acknowledgment of the suffering and some financial assistance to the next of kin. Nonetheless, it fails in every way to reduce the threat of similar violations occurring in the future by not tackling the law and/or the practice of the state party which enabled the violation in the first place. The continuous appearance and high number of Turkish disappearances cases serve as a case in point. Furthermore, it is almost completely stripped of any gender sensitivity, since it does not capture the Court's otherwise substantial potential to remedy the harms and damages caused by the act other than the loss of earnings.

Yet, sensitivity towards what it means to be a woman in a particular situation in a particular country is not unknown to the ECtHR either. In a landmark judgment in the *N. v. Sweden* asylum case in 2010, the ECtHR for the first time took into account original research on what would await the applicant in her home country Afghanistan if she were to return. The ECtHR considered gender inequality in Afghanistan and societal gender discrimination which would greatly affect the application, considering her profile of a less conservative woman who voluntarily separated from her husband and was living with a different man.[308] In conducting such analysis, the Court decided to shield the applicant from deportation solely on the basis of the gender specific harms such as domestic violence and social stigma that she would have encountered in Afghanistan. There is no reason why the same specificities should not be considered in the specific context of Kurdish women in Turkey when it comes to, for example, awarding rehabilitation measure, or requiring sensitivity towards female family members in the process of investigation.

[308] N. v. Sweden 23505/09 E.C.H.R. (2010), para 55-57

As far as the HRC is concerned, it too has been developing its practice of awarding reparations and becoming more specific in recommending that the state provides medical treatment[309] or compensate for the loss of earnings[310] that needs to be offered to the victim. In addition, the HRC itself explained its own mandate in General Comment No. 31 where it made clear that reparations recommended do not include only monetary compensation, but could also trigger a variety of measures of satisfaction, guarantees of non-repetition and symbolic measures.[311] By the way of example, the HRC has previously recommended that the burial site of a disappeared is found as a measure of satisfaction.[312] That being said, the Committee can surely be more specific than it has been in the selected Bosnian cases. Some Bosnian applicants have asked for specific measures of medical treatment, training and education,[313] a symbolic memorial for the victims,[314] and a public apology,[315] however, these were not granted to them, possibly partly because of different domestic initiatives that are taking place or are said to be taking place.

The Inter-American Court evidently has the capacity and willingness to cover nearly all of the suggested measures. Perhaps the only one not observed in the cases chosen for this study concerns training and education for the female applicants and/or their family members, which nonetheless is not an unfamiliar practice. Namely, the IACtHR has previously ordered the responding state to provide scholarships for the victim's wife and brother for the purposes

[309] See *Altesor v. Uruguay* (Communication no. 10/1977) para. 16; *Williams v. Jamaica* (Communication no. 609/1995) para. 8; R.S. v. *Trinidad and Tobago* (Communication no. 684/1996) para. 9; *McCallum v. South Africa* (Communication no. 1818/2008) para. 8.
[310] In, for instance, Adimayo M. et al. v. Togo (Communication no. 422-424/1990) para. 9.
[311] Para 16 of the General Comment No. 31 (n. 80).
[312] Staselovich v. Belarus (Communication no. 887/1999) para. 11; Saimijon and Malokhat Bazarov v. Uzbekistan (Communication no. 959/2000) para. 10;
[313] Ičić v. Bosnia and Herzegovina (n. 29)
[314] Selimović et al. v. Bosnia and Herzegovina (n. 29)
[315] Hamulić and Hodžić v. Bosnia and Herzegovina (n. 29)

of pursuing a professional training[316]; vocational assistance and special education program for former juvenile offenders[317], as well as scholarships for postsecondary education[318], *inter alia*. Clearly, the IACtHR does not only attempt to repair the direct consequences of a violation, but also to enhance the living conditions and social realities of the victims, who are usually the poorest, most vulnerable and most marginalized, like women tend to be.[319] That is precisely the angle that this call for gender-sensitivity wishes to see among other international human rights bodies, even if they prefer not to label it as such.

The reality is, all three human rights bodies have the mandate to do so, and such practices are not entirely unknown to them. Now that this has been established, it is important to understand what happens once a(n) (ideally gender-sensitive) judgment is issued, and the state party in question is requested to provide a series of reparations to the applicant, or make a number of changes in its law and policies. Each of the three human rights bodies requires further scrutiny before a full understanding of how gender sensitivity could infiltrate into these institutions.

The enemy of gender-sensitive remedies in the Inter-American system

While the IACtHR and the ECtHR tend to be a classic pair for comparison among human rights scholars, their mechanisms of compliance differ greatly. There is no equivalent of the Committee of Ministers in the Inter-American system that would ensure compliance with the IACtHR's judgments in a more political setting. Instead, the IACtHR relies on periodic reports from states, and it requests that these reports address clear efforts to comply with the

[316] *Cantoral Huamani and Garcia Santa Cruz v. Peru* (No. 167, 2007), para 194.
[317] *"Juvenile Reeducation Institute" v. Paraguay* (IACtHR No. 112, 2004), para 321.
[318] *Gomez Palomino v. Peru* (No. 136, 2005), para 148; *Valle Jaramillo et al v. Colombia* (No. 201, 2009) etc.
[319] Diana Contreras-Garduno and Sebastiaan Rombouts, 'Collective Reparations for Indigenous Communities Before the Inter-American Court of Human Rights', (2010), Merkourious Utrecht Journal of International and European Law; Vol. 27:72, 04,17

orders for reparations.[320] The compliance system, on its face, looks rather weak. Surprisingly, the compliance rate has nonetheless been quite high, particularly when it comes to monetary compensation, with an average delay ranging from a year to two and a half years.[321] Money does not seem to be a grave problem, although the sums awarded exceeded those requested by the ECtHR more than tenfold. Some of the financial aspects are likely to be agreed on in a friendly settlement, before the final judgment is delivered. For instance, in the *Tiu Tojin v. Guatemala* case, the state had already paid 1,475,000 GTQ (over USD 200,000) to the family for moral damages, including the cost of future medical and psychological treatment for the mother of the disappeared boy before the IACtHR reached its final ruling.[322] Surely this remains possible in situations where the state clearly acknowledges its responsibility for the crime, and is less likely to happen if any more recent disappearances case were to appear before the Inter-American Commission.[323]

The major enemy to the perfect compliance in the Inter-American system and to a perfect gender-sensitive record of the IACtHR-ordered reparations is, in fact, the persistence of the old system of impunity.[324] Current governments in Central America still host officials who played prominent roles in the military regimes, which makes obtaining information about the violations the men in power had likely been involved in impossible. Guatemala, a poor Central American country by any standards, does not seem to take an issue with covering the monetary reparations ordered by the IACtHR, which, while is far from enough, suffices to make at least some changes in women's lives. Yet, in all monitoring compliance reports

[320] Ibid
[321] Ibid
[322] Tiu-Tojin v. Guatemala (n. 30)
[323] Lack of cooperation of the state shown in the case Yrusta v. Argentina (n. 136) currently before the Committee on Enforced Disappearances regarding a more recent disappearance could serve as a case in point.
[324] Contreras-Garduno and Rombouts (n. 319)

Guatemala is urged to comply with several common aspects of the reparations order whose progress is obstructed precisely because of impunity: (a) effective investigation, (b) trying and sanctioning those responsible, (c) locating the remains and affording proper burial, (d) ensuring that similar violations do not occur again. These shortcomings only further exacerbate mental sufferings of female applicants.

In addition to paying for pecuniary and non-pecuniary damages, the government of Guatemala seems to not have a problem complying with more symbolic reparations such as organizing a public act to acknowledge its international responsibility, re-naming an existing educational center with a name that refers to children who disappeared, and placing a plaque in remembrance of the disappeared.[325] As previously discussed, it is hard to define compliance with these symbolic measures as women's rights success stories. Yet, they surely serve to show that other symbolic reparations, as desired by women victims themselves, could find their place in judgments and complied with in the aftermath.

What emerges from this discussion is that it is not the IACtHR that stands in the way of gender sensitivity in reparations, but rather the corrupt political system which the Inter-American Court cannot control. Studies show that the majority of reparations (61%) ordered by the Court are in fact those the states tend to comply with, the victim-oriented ones such as monetary compensation and symbolic reparations, for which the compliance rate goes up to 80%, while only a small number (15%) involved effective investigation or sanctioning those responsible for the violation.[326] In fact, some authors have concluded that out of the then fifty four judgments requesting the responding state to investigate, only the response of Peru in the

[325] Ibid.
[326] Ibid

Castillo-Paez case was deemed as satisfactory fulfilled.[327] For better compliance, it has been noted that putting an obligation on one branch of the government only – e.g. letting the executive act alone - brings higher rates of implementation.[328] Motivated by the jurisprudence of the IACtHR, the Constitutional Court of Guatemala, too, on its own treated enforced disappearance as an ongoing, continuous violation, applying the 1996 national law that codified the crime of enforced disappearance to the incidents before this date.[329] This adoption of the IACtHR's jurisprudence domestically can later on be a decisive factor in any new efforts to include female relatives of the disappearance in compensation schemes or give them a standing in a case.

The deficiencies, at least in the case of Guatemala, seem to be systemic and political. The lack of rule of law persists despite the shift to democracy, and there seems to be no clear separation of powers, high level of corruption and very deep mistrust in judicial institutions among the public.[330] Because these defects that hinder its compliance with the IACtHR's gender-sensitive judgments are political, the resolution thereof is not within the mandate of the Inter-American Court or any human rights body. The shortcomings, then, must not crucial for determining the strength of the Inter-American human rights system as a whole, or concluding that gender sensitivity in the IACtHR's judgments means nothing in practice.

[327] Antkowiak cited in Cecilia M. Bailiet, 'Measuring Compliance with the Inter-American Court of Human Rights: The Ongoing Challenge of Judicial Independence in Latin America', (2013) Nordic Journal of Human Rights 31:4, 477,495
[328]Ibid
[329] Raquel Aldana, 'A Reflection on Transitional Justice in Guatemala 15 Years After the Peace Agreements' in Thorsten Bonacker and Christoph Safferling (eds.) *Victims of International Crimes: An Interdisciplinary Discourse* (Springer 2013)
[330] Bailiet (n. 327)

Gender sensitivity is a must for the Committee of Ministers, too

The role the Committee of Ministers plays in facilitating state compliance, cooperation and accountability has been seen as greatly important, if not crucial.[331] In fact, many omissions of the ECtHR tackled in Chapters III and IV have largely to do with the CoM's separate and powerful mandate. Although the ECtHR would not include it in judgments, the abuse of power by Turkish security forces, particularly in Kurdish areas, did not go unnoticed. In 2005, the CoM reported that 74 judgments by the ECtHR with respect to Turkey brought to light serious violations of the ECHR by Turkish security forces, including acts of disappearances and torture.[332] By the time the CoM issued another resolution on security forces in Turkey in 2008, this number increased to 175.[333] Numerous pages of quite repetitive critique of the Turkish government revealed nothing about women and the CoM's willingness to read the state security actions through a gender lens. Reading in between the lines brought about some hint of potentially gender-sensitive recommendations. In the CoM's Interim Resolution DH(2002)98, in particular, Turkey was urged to train its police and gendarmerie[334], an act that could involve education about treating female relatives of the arbitrarily detained and disappeared. Some further developments of procedural safeguards triggered by the CoM include the right of family members of the person detained to be informed about their whereabouts,[335] and practicing

[331] Courtney Hillebrecht, 'Rethinking Compliance: The Challenges and Prospects of Measuring Compliance with International Human Rights Tribunals' (2009) Journal of Human Rights Practice Vol 1:3, 362, 379
[332] Committee of Ministers, Interim Resolution ResDH(2005)43 Actions of the security forces in Turkey Progress achieved and outstanding problems, Council of Europe
[333] Committee of Ministers, CM/ResDH(2008)69 Actions of the security forces in Turkey, Progress achieved and outstanding problems. Council of Europe
[334] Interim Resolution ResDH(2002)98 Actions of security forces in Turkey Progress achieved and outstanding problems – General measures to ensure compliance with the judgments of the European Court of Human Rights in the cases against Turkey. Council of Europe.
[335] Art 95 of the Turkish Code of Criminal Procedure

mandatory compliance with Articles 2 and 3 of the ECHR.[336] This shows that the mere fact that the ECtHR repetitively issued judgments with great monetary repercussions for Turkey, and that the CoM then repetitively reported on these practices triggered *some* changes in legislation and policy-making in Turkey, but more effort is needed.

With this very brief analysis it becomes clear that the power and the potential of the ECtHR must be examined beyond a narrow reading of the judgments issued by the Grand Chamber, and must instead be evaluated hand-in-hand with the practices of the CoM, which is willing to point out to systemic violations. Yet, this also means that the changes done domestically somewhat reflect the ECtHR's judgments in the sense that they are both quite general and do not single out any vulnerable groups that need special attention. Therefore, the CoM ought to urge the member state to undertake more specific and meaningful transformations to challenge the discriminatory system that puts disproportionate burden on women in their pursuit of justice and in their everyday lives. This narrative could then be supported by the ECtHR's rulings the pending disappearances cases from Turkey in which traces of intersectionality and gender sensitivity would be more visible.

The hidden gender sensitivity of the HRC

The Human Rights Committee is a UN treaty body, and not a court. It does not issue judgments, but views and recommendations. Upon doing so, it requests states parties to submit a report about the measures taken to make the Committee's views effective within 180 days since the views were delivered.[337] In 2008, in its General Comment No. 33, the HRC recalled

[336] For instance, the Constitutional Court and Court of Cassation had begun to comply with the procedural requirements of Articles 2 and 3 of the Convention. See Committee of Ministers, Supervision of the Execution of Judgements and Decisions of the European Court of Human Rights, 10th Annual Report of the Committee of Ministers (2016) Council of Europe.

[337] Human Rights Committee, Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights, 30 November 2016, CCPR/C/158 Para 3

that its views incorporate "some important characteristics of a judicial decision", as they are arrived at in judicial spirit, impartiality and independence.[338] HRC is, therefore, a quasi-judicial organ empowered by the ICCPR to interpret the treaty. That the signatory parties are bound by the provisions of the ICCPR and the views of the HRC is also in accordance to the *pacta sunt servanda* principle.[339] Any discussion on the utility of even looking for gender-sensitivity in a UN body must observe these facts before concluding that the HRC is a forum for discussion rather than a serious human rights body.

The way in which the HRC awards reparation is, at least in theory, already gender-sensitive. In the guidelines regarding reparations issued in 2016, the HRC stated that the appropriate measures of reparation will be decided upon on a case-by-case basis, taking into consideration the specific circumstances of the case, such as, for instance, "the existence of a gender dimension".[340] In reality, the language in which these views are expressed could be less vague in order to show the existence of such gender dimensions. As a general rule, the HRC will not specify the exact amount of money that is to be paid by the State party,[341] although it will largely rely on monetary compensation, as seen in Bosnian cases. However, a series of more specific forms of redress have elsewhere been ordered by the HRC, many of them in the relation to disappearances. Namely, the HRC has previously asked the responding state party to conduct a public investigation[342], bring perpetrators to justice[343], ensure non-repetition of

[338] UN Human Rights Committee (HRC), *General comment No. 33, Obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights*, 25 June 2009, CCPR/C/GC/33, para 11.
[339] In line with Article 26 of the Vienna Convention on the Law of Treaties (VCLT) which states that every treaty is binding and is to be performed in good faith. See: Nikolaos Sitaropoulos "States are Bound to Consider the UN Human Rights Committee's Views in Good Faith" (OxHRH Blog, 11 March 2015) <http://humanrights.dev3.oneltd.eu/states-are-bound-to-consider-the-un-human-rights-committees-views-in-good-faith/> accessed 24 May 2017
[340] HRC Guidelines on measures of reparation (n. 337) Para 6
[341] HRC Guidelines on measures of reparation (n. 337) Para 9
[342] Comm. No. 181/1984 A and H Sanjuan Arevalo v Columbia, HRC.
[343] Quinteros v. Uruguay (n. 9).

violations[344], amend the law[345], provide restitution of liberty, employment or property[346], and provide medical care or treatment[347], *inter alia*. As shown before, vert few of these have been observed in the cases brought by Bosnian women.

Furthermore, symbolic reparations are, too, within the HRC's reach. In addition to public apologies, other types of symbolic reparations (e.g. building a monument, renaming a street, or putting up a commemorative plaque) all fall within the HRC's mandate when it comes to reparations.[348] Nonetheless, these tend to be by and large underestimated and absent to date.[349] As far as measures of satisfaction are concerned, it is precisely disappearances that pushed the HRC to further develop its jurisprudence on such reparations.[350] The only explicit guarantee of non-repetition, drafted as the obligation to "ensure that similar violations do not occur" in the future has not developed and made more specific since the 1980, remaining one of the major drawbacks in the Committee's jurisprudence.[351]

After 40 years of successful practice of individual communication, one could argue that it is no longer necessary to be particularly cautious and vague about framing the reparations recommendations.[352] Nonetheless, ambiguity still persists to some degree. The practice of the HRC remains inconsistent, as sometimes the language in the sections awarding reparations will remain quite vague, calling the state party to provide "an effective remedy", whereas it other

[344] Ibid
[345] Quinteros v. Uruguay (n. 9), Bleier v. Uruguay No. 30/1978 HRC.
[346] Gedumbe v. Congo 641/1995 HRC
[347] Raul Sendic Antonaccio v. Uruguay No. 63/1979 HRC
[348] HRC Guidelines on measures of reparation (n. 337) Para 11(f)
[349] Valeska David, 'Reparations at the Human Rights Committee: Legal Basis, Practice and Challenges'. (2014) Netherlands Quarterly of Human Rights, Vol. 32/1, 8, 43.
[350] E.g. ordering for the first time that the state established what happened and bring to justice those responsible, Bleier v. Uruguay (n. 345).
[351] Since the Weissman and others v. Uruguay case, cited in Valeska David (n. 349) p. 22
[352] Valeska David (n. 349)

cases with very similar fact pattern, it will be much more specific.[353] This is not quite in accordance with the Dublin II regulations on the UN treaty bodies, the HRC and other UN Committees should:

> […] to the greatest extent possible, be framed in a way that allows their implementation to be measured. Treaty bodies should use targeted and focused remedial language and, where possible be prescriptive.[354]

The answer to why this is the case may lie behind a similar logic like the one employed by the ECtHR. The views issued by the HRC remain concise and vague, however, it is in periodic reports that the Committee becomes more specific as to what the state party did wrong and how it should go about remedying it.

Similarly to the situation in Latin America, some of the aspects of the HRC's judgments against Bosnia and Herzegovina have not complied with have nothing to do with the HRC and its mandate, but with serious impediments in the political design in the country. All Bosnian applicants referred to the fact that the Fund for the families of the missing persons, while envisaged by the law[355] has not been established to date. BiH admitted that the Fund had not become operational due to political backlog in the country in its report submitted to the HRC in 2011.[356] In 2016, BiH reported to the HRC that a separate legislation aiming to solve the issue of adequate compensation to families of missing persons – which is a part of BiH's

[353] For instance, recommending that the state party ensure the application of its current legal framework which does not entice emotional harm to the applicants, like in Icic v. Bosnia case, or changing its legal framework like in the Duric case.
[354] Dublin 11 Meeting, Outcome Document Strengthening the United Nations Human Rights Treaty Body System, Nov. 10-11 (2011), para. 93.
[355] Decision on the Establishment of the Fund to Support Families of Missing Persons in BiH (BiH Official Gazette No. 96/06)
[356] Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Second periodic report of States parties, Bosnia and Herzegovina. (1 February 2011) CCPR/C/BIH/2

obligations to comply with the HRC's decisions – has not yet been adopted by the Parliament.[357]

Furthermore, BiH reported that the Missing Persons Institute, although it regularly contacts associations of families of missing persons about the process, has "no obligation or possibility" to afford psychological support to the families.[358] In its concluding recommendations in 2012, the HRC recommended that the Missing Persons Institute is adequately funded and that, furthermore, BiH provides adequate psychological support to families of the missing, particularly during exhumations.[359] This very specific and gender sensitive recommendation was repeated in 2017.[360]

In the same year, the HRC raised a serious concern about Bosnia's failure to implement the Committee's views and recommendations, and noted a clear absence of a national mechanism for following up.[361] These issues arguably arise from the political design in the country, in which two entities, namely Republika Srpska and the Federation apply a different set of laws and run different programs with regards to missing persons. For instance, Republika Srpska is by and large gender-sensitive and it already grants the following to the family members of the killed, missing and deceased combatants: disability allowance, health care, refund of funeral costs of exhumed combatants, spa rehabilitation in special rehabilitation programs, priority in housing allocations, refund of costs of building a tombstone.[362]

[357] Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the option reporting procedure, Third periodic report of States parties, Bosnia and Herzegovina. 19 May 2016, CCPR/C/BIH/3 Para 11
[358] Ibid para 106(c)
[359] Human Rights Committee, Concluding observations on the second periodic report of Bosnia and Herzegovina, adopted by the Committee at its 106th session (15 October – 2 November 2012), CCPR/C/BIH/CO/2 Para 9
[360] Human Rights Committee, Concluding observations on the third periodic report of Bosnia and Herzegovina, adopted by the Committee, 13 April 2017, CCPR/C/BIH/CO/3, Para 19-20
[361] Human Rights Committee, Concluding observations on the second periodic report (n. 359) Paras 7-8
[362] Under the Law on the Entitlements of War Veterans, Militaries with Disabilities and Families of Soldiers Fallen in the Fatherland War of the Republika Srpska.

To conclude, the written word shows that the HRC wishes to be gender sensitive in all cases, not just with enforced disappearances. Being more specific when issuing views on a particular disappearance case would give the state party more guidance in complying with the decision, and fewer excuses for not complying fully immediately after. The very fact that state party ought to comply with its obligations related to the ratification of the ICCPR works for the benefit of the HRC, however, it is difficult to see what the sanctions for systemically not complying, like in the case of BiH could be. It is true that a highly disfunctional state like Bosnia finds it hard to comply with anything, and the binding judgments coming from the European Court of Human Rights have not been complied with either.[363] For that matter, having the HRC being more specific and more strict in its reports would at least transmit an important message about how disappearances cases are to be dealt with, and remind about female applicants as autonomous subjects and the harms they experience. If nothing else, these can be used as a point of reference in traditionally more binding judgments issued by human rights courts, or by domestic courts and human rights institutions after a potential regime change.

This Chapter has shown that looking for gender sensitivity in the reparations law and practice of international human rights bodies requires more than merely reading through the last pages of a judgment. The case does not automatically close once such a judgment is issued, and what happens afterwards makes a real difference for the state of human rights, domestically and internationally. Three important facts need to be singled out here: (a) international human

[363] See the report of the Minority Rights Group on Bosnia's non-compliance of the Sejdic-Finci decision 'Bosnia and Herzegovina: Ensuring the political participation of minorities' (Minority Rights 20 Nov 2016) available at: http://minorityrights.org/law-and-legal-cases/finci-v-bosnia-and-herzegovina/ accessed on 31 July 2017.

rights bodies and/or the institutions which complement them in monitoring compliance are likely to be more specific in the reports issued after the judgment and are willing to point out to systemic defects that are the root of gendered violations such as disappearances (b) state parties are obliged to comply with human rights treaties as much as they are obliged to fulfill their obligations in respect to any other treaty and they, despite the popular belief, tend to comply with these obligations and therefore (c) ordering specific, gender sensitive reparations is more than merely wishful thinking and is not outside the mandates of these international human rights bodies; however, fixing domestic problems of political nature which contribute to non-compliance is. For these reasons, gender sensitive remedy in disappearance cases, as well as for other gendered violations, is to be encouraged and, if applied, is likely to be complied with. Needless to say this frequently happens with delays, possibly not in full, and with a few chronic disobeyers for whose weak domestic infrastuctures gender issues may be too far-fetched, although they should remain a matter of urgency.

Concluding Remarks

On this journey through the jurisprudence of international human rights bodies on the enforced disappearances, the myriad of violations that stem from it, and the women's side of the story, a variety of issues have been at stake. On the one hand, there was the act of enforced disappearances itself, and seeing how international human rights bodies have acknowledged it as a breach of their respective conventions, although the treaties do not mention it explicitly. On the other hand, the thesis extensively discussed the impact enforced disappearance has on women and women only, and the role they play in demanding justice, truth and reparations. This thesis wondered about what happens when these two notions come together before an international human rights body, and a case of enforced disappearance is brought by a female relative of the disappeared who has claims for her own sufferings induced by the role she has assumed in the society. In offering a gender reading of court cases and observations, this research dealt with different social and legal questions: *Who are these women? Why do they mobilize? What hardships do they face? Can human rights law be of help? How? What more can international human rights bodies do? Why?* Hoping that all of these questions have at least partly been tackled, the thesis proceeds to its final remarks.

Firstly, a short summary of major contributions of this piece.

1. Female relatives of the disappeared mobilize across the globe in search for their loved ones, reaching the highest level of justice for human rights violations by bringing their cases to regional and international human rights bodies. In their profile, they do not differ much. They will be from a minority group, or married into a minority, they will rarely have much education, and had previously completely depended on their husbands or sons as breadwinners.

2. The claims these women bring forward will depend on the previous jurisprudence of the human rights body in question, but also on the specific socio-political context. While Kurdish women will allege violations of the non-discrimination clause, Muslim Bosnian women will focus more on mental health services they cannot afford due to the economic situation in the country. In Latin America, the focus will frequently be on the family and the unique ties indigenous communities have. Similarities lie in the allegations of their severe mental (and sometimes physical) suffering that amounts to a violation of freedom from torture and cruel, inhuman and degrading treatment, protected by all three conventions observed here.
3. How these claims are going to be received by human rights bodies really depends on their practice and the context in which they issue judgments, much more than on their mandate. More precisely, while all three bodies could recognize violations of freedom from torture or private and family life, but they do not always do so, or might prefer the former to the latter, in accordance with their established jurisprudence of enforced disappearances.
4. All three human rights bodies have allowed for exceptions and adjustments that make it easier for these disadvantaged female applicants to bring their cases, for example, when it comes to *ratione temporis* and exhausting domestic remedies. In addition, they have played with the concept of presumption of death to increase the likelihood of holding state parties accountable on either substantive and procedural grounds for a violation of right to life.
5. Female applicants will only very rarely ask for monetary compensation only; on the contrary, they are inclined to reject it as reparation for what has been done. In contrast, many will take on the mental suffering claim and ask for medical treatment

and rehabilitation. Others will focus more on symbolic reparations, such as acknowledgments of systemic violations, apologies, or monuments.

6. All three bodies will nonetheless award monetary compensation for the harm inflicted; the ECtHR will order less, the IACtHR will order more, and the HRC will not specify how much is appropriate. In addition, very little will be awarded by the ECtHR and the HRC, while the Inter-American Court tends issue very comprehensive orders for reparations, including measures of satisfaction, rehabilitation, symbolic reparations and guarantees of non-repetition. While the argument that these bodies are limited by their mandates stands, it is important to note that they all have potential to explore other means of reparation in future enforced disappearances cases.
7. How gender-sensitive are these orders for redress? In their narrative, perhaps very little, as only rarely will any of them tackle the gendered nature of this particular violation. In practice, however, many measures as described in Chapter IV have a potential to be transformative for both women's individual lives and the (gender) unequal society they live in. For instance, medical treatment can help these women go through the trauma, while compensation for lifetime earnings and training can assist them in earning money for themselves and their families for the first time. Effective investigations into disappearances and criminal prosecution of those responsible will deter future violations of both men and women's rights, while symbolic measures may have a potential to send a strong message that women, too, are acknowledges as independent agents.
8. Finally, human rights law can help because the decisions of human rights bodies do matter. Looking at the crime of disappearances in isolation will not suffice, it is instead necessary to look at the institutional, political and social context in which

they occurred. Inter-American Court is in accordance with this premise, having argued that all the information regarding the power structures that allowed for the crime to happen must be analyzed.[364] Human rights law can challenge these power structures. As the past decades of international human rights law and individual petitions have showed, such judgments do make changes – in individual and personal situations, in legislation, in acts of governments and state forces. Such improvements have been noted in Turkey, Guatemala and in Bosnia and Herzegovina and, where they are lacking, the problem may lie elsewhere (i.e. in a corrupt government), and not in the fact that the international human rights system is weak. For that matter, improvements in how the judgments and views are delivered, with what language and outcome, can still be made. Human rights law, therefore, must continue to progress towards a more gender-sensitive approach to all cases, not merely those of sexual violence.

On a more personal note, if it perhaps has not been made clear in the preceding chapters, the sole point of admiration and a constant motivation for research remains the activism of mothers and wives that is centered on these very roles, as demonstrated here and through numerous other domestic[365] and international[366] initiatives. These groups of relatives of people who are imprisoned, tortured, disappeared or killed during a particular time of repression mobilize under a status of victims in at least two forms: those with temporary victim status which may diminish once they reach their main goal (release of prisoners, for example) and those who cannot reach these goals, so remain victimized indefinitely (e.g. people searching

[364] García and Family Members v. Guatemala (n. 30), para 150.
[365] E.g. Mothers of the Plaza del Mayo
[366] E.g. Mothers of Srebrenica and their efforts to hold the Netherlands accountable for the genocide.

for the disappeared).[367] When they stay together in an association or even informally gather on a regular basis, they can become very crucial political actors in the transitional process. On the one hand, they disturb the peace, they tend to demand more than what is in peace accords, and keep demanding it for a long time, even once everyone has forgotten about it. On the other hand, they hold great moral authority; non-corrupted mothers and wives, they pursue their just causes, and not even for themselves, but for others who cannot speak anymore.[368] This thesis acknowledges their just cause, above all, but has attempted to explore them as agents who feel, need, and, as a group, could inspire transformations of the gender reality in their society, because they are never a few, but great numbers of women in similar situations.

The reason this all matters is rather simple. Collective meanings that a community attaches to femininity, as well as masculinity, do not disappear during the conflict, and if they are re-shaped during the conflict, they do not go away solely because the conflict ends.[369] More precisely, the stigma attached to widowhood or being a mother whose child disappeared is not removed in the aftermath of the conflict. Since this stigma remains very visibly present, women relatives of the disappeared seek other women relatives of the disappeared for support, and what might be merely sharing of experiences initially has a great potential to turn into whole movements. These movements, if they raise awareness of this being a problem that happens to men because they are men and of the subsequent problem that happens to women because they are women, could yield more protection for both vulnerable male populations and vulnerable female populations, tackling this unique crime of disappearance more effectively.

[367] Veit Strassner, 'From Victimhood to Political Protagonism: Victim Groups and Associations in the Process of Dealing with a Violent Past' in Thorsten Bonacker and Christoph Safferling (eds.) *Victims of International Crimes: An Interdisciplinary Discourse* (Springer 2013)
[368] Ibid.
[369] Rubio-Martin (n. 210)

Lastly, it is not only the crime and the human rights violations that need to be understood as gendered for the benefit of both women and men. What also needs to be recognized is the role of women in conflict, and the victimhood and agency they adhere to on so many different fronts. As Margaret Urban Walker puts it, the battle women won in the context of sexual violence against women in conflict may be "*at the expense of a fuller and more nuanced understanding of women's losses, injuries and sufferings*", which are very complex.[370] Until their complexity is recognized, especially in cases where it may seem that there is a complete absence of physical harm and women are therefore likely not to be seen as victims, no proper remedy can be awarded, and the full scope of the role women play in conflict and after it alike cannot be acknowledged. In the absence of such trends in transitional justice and international human rights law, equal attention to men and women and the socially constructed specificities that come with their gender remains a long way ahead.

[370] Margaret Urban Walker (n. 15) 60

Bibliography

Books and articles

Anna Peluffo, 'The Boundaries of Sisterhood: Gender and Class in the Mothers and Grandmothers of the Plaza de Mayo' (2007) Journal on Social History and Literature in Latin America, Vol. 4, No. 2, 77,102.

Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009)

Birgit Sauer, 'Bringing the State Back In: Civil Society, Women's Movements and the State' in Karen Hagemann, Sonya Michel, and Gunilla Budde (eds) *Civil Society and Gender Justice: Historical and Comparative Perspective*, (Berghahn Books 2011)

Brandon Hamber and Ingrid Palmary, 'Gender, Memorialization, and Symbolic Reparations' in Ruth Rubio-Marin (ed.) *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge University Press 2009)

Bryan A. Garner, *Black's Law dictionary* (10th ed. Thomson West 2014)

Catherine O'Rourke, "Dealing with the Past in a Post-Conflict Society: Does the Participation of Women Matter? Insights from Northern Ireland" (2012) Wm & Mary J. Women & L. 35

Catherine O'Rourke, 'Feminist scholarship in transitional justice: a de-politicising impulse?' (2015) Women's Studies International Forum 51 118,127

Catherine O'Rourke, *Gender Politics in Transitional Justice* (Routledge 2013)

Cecilia M. Bailiet, 'Measuring Compliance with the Inter-American Court of Human Rights: The Ongoing Challenge of Judicial Independence in Latin America', (2013) Nordic Journal of Human Rights 31:4, 477,495

Christine Bell, & Catherine O'Rourke, 'Does feminism need a theory of transitional justice? An introductory essay' (2007) 1(1) Intl. J. of Trans. Justice 23, 44

Claire de Than and Edwin Shorts, *International Criminal Law and Human Rights* (Sweet & Maxwell 2003)

Claudia Paz y Paz Bailey, 'Guatemala: Gender and Reparations for Human Rights Violations', in Ruth Rubio-Marin (ed.) What Happened to the Women? Gender and Reparations for Human Rights Violations (Columbia/SSRC 2006)

Courtney Hillebrecht, 'Rethinking Compliance: The Challenges and Prospects of Measuring Compliance with International Human Rights Tribunals' (2009) Journal of Human Rights Practice Vol 1:3, 362, 379

Cynthia Cockburn, & Dubravka Zarkov (eds.), *The Postwar Moment: Militaries, Masculinities, and International Peacekeeping* (Lawrence and Wishart Ltd 2002)

Cynthia Cockburn, 'Militarism and War', in Laura J. Shepherd, *Gender Matters in Global Politics*, (Routledge. 2010)

Cynthia Cockburn, *From Where We Stand: War, Women's Activism, and Feminist Analysis* (Zed Books 2007)

Cynthia Bejarano, 'Las Super Madres de Latino America: Transforming Motherhood and Houseskirts by Challenging Violence in Juarez, Mexico, Argentina and El Salvador' in Arturo Aldama (ed) *Violence and the Body: Race, Gender, and the State* (IUP 2003)

Cynthia Enloe, *Globalization and Militarism: Feminists make the Link* (Rowman & Littlefield Publishers, Inc., 2007)

Daniele Guilia "Tunisian Women's Activism after the January 14 Revolution. Looking within and towards the Other Side of the Mediterrenean."(2014) Journal of International Women's Studies, 15(2) 16, 32

Diana Contreras-Garduno and Sebastiaan Rombouts, 'Collective Reparations for Indigenous Communities Before the Inter-American Court of Human Rights', (2010), Merkourious Utrecht Journal of International and European Law; Vol. 27:72, 04, 17

Dilek Kurban, 'Reparations and Displacement in Turkey. Lessons Learned from the Compensation Law' (2012) ICTJ/Brookings

Dinah Shelton, *Remedies in International Human Rights Law* (3rd ed. OUP, 2015)

Doris Buss, ''Performing Legal Order: Some Feminist Thoughts on International Criminal Law" (2011) International Criminal Law Review 11 409,423

Dubravka Zarkov (ed), *Gender, Violent Conflict, and Development* (Zubaan 2008)

Hatice Bozkurt and Özlem Kaya, *Holding up the Photograph. Experiences of the Women Whose Husbands Were Forcibly Disappeared* (Truth Justice Memory Center 2014)

Fionnuala Ni Aolain, 'Women, security, and the patriarchy of internationalized transitional justice' (2009) 31 Human Rights Quarterly 4 1055, 1085

Fionnuala Ni Aolain, 'Political Violence and Gender in Times of Transition' 15 Colum. J. of Gender and the Law 829, 849

Interview with Adrijana Hanušić Bećirović from TRIAL International. Personal correspondence, July 2017

Irum Taqi, ‘Adjudicating Disappearance Cases in Turkey: An Argument for Adopting the Inter-American Court of Human Rights’ Approach’. (2001) Fordham International Law Journal Vol. 24 940,986

Italo A. Gutierrez and Jose V. Gallegos, ‘The Effect of Civil Conflict on Domestic Violence: The Case of Peru’ (2016) Rand Labor and Population, WR-1168

Jan, Schneider, *Reparation and enforcement of judgments: a comparative analysis of the European and Inter-American human rights systems* (Berlin : epubli GmbH, 2015).

Jenny Edkins, *Missing Persons and Politics* (Cornell University Press 2011)

Jo M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* 2nd ed. (Cambridge University Press, 2003)

Jon Reed and Nineth de Garcia, “The Dictatorship Has Taught me the Road: Interview with Nineth de Garcia, Leader of GAM” (1991) Latin American Perspectives 18, 103

Karen Engle, ‘Feminist and its (DIS) contents: Criminalizing wartime rape in Bosnia and Herzegovina’ (2005) 99(4) AJIL 778, 816

Katherine M. Franke, ‘Gendered Subjects of Transitional Justice’ (2006) Columbia Journal of Gender and Law 15:3 813, 828

Kim Miller, ‘Moms with Guns: Women’s Political Agency in Anti-Apartheid Visual Culture’ (2009) African Arts 68, 75

Laura Sjoberg, *Gendering Global Conflict: Toward a Feminist Theory of War* (Columbia University Press 2013)

Lech Garlicki, ‘Relations between Private Actors and the European Convention on Human Rights, in The Constitution in Private Relations’ in András Sajó & Renáta Uitz (eds.) *The Constitution in Private Relations: Expanding Constitutionalism* (Eleven international publishing, 2005) 129, 136.

Maja Šoštarić, "Život u sjeni: žrtve rata i rodno osjetljiva istina, pravda, reparacije i garancije neponavljanja u Bosni i Hercegovini." (*Impunity Watch* 2012) <http://www.impunitywatch.org/docs/Gender_IW_BiH_report_%28BCS%29.pdf > accessed 1 December 2016

Margaret Urban Walker, ‘Gender and Violence in Focus: A Background for Gender Justice in Reparations’ in Ruth Rubio-Marin (ed.) *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge University Press 2009)

Marthe Lot Vermeulen, ‘The Duty to Take Preventive Operational Measures: An Adequate Legal Tool to Hold States Responsible in Enforced Disappearance Cases’ in Antoine Buyse (ed.) *Margins of Conflict: The ECHR and Transitions to and from Armed Conflict* (Intersentia 2011)

Mayesha Alam, *Women and Transitional Justice: Progress and Persistent Challenges in Retributive and Restorative Processes* (Palgrave Macmillan 2014)

Melissa W. Wright, "Gender and geography: knowledge and activism across the intimately global" (2008) Progress in Human Geography 33(3) 379,386

M.V. Nadkarni, *Ethics for Our Times: Essays in Gandhian Perspective* (Oxford University Press 2014)

Nadine Puechguirbal, 'The Cost of Ignoring Gender in Conflict and Post-Conflict Situations: A Feminist Perspective' (2012) Amsterdam Law Forum 4:1

Nikolaos Sitaropoulos 'States are Bound to Consider the UN Human Rights Committee's Views in Good Faith' (*OxHRH Blog*, 11 March 2015) <http://humanrights.dev3.oneltd.eu/states-are-bound-to-consider-the-un-human-rights-committees-views-in-good-faith/> accessed 24 May 2017

Nikita Dhawan, 'Transitions to Justice' in Gender in Susanne Buckley-Zistel and Ruth Stanley (eds.) *Transitional Justice* (Palgrave Macmillian 2012)

Olivera Simic, 'What Remains of Srebrenica? Motherhood, Transitional Justice and Yearning for the Truth' (2009) Journal of International Women's Studies 10:4, 220, 236.

Pablo de Greiff, *The Handbook of Reparations* (OUP 2008)

Patricia Justino et al., 'Women Working for Recovery: The Impact of Female Employment on Family and Community Welfare after Conflict' (2012) UN Women.

Polly Dewhirst and Amrita Kapur, *The Disappeared and Invisible: Revealing the Enduring Impact of Enforced Disappearance on Women* (International Center for Transitional Justice 2015)

R. J. A. McQuigg, 'Domestic Violence and the Inter-American Commission on Human Rights: Jessica Lenahan (Gonzales) v. United Sates' (2012) Human rights Law Review 12:1, 122,134.

Raquel Aldana, 'A Reflection on Transitional Justice in Guatemala 15 Years After the Peace Agreements' in Thorsten Bonacker and Christoph Safferling (eds.) *Victims of International Crimes: An Interdisciplinary Discourse* (Springer 2013)

Ruth Rubio-Marin (ed.) *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge University Press 2009)

Ruth Rubio-Marin (ed.) *What Happened to the Women? Gender and Reparations for Human Rights Violations* (Columbia/SSRC 2006)

Ruth Rubio-Marín, Clara Sandoval and Catalina Diaz, 'Repairing Family Members: Gross Human Rights Violations and Communities of Harm' in Ruth Rubio-Marin (ed.) *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge University Press 2009)

Sarah Fulton, 'Redress for Enforced Disappearance: Why Financial Compensation is not Enough' (2014) Journal of International Criminal Justice 12 769,785

Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights, Cases, Materials and Commentary* (Oxford University Press, 3rd ed. 2013)

Sarah L. Wells, 'Gender, Sexual Violence and Prospects for Justice at the Gacaca Courts in Rwanda' (2005) 14 S. Cal. Rev. L. & Women's Stud. 167

Simon Robins, *Families of the Missing: A Test for Contemporary Approaches to Transitional Justice*. (Routledge, 2013)

Siobhan Curran, 'Intersectionality and Human Rights Law: An Examination of the Coercive Sterilisations of Romani Women' (2016) The Equal Rights Review 16 132, 159

Valentine M. Moghadam, "Transnational Activism" in Laura Shepard (ed) *Gender Matters in Global Politics: A Feminist Introduction to International Relations* (Routledge 2010)

Valerie Couillard, "The Nairobi Declaration: Redefining Reparations for Women Victims of Sexual Violence" (2007) The International Journal of Transitional Justice 1 444,453

Valeska David, 'Reparations at the Human Rights Committee: Legal Basis, Practice and Challenges'. (2014) Netherlands Quarterly of Human Rights, Vol. 32/1, 8, 43.

Veit Strassner, 'From Victimhood to Political Protagonism: Victim Groups and Associations in the Process of Dealing with a Violent Past' in Thorsten Bonacker and Christoph Safferling (eds.) *Victims of International Crimes: An Interdisciplinary Discourse* (Springer 2013)

Viviana Krsticevic, Comment, in Conference, 'Reparations in the Inter-American System: A Comparative Approach', (2007) 56 AM. U. L. REV. 1375, 1419

Zinaida Miller, 'Effects of Invisibility: In Search of the 'Economic' in Transitional Justice' (2008) The International Journal of Transitional Justice 2 266,291

Reports and UN Documents

Background paper for seminar Opening of the Judicial Year January 2016, International and National Courts Confronting Large-scale Violations of Human Rights, (2016) Council of Europe.

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, UN Doc. (2006) A/RES/60/147

Committee on Enforced Disappearances, Consideration of reports submitted by States parties, Bosnia and Herzegovina (28 May 2015) CED/C/BIH/1

Committee of Ministers, Interim Resolution ResDH(2005)43 Actions of the security forces in Turkey, Progress achieved and outstanding problems, (2005) Council of Europe.

Committee of Ministers, CM/ResDH(2008)69 Actions of the security forces in Turkey, Progress achieved and outstanding problems. (2008) Council of Europe.

Committee of Ministers, Supervision of the execution of judgements of the European Court of Human Rights, 1st Annual Report 2007, (March 2008) Council of Europe.

Committee of Ministers, Supervision of the Execution of Judgements and Decisions of the European Court of Human Rights, 10th Annual Report of the Committee of Ministers (2016) Council of Europe.

European Court of Human Rights, 'Pilot Judgement – Factsheet', Press Unit published in April 2017

Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Second periodic report of States parties, Bosnia and Herzegovina. (1 February 2011) CCPR/C/BIH/2

Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Third periodic report of States parties, Bosnia and Herzegovina. (19 May 2016) CCPR/C/BIH/3

Human Rights Committee, General Comment No. 31 on The Nature of the General Legal Obligation Imposed on States Parties to the, Covenant (2004) CCPR/C/21/Rev.1/Add. 1326

Human Rights Committee (HRC), General comment No. 33, Obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, 25 June 2009, CCPR/C/GC/33

Human Rights Committee, Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights, (30 November 2016) CCPR/C/158

Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, Follow-up report to the recommendations made by the Working Group: Missions to Congo and Pakistan, (13 September 2016), A/HRC/33/51/Add.7

Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances (21 January 1983) E/CN.4/1983/14

Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances (22 January 1981) E/CN.4/35

Human Rights Council, Working Group on Enforced or Involuntary Disappearances, 'General comment on women affected by enforced disappearances', UN Doc. (2012) A/HRC/WGEID/98/2

Minority Rights Group, 'Bosnia and Herzegovina: Ensuring the political participation of minorities' (Minority Rights 20 Nov 2016) available at: http://minorityrights.org/law-and-legal-cases/finci-v-bosnia-and-herzegovina/ accessed on 31 July 2017

Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, Question of Enforced or Involuntary Disappearances. Commission on Human Rights, Reported submitted by Mr. Manfred Nowak. UN Doc. (1996) E/CN.4/1996/36

The Dublin Statement, Outcome Document Strengthening the United Nations Human Rights Treaty Body System, Nov. 10-11 (2011)

United Nations Office of the High Commissioner for Human Rights, 'Status of Ratification' (*UN OHCHR* 2016) < http://indicators.ohchr.org/> accessed 28 October 2016

University of Minnesota, Human Rights Library, 'Ratification of International Human Rights Treaties – Turkey' (*Human Rights Library* n.d.)< http://hrlibrary.umn.edu/research/ratification-turkey.html > accessed on 4 June 2016

Treaties and Laws

American Convention on Human Rights, "Pact of San Jose", Costa Rica, (adopted 22 November 1969) Organization of American States

Beijing Declaration and Platform of Action, (adopted 27 October 1995) the Fourth World Conference on Women, United Nations

Bosnia and Herzegovina, Decision on the Establishment of the Fund to Support Families of Missing Persons in BiH (BiH Official Gazette No. 96/06)

Bosnia and Herzegovina, Law on the Entitlements of War Veterans, Militaries with Disabilities and Families of Soldiers Fallen in the Fatherland War of the Republika Srpska (RS Official Gazette No. 55/07 – consolidated text, 59/08 and 118/09)

Bosnia and Herzegovina, Law on the Protection of Civilian Victims of War (RS Official Gazette No. 24/10)

European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, Council of Europe, 4 November 1950

Inter-American Convention on Forced Disappearance of Persons, (adopted 9 June 1994) Organization of American States

International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006) UN General Assembly

International Covenant on Civil and Political Rights (adopted 16 December 1966) United Nations, Treaty Series, vol. 999, 171

Rome Statute of the International Criminal Court (adopted 17 July 1998, last amended 2010), UN General Assembly

Rules of Procedure of the Inter-American Court of Human Rights, Annual Report of the Inter-American Court of Human Rights, 1991, O.A.S. Doc. OEA/Ser.L/V/III.25 doc.7 at 18 (1992), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 145 (1992).

The Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation (2007)

Turkish Criminal Procedure Code (Law No. 5271 of December 4, 2004, as amended up to Law No. 6217 of March 31, 2011)

Turkey, Law No. 2845 of 1983 on National Security Courts

Turkey, Law No. 5233 on Compensation of Losses Resulting from Terrorist Acts and Measures Taken against Terrorism (Compensation Law)

Vienna Convention on the Law of Treaties (adopted 23 May 1969), United Nations Treaty Series, vol. 1155

Cases

European Court of Human Rights

Airey v. Ireland App No 6289/73 (ECtHR 09 October 1979)

Akdeniz v. Turkey App No 25165/94 (ECtHR 31 May 2005)

Akdeniz and Others v. Turkey App No 23954/94 (ECtHR 31 May 2001)

Akkum and Others v Turkey App No 21894/93 (ECtHR 24 June 2005)

Aslakhanova and Others v. Russia App No 2944/06, 8300/07, 50184/07, 332/08 and 42509/10 (ECtHR 18 December 2012)

Aydin v. Turkey App No 57/1996/676/866 (ECtHR 25 September 1997)

Baysayeva v. Russia App No 74237/01 (ECtHR 5 April 2007)

Bazorkina v. Russia App No 69481/01 (ECtHR 2006)

Belge v. Turkey Application No. 50171/09 (ECtHR 2016)

Cicek v Turkey App No 25704/94 (ECtHR 05 September 2001)

Deweer v. Belgium App No 6903/75 (ECtHR 27 February 1980)

Engel and Others v. the Netherlands App No 5100/71; 5101/71; 5102/71; 5354/72; 5370/72 (ECtHR 8 June 1976)

Er and Others v. Turkey (23016/04 decision of 31 October 2010), Concurring Opinion, Judge Sajo

Ertak v. Turkey App No 20764/92 (ECTHR 2000)

Imakeyeva v Russia App No 7615/02 (ECtHR 9 November 2006)

İpek v. Turkey App No 25760/94 (ECtHR 2004)

Kurt v Turkey App No 799/1002 (ECtHR 25 May 1998)

Meryem Çelik and Others v. Turkey 3598/03 (ECtHR 16 July 2013)

N. v. Sweden App No 23505/09 (ECtHR 2010)

Osmanoğlu v. Turkey App No 48804/99 (ECtHR 24 January 2008)

Papamichalopoulos v Greece App No 14556/89 (ECtHR 1993)

Salman v. Turkey App No 21986/93 (ECtHR 27 June 2000)

Şarlı v. Turkey App No 23657/94 (ECtHR 22 May 2001)

Saygi v. Turkey App No 37715/11 (ECtHR 27 January 2015)

Scordino v. Italy App No 36813/97 (ECtHR 2006)

Sejdic and Finci v. Bosnia and Herzegovina App No 27996/06 (ECtHR 2009)

Süheyla Aydın v. Turkey App No 25660/94 (ECtHR 2005)

Tanis and Others v. Turkey App No 65899/01 (ECtHR 30 November 2005)

Taş v. Turkey App No 24396/94 (ECtHR 14 November 2000)

Timurtaş v. Turkey App No 23531/94 (ECtHR 2000)

Tekdag v. Turkey App No 27699/95 (ECtHR 25 November 1996)

Turkoglu v. Turkey App No 34506/97 (ECtHR 17 March 2005)

Yasa v. Turkey App No 63/1997/847/1054 (ECtHR 02 September 1998)

Inter-American Court of Human Rights

Bámaca Velásquez v. Guatemala (Judgment) Inter-American Court of Human Rights Series C No. 91 (22 February 2002).

Bámaca Velásquez v. Guatemala (Monitoring Compliance with Judgement) Order of the Inter-American Court of Human Rights (18 November 2010)

Blake v. Guatemala (Judgment), Inter-Am. Ct. H.R., Ser. C, No. 48, (22 January 1999)

Bulacio v Argentina (Judgment) Reasoned Opinion Judge Cançado Trindade, Inter-American Court of Human Rights (2003)

Cantoral Benavides v. Peru (Judgment) Inter-American Court of Huma Rights Series C No. 69 (18 August 2000)

Cantoral Huamani and Garcia Santa Cruz v. Peru (Judgement) Inter-American Court of Human Rights Series C No. 167 (2007)

Chitay Nech et al. v. Guatemala (Judgment), Inter-American Court of Human Rights Series C, No. 212, (25 May 2010)

García and Family Members v. Guatemala (Judgment), Inter-American Court of Human Rights Series C, No. 258, (29 November 2012)

Godínez-Cruz v. Honduras (Judgment) Inter-American Court of Human Rights (17 August 1990)

Gomez Palomino v. Peru (Judgement) Inter-American Court of Human Rights Series C No. 136 (2005)

Gonzalez, Monreal and Monarrez ("Cotton Field") v. Mexico, IACtHR 2009.

"Juvenile Reeducation Institute" v. Paraguay (Judgement) Inter-American Court of Human Rights Series C No. 112 (2004)

La Cantuta v Peru, Muñoz Sánchez and ors v Peru (Reparations and costs) Inter-American Court of Human Rights Series C no 162, IHRL 3047 (2006)

Loayza Tamaya v. Peru (Reparations and costs) Inter-American Court of Human Rights Series C No 42 (27 November 1998)

Marco Antonio Servellón García et al. v. Honduras, Case 12.331, Report No. 16/02, Inter-Am. C.H.R.,Doc. 5 rev. 1 at 348 (2002)

Maria Isabel Veliz Franco et al. v. Guatemala (Merits Judgement) Inter-American Court of Human Rights. Case 12,578 (03 November 2011)

Molina-Theissen v. Guatemala (Judgement) Inter-American Court of Human Rights Series C No. 106 (4 May 2004)

Molina Theisen v. Guatemala (Monitoring Compliance with Judgement) Order of the Inter-American Court of Human Rights (16 November 2009)

Tiu Tojín v. Guatemala (Merits, Reparations, and Costs) Inter-American Court of Human Rights, Judgment of November 26, 2008

Valle Jaramillo et al v. Colombia (Judgement) Inter-American Court of Human Rights Series C No. 201 (2009)

Velásquez-Rodríguez v. Honduras (Merits Judgment) Inter-American Court of Human Rights Series C No. 4 (29 July 1988)

Villagrán Morales et al. v. Guatemala (the "Street Children" Case) (Judgment) Inter-American Court of Human Rights Series C No. 63 (19 November 1999)

Human Rights Committee

A and H Sanjuan Arevalo v Columbia Communication No. 181/1984 (HRC 1984)

Adimayo M. et al. v. Togo Communication No 422-424/1990 (HRC 1996)

Altesor v. Uruguay Communication No 10/1977 (HRC 1982)

Aumeeruddy-Cziffra and others v. Mauritius Communication No 35/1978 (HRC 1984)

Bleier v. Uruguay Communication No 30/1978 (HRC 29 March 1982)

Dalisa and Sakiba Dovadžija v Bosnia and Herzegovina Communication No 2143/2012 (HRC July 2015)

Duric v Bosnia and Herzegovina, Communication No. 1956/2010 (HRC July 2014)

Gedumbe v. Congo Communication No 641/1995 (HRC 2002)

Hamulić and Hodžić v Bosnia and Herzegovina, Communication No 2022/2011 (HRC 30 March 2015)

Ičić v. Bosnia and Herzegovina Communication No 2028/2011 (HRC 2015)

Kožljak v Bosnia and Herzegovina Communication No 1970-2010 (HRC October 2014)

María del Carmen Almeida de Quinteros et al. v. Uruguay Communication No 107/1981, (HRC 1990)

McCallum v. South Africa Communication No 1818/2008 (HRC 2010)

Mojica v. Dominican Republic Communication No 449/1991 (HRC 18 March 1993)

Pratt and Morgan v Jamaica Communication No 210/86, 225/87 (HRC 1994)

Raul Sendic Antonaccio v. Uruguay Communication No 63/1979 (HRC 1982)

Rizvanovic v Bosnia and Herzegovina Communication No. 1997/2010 (HRC March 2014)

R.S. v. Trinidad and Tobago Communication No 684/1996 (HRC 2002)

Saimijon and Malokhat Bazarov v. Uzbekistan Communication No 959/2000 (HRC 2006)

Selimović et al. v. Bosnia and Herzgovina Communication No 2003/2010 (HRC 2014)

Staselovich v. Belarus Communication No 887/1999 (HRC 2003)

Tija Hero, Ermina Hero, Armin Hero v Bosnia and Herzegovina Communication No 1966/2010 (HRC October 2014)

Williams v. Jamaica Communication No 609/1995 (HRC 1997)

Other cases

Chorzow factory case (Germany v. Poland) (Merits) PCIJ Series A, No. 17

Yrusta v. Argentina, UN Committee on Enforced Disappearances, First Views adopted on 12 April 2016, CED/C/10/D/1/2013

Women's organizations' Websites

CONAVIGUA at: http://conavigua.tripod.com/

Grupo de Apoyo Mutuo at: http://www.worldcoalition.org/Grupo-de-Apoyo-Mutuo.html

Majke Srebrenice at: http://enklave-srebrenica-zepa.org/

Saturday Mothers at: https://twitter.com/cumartesiannesi

Truth Justice Memory Center at: http://hakikatadalethafiza.org/en/