

ENFORCED DISAPPEARANCE IN ARGENTINA: A HUMAN RIGHTS APPROACH ON THE CASE OF LUCIANO ARRUGA¹

DESAPARICIONES FORZADAS EN ARGENTINA: UN ENFOQUE DE DERECHOS HUMANOS EN EL CASO DE LUCIANO ARRUGA

Received: 19/08/2019 – Accepted: 07/11/2019

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- 1 The present text is the result of extensive conversations with Prof. Dr. Laura Clérico and filmmaker Ana Fraile. On one occasion we were invited to participate in the screening of the Film, *¿Quién mató a mi hermano?* (Who killed my brother?), during the Lateinamerikafilmtage in Nuremberg, Germany on the 9th of February 2019. See: Creating Rights, Who killed my brother?, The story of Luciano Arruga, 6 February 2019, available in: <https://creatingrights.com/tag/luciano-arruga/>, last visited 2 August 2019, also for more information see: www.quienmatoamihermano.com. Also, the present article received the valuable comments by Rainer Huhle and Shona Walter.
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Abstract

This article seeks to present a general overview of the provisions of international human rights law that are relevant to better understanding the case of Luciano Arruga's enforced disappearance in Argentina. First, this article describes a summary of the emergence of the term "enforced disappearance", the context of Argentina in relation to such a crime, and the factual and judicial process of the Luciano Arruga case. It also analyzes United Nations (UN) jurisprudence in order to study the causes and consequences that could have led to Luciano Arruga's enforced disappearance. In addition, this article focuses particularly on the elements of enforced disappearances, children's rights, and economic, social, and cultural rights, to better understand Luciano Arruga's case. In order to achieve the mentioned objectives, this article studies relevant academic literature, newspaper articles, Non-governmental Organization (NGO) reports, and the UN reports. The argument put forward is that the case of Luciano Arruga is a contemporary form of enforced disappearance.

Keywords: Human Rights; Enforced Disappearance; Luciano Arruga; Economic, social and cultural rights.

Resumen

Este artículo busca presentar una visión general de las disposiciones más relevantes del Derecho Internacional de los Derechos Humanos, para comprender mejor el caso de la desaparición forzada de Luciano Arruga en Argentina. Primero, describe el surgimiento del término "desaparición forzada", el contexto de Argentina en relación a dicho delito y el proceso fáctico y judicial del caso. En particular, analiza la jurisprudencia de las Naciones Unidas (ONU) para entender mejor las causas y consecuencias de su desaparición forzada. Asimismo, centra su análisis en los derechos del niño y los derechos económicos, sociales y culturales. A fin de lograr los objetivos mencionados, este artículo analiza bibliografía relevante, artículos periodísticos, informes de organizaciones no gubernamentales (ONG) e informes de la ONU. El argumento central es que el caso de Luciano Arruga es una forma contemporánea de desaparición forzada.

Palabras clave: Derechos humanos; Desaparición forzada; Luciano Arruga; Derechos económicos, sociales y culturales.

*“Everything is etched in our memory
A thorn of life and history
Memory punctures until it makes
Bleed the people who don’t let it run free
And not let loose free like the wind”.*

Leon Gieco (Argentine folksinger and songwriter).

Summary

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1. Preliminary considerations

The objective of the present article is to understand the practice of enforced disappearance as a violation of numerous human rights, and this article defines it as a complex crime³ that needs to be

³ The Working Group on Enforced or Involuntary Disappearances expressed that among the legal obligations of the States, not only should the analysis be focused on the causes of enforced disappearances, but it should also be focused on the context where the crime unfolds. In addition, States should also adopt measures in order to address the structural context in terms of vulnerability that lies beneath the disappearance. See Involuntary disappearances and economic, social, and cultural rights, 9 July 2015, A/HRC/30/38/Add.5, para. 6. See also E/CN.4/1986/Add.1, paras. 42–44.

addressed in connection with economic, social, and cultural rights, as well as children's rights⁴.

2. General overview of the emergence of the term “enforced disappearances” and its scope

Enforced disappearances are widely understood as one of the most serious human rights violations and are also considered by their very nature a crime against humanity⁵. “To disappear” is commonly defined as an act of someone or something ceasing to be visible. The term also relates to synonyms such as dying out, death, extinction, coming to an end, ending, and passing away, among others. It is a concept that can also closely describe what occurs when an external force acts to make the existence of a particular individual invisible. It can also be characterized as a step before becoming dead, slowing fading away. Enforced disappearances not only affects the person who goes missing but also the family members who dedicate their lives to the search for their loved ones. Families,

4 This line of investigation has been elaborated by Clérico and Aldao who argue the urgency to integrate the interpretation of article 19 with article 75, paragraph 23 of the Constitution of Argentina while analyzing the relationship between enforced disappearance and social rights on articles that work with gender and poverty. The article opens the debate between the concepts of autonomy (article 19) and social inequality (article 75 para. 23). See ALDAO, Martín; CLÉRICO, Laura, *Autonomía Hora Cero. Artículo 19 (Autonomía) Ramal Artículo 75, inciso 23 CN (Desigualdades)*, en *Autonomía y Constitución. El artículo 19 de la Constitución Nacional en debate*, ALVAREZ, Silvina; GARGARELLA, Roberto; IOSA, Juan (Coords), Ed. Rubinzal Culzoni, Santa Fe, 2019 (en edición).

5 WGEID: General Comment, Enforced disappearances as a crime against humanity, Preamble, p. 1, available at: https://www.ohchr.org/Documents/Issues/Disappearances/GCas_crime_against_humanity.pdf, last visited, 21. March 2019. Enforced disappearance is also in a provision in the Rome Statute of the International Criminal Court adopted in 1998 and coming into force in 2002 (A/CONF.183/9/1998). Enforced disappearances are enshrined in article 7, 1 (i) and are defined as follows: “enforced disappearances of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence 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, with the intention of removing them from the protection of the law for a prolonged period of time”.

while searching for the missing, lose their will to find their whereabouts. The act of making somebody invisible is considered to be one of the worst human rights violations an individual could suffer.

From a historical perspective, the term "enforced disappearances" is generally associated with the dictatorships in Latin America during the 1960s, 1970s, and 1980s. Particularly in the Southern Cone countries, Argentina and Chile⁶, due to, among other factors, the proliferation of such practices that resulted in alarming statistics and the unprecedented fight of family members in order to find the whereabouts of their loved ones⁷. Nevertheless, and according to various scholars⁸, the origins of disappearances can be traced back to World War II⁹. In particular, the Night and Fog Decree (*Nacht und Nebel Erlass*)¹⁰ issued on the

6 According to scholars, the term disappearance was "coined in Chile, because a tone point those of us working for the Peace Committee notice that we were no longer receiving information concerning the whereabouts of some prisoners we were representing. Colleagues from the Peace Committee's Information Department came to us and said: there are 131 people who have disappeared. And we started using that term". See The emergence of Disappearances as a Normative Issue, Presentation by José Zalaquett, University of Michigan, October 2010, available at: <http://humanrightshistory.umich.edu/files/2012/07/Zalquette1.pdf>, last visited 20 March 2019.

7 Specifically, long-term military governments which controlled the nations for the following periods between 1964 to 1990: Ecuador, 1963-1966 and 1972-1978; Guatemala, 1963-1985 (with an interlude from 1966-1969); Brazil, 1964-1985; Bolivia, 1964-1970 and 1971-1982; Argentina, 1966-1973 and 1976-1983; Peru, 1968-1980; Panama, 1968-1989; Honduras, 1963-1966 and 1972-1982; Chile, 1973-1990; Uruguay, 1973-1984; and El Salvador 1948-1984.

8 KYRIAKOW, Nikolaus, *An Affront to the Conscience of Humanity: Enforced disappearance in international human rights law*, European University Institute, 2012, p. 25.

9 Nevertheless, and according to scholars, enforced disappearances can also be found under the regime of Stalin, see: see VRANCKX, A. *A long road towards universal protection against enforced disappearance*, International Peace Information Service (IPIS), 2007, section 2; FINUCANE, B., *Enforced Disappearance as a Crime Under International Law: A Neglected Origin in the Laws of War*, The Yale Journal of International Law, 2010, 1 pp. 171-198, at p. 172; KIKHIA, J., *Enforced Disappearance in International Law: Case Study of Mansur Kikhia*, XXVII Journal of International Politics and Economics, 2009, pp. 27-39, at p. 28.

10 According to Wilhelm von Ammon, the expert who supervised the Night and Fog program (or in German is understood as "Nacht und Nebel Erlass" with the abbreviation NN) expressed: "the essential point of

7th of December 1941 by Adolf Hitler. The decree under this codename was directed against people considered to be political offenders and also members of the national resistance that were secretly transported to Germany. Consequently, these people vanished without leaving a trace and no information was given about their whereabouts¹¹.

In order to better understand the origins of such a crime, it is also important to mention the General Assembly Resolution 33/173. This Resolution states how enforced disappearance is analysed as a universal issue that has affected different parts of the world¹². This Resolution called upon the Human Rights Commission “to consider the question of disappeared persons with a view to making appropriate recommendations”¹³ and also called upon states to “devote appropriate resources to searching for such persons and to undertake speedy and impartial investigations”¹⁴. Consequently –after the adoption of a number of Resolutions by the UN Economic and Social Council (ECOSOC), the Commission on Human Rights, and the Sub-Commission on Prevention of Discrimination and Protection of Minorities¹⁵– the Working Group on Enforced or Involuntary Disappearances (WGEID) was created.

The WGEID was the first UN human rights mechanism with a universal

the NN procedure, in my estimation, consisted of the fact that the NN prisoners disappeared from the occupied territories and that their subsequent fate remained unknown”. See: Trials of War Criminals before the Nuremberg Military Tribunals under control council law N. 10 at 1042 (1949). See also HUHLE, Rainer, *Noche y Niebla, Mito y significado, Desapariciones forzadas de niños en Europa y Latinoamérica*, CASADO, María y LÓPEZ ORTEGA, Juan José (cords.), Universidad de Barcelona (2017).

11 SCOVAZZI, T; CITRONI, G., The struggle against enforced disappearance and the 2007 United Nations Convention, 2007, p. 4.

12 UN General Assembly Resolution 33/173, Disappeared persons, 1978. See KYRIAKOU, *An affront to the conscience of humanity: enforced disappearance in international human rights law*, European University Institute, Department of Law, Florence, June 2012, p. 40.

13 UN General Assembly Resolution 33/173, Disappeared persons, 1978, para. 2.

14 *Ibidem*, para. 1.

15 ECOSOC adopted the Resolution 1979/38, the Commission on Human Rights Resolution 20 (XXXVI), and the Sub-Commission Resolution 5B (XXXII). See also: KYRIAKOU, N., *An affront to the conscience of humanity: enforced disappearance in international human rights law*. Op. Cit., p. 41.

mandate. Furthermore, the WGEID was created with the primary aim of assisting the families in determining the whereabouts of their family members who had disappeared¹⁶. Presently, the WGEID is responsible for monitoring States in achieving their obligations agreed to under the Declaration on the Protection of All Persons from Enforced Disappearance¹⁷. In addition, and based on the last WGEID Report presented at the Human Rights Council¹⁸, the WGEID has processed a total of 57,149 cases from 108 States. Those, which are still unresolved, are 45,499 from ninety-two countries and only 404 cases have been resolved¹⁹.

In terms of the progressive development of criminalizing enforced disappearances, it can be said to be concentrated in three core international human rights instruments that focus on this particular issue: the 1992 Declaration on the Protection of All Persons from Enforced Disappearances²⁰, the 1994 Inter-American Convention on Forced Disappearance of Persons²¹, and the 2006

16 The WGEID was established by the Commission on Human Rights Resolution 20 (XXXVI).

17 See KYRIAKOU, N., An affront to the conscience of humanity: enforced disappearance in international human rights law. *Op. Cit.*, p. 41-47.

18 The United Nations Human Rights Council "is an inter-governmental body within the United Nations system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them. It has the ability to discuss all thematic human rights issues and situations that require its attention throughout the year. It meets at the UN Office at Geneva. The Council is made up of 47 United Nations Member States which are elected by the UN General Assembly. The Human Rights Council replaced the former UN Commission on Human Rights", available at: <https://www.ohchr.org/en/hrbodies/hrc/pages/aboutcouncil.aspx>, last visited 8 October 2019.

19 WGEID Report, Human Rights Council, A/HRC/39/46, 30 July 2018, note by the Secretariat, p. 1; UN News, Increasing cases of enforced disappearances, just the tip of the iceberg, UN experts group warns, 16 September 2016, available at: <https://news.un.org/en/story/2016/09/539172-increasing-cases-enforced-disappearances-just-tip-iceberg-un-experts-group>, last visited 14 March 2019.

20 Declaration on the Protection of All Persons from Enforced Disappearances, General Assembly, Resolution 47/133, A/RES/47/133, December 1992.

21 Inter-American Convention on Forced Disappearance of Persons, June 1994. It is important mentioning that this particular instrument has been adopted at the regional level even before the ratification of the UN Convention. In this respect, this event reflects the particular context of the region. The instrument was

International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED)²². Another important body that needs to be mentioned is the Committee on Enforced Disappearances (CED) which was established as a monitoring treaty body to supervise the implementation of the rights and obligations of the ICPPED²³.

The complexity of enforced disappearances makes it necessary to understand it in the light of other human rights violations²⁴. For example, other rights that may be infringed upon in the course of disappearances are the following: the right to being recognized as a person before the law; the right to liberty and security of the person; the right to not be tortured or subject to other cruel, inhuman, or degrading treatment or punishment; the right to life in cases where the disappeared person is killed; the right to an identity; the right to a fair trial and to judicial guarantees; the right to an effective remedy; the right to know the truth²⁵; the right to protection and assistance to the family; the right to an

created to provide specific mechanisms in order to protect the human rights of its population.

22 International Convention for the Protection of All Persons from Enforced Disappearances, General Assembly Resolution A/RES/61/177, UN Doc. A/HRC/RES/2006/1, December 2006. See also CITRONI, Gabriella, *Short-term enforced disappearances as a tool for repression*, *Diritto Internazionale Pubblico*, 2016.

23 The UN Convention was adopted on 20 December 2006 by the UN General Assembly and entered into force on 23 a December 2010 "The CED is a body of independent experts which are monitoring the implementation of the Convention. See OHCHR, Committee on Enforced Disappearances. As at 13 August 2019, 98 States had signed and 60 are parties of the Convention, see: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en, last visited 11 August 2019.

24 As a way of illustration, the connection between enforced disappearances with crimes against humanity can be traced to the Resolution 666 of the General Assembly of the OEA (or OAS—Organization of American States). Particularly, it expresses "that the practice of forced disappearances of persons in the Americas is an affront to the conscience of the hemisphere and constitutes a crime against humanity". See OEA, General Assembly, Proceedings Volume 1, OEA/Ser. P/XIII 0.2. Washington, 1983, p. 69. Examples of these connections can be found in: the Inter-American Convention on Forced Disappearances of Persons, 6th Preamble paragraph; article 18 of the 1996 International Law Commission draft Code of Crimes Against Peace and Security for Mankind; article 7, para 1 of the Rome Statute that established the International Criminal Court; article 5 of the UN Convention on the Protection of All Persons Against Enforced Disappearances.

25 The analysis on the right to know the truth is not in the scope of the present article. Nevertheless, in

adequate standard of living; and the right to health and to education²⁶. This leads to the following section, which describes Luciano Arruga's contemporary form of enforced disappearance²⁷ and how other human rights violations affect and influence the understanding of such a crime.

3. Argentinian context: the case of Luciano Arruga

Argentina during the military rule is known as a notorious example of enforced disappearances due to the on-going trials²⁸ to prosecute the perpetra-

the particular case of study, the right to know the truth constitutes a relevant factor for further academic research to be considered upon. See: Working Group on Enforced or Involuntary Disappearances, General Comment on the Right to the Truth in Relation to Enforced Disappearances, A/HRC/16/48.

26 Office of the UN High Commissioner for Human Rights, Fact Sheet No. 6/REV.3, Enforced or Involuntary Disappearances, pp. 3-4.

27 The concept was used by the Committee on Enforced Disappearances in its Concluding observations on the report submitted by Argentina, 12 December 2013, CED/C/ARG/CO/1, para. 15. In addition, "the [Inter-American Commission on Human Rights] and the UN Working Group express their deep concern over the fact that the serious crime of forced disappearances has continued in the era of democratic governments in the region, as well as over the metamorphosis of the phenomenon. While forced disappearances used to be part of "national security" strategies employed against so-called subversive or terrorist groups in the context of serious and massive human rights violations, currently these serious crimes are taking place in other contexts. Organized crime groups such as drug cartels and human trafficking organizations are using disappearances, in some cases in collaboration with State agents, which constitutes forced disappearance". See Inter-American Commission on Human Rights, forced Disappearances: significant progress and major challenges in the region. August 2015, available in: http://www.oas.org/en/iachr/media_center/PReleases/2015/098.asp. In addition, the concept of social disappearances, analyzed by Gatti, explores forms of disappearances in ordinary situations such as being invisibilized, forgotten in contexts of extreme poverty or in situations of human trafficking or slavery. See: GATTI, G., IRAZUZTA, I., y MARTÍNEZ, M., 2019. Introducción. *La desaparición forzada de personas: circulación transnacional y usos sociales de una categoría de los derechos humanos*. Oñati Social Legal Series [online], 9 (2), 145-154. Available at: <https://doi.org/10.35295/osls.iisl/0000-0000-0000-1018>

28 According to Human Rights Watch Events of 2018, the Attorney General's Office reported 3,007 people charged, 867 convicted, and 110 acquitted of crimes allegedly committed by Argentina's last military junta.

tors responsible for the enforced disappearances while in dictatorship²⁹. On the other hand, the Argentinian international relevance and its distinct characteristics are related to the brutal dictatorship that involved human rights violations such as disappearances, summary executions, torture, and unlawful deprivation of freedom. Particularly, and as central features of the repression, the military regime is being blamed for the abduction of young people and infants, some born during the captivity of their mothers³⁰; the massive repressions; and the creation of 365 clandestine detention centres³¹.

These atrocities provided a fertile ground for the emergence of numerous human rights organizations, such as Grandmothers and Mothers of Plaza de Mayo, Ecumenical Movement for Human Rights (MEDH), Centre for Legal and Social Studies (CELS), Relatives of Political Detainees–Disappeared Persons (Familiares), whose aim is finding the whereabouts of the disappeared. The

Of 599 cases alleging crimes against humanity, judges had issued rulings in 203. [...] As of November 2018, 128 people who were illegally taken from their parents as children during the 1976–1983 dictatorship had been identified. Many were reunited with their families. See Human Rights Watch, Event of 2018, available at: <https://www.hrw.org/world-report/2019/country-chapters/argentina>

29 Argentina's willingness to address enforced disappearances is shown by being one of the first signatory member States of the UN Convention. In addition, according to scholars, the prosecution of the perpetrators is the result of the following elements: "strong HROs (Human Rights Organizations), executives who support human rights, a significant amount of judges willing to prosecute, sensitivity to the international human rights law and to regional developments and IAHR (Inter-American Human Rights) system and effective memory policies". See BALARDINI, Lorena, CELS – Universidad de Buenos Aires, Prepared for delivery at the 2014 Congress of the Latin American Studies Association, Chicago, IL May 21–24, 2014, p. 20.

30 According to Kirsten Weld, "In Argentina, pregnant women detained in torture centres like the Navy School of Mechanics [...] (ESMA), were kept alive long enough to give birth, whereupon their infants were taken away and placed with army families in order to 'eradicate the seed' of subversion". See: WELD, Kirsten, *Forced Disappearance in Latin America, Because they were taken alive*, Revista, Harvard Review of Latin America, available at: <https://revista.drclas.harvard.edu/book/discovering-dominga>, last visit 20 March 2019. See also: BYSTROM, Kerry; WERTH, Brenda, *Stotel Children, Identity Rights and Rhetoric*, Berlin, available at: <http://www.jaonlinejournal.com/archives/vol33.3/2Bystrom.pdf>, last visited 10 March 2019.

31 See CONADEP, *Nunca más report and indictment in case N 2637/04 Vaello, Orestes Estanislao y otros s/ privación ilegal de la libertad agravada*.

Permanent Assembly for Human Rights (APDH) and the Argentine League for the Rights of Mankind (LADH) existed before the military coup. Their primary roles were to find the whereabouts of the disappeared, their prompt release, international reporting, and the peremptory request for criminal accountability for past human rights violations during the military era. The symbolism and activism of social movements were, during that time and at present, transcendental key players in forming the public discourse and shaping the memory of the Argentinian population³².

Since December 1983, Argentina has had an elected government and its democracy has slowly reinstated. In terms of truth³³ and justice³⁴, prosecutions of former officials implicated in crimes were possible due to a series of actions promulgated by the Congress, the Supreme Court, and federal judges annulling amnesty laws of "full stop" and "due obedience"³⁵. Confronting past abuses resulted in 3007 people charged, 867 convicted, 110 acquitted of crimes allegedly committed by Argentina's last military

32 As Huneus describes it, "the human rights movements of the 1980s, which focused on the violations of fundamental rights such as torture and disappearances, did not spill over into other areas of rights. The dictatorship-era nongovernmental organizations have only in recent years taken on new kinds of causes, "such as the ones who assisted in the search of Luciano Arruga".

33 President Alfonsín, immediately after winning the 1983 election, organized the National Commission on the Disappearances of Persons (CONADEP) in order to investigate the disappearances and deaths that occurred during the military dictatorship.

34 See FILIPPINI, Leonardo, *La persecución penal en la búsqueda de justicia*, in *Hacer justicia: nuevos debates sobre el juzgamiento de crímenes de lesa humanidad en la Argentina*, 1 ed. Buenos Aires: Siglo Veintiuno Editores, 2011; VERBITSKY, Horacio *Entre olvido y memoria*, in ANDREOZZI, G. (coord.), *Juicios por crímenes de lesa humanidad en Argentina*, Atuel, Buenos Aires, 2011; FERNANDEZ MEIJIDE, *La historia íntima de los derechos humanos en Argentina*, Sudamericana, Buenos Aires, 2009, among others.

35 "The three-judge appeals panel unanimously affirmed a March 6 decision by Federal Judge Gabriel Cavallo that found the 1986 and 1987 amnesty laws to be unconstitutional and contrary to Argentina's international human rights obligations. The Federal Court ruling allowed the first trial since 1987 of an officer for torture and 'disappearances' committed during Argentina's so-called dirty war to proceed, and opened the door to further prosecutions". See Human Rights Watch, *Reluctant Partner: the Argentine Government's Failure to Back Trials of Human Rights Violations*, January 2006.

dictatorship. Out of a total of 599 cases of crimes against humanity, 203 had rulings issued by judges³⁶.

Despite the redemocratization of Argentina over the last thirty-six years, human rights violations such as torture, disappearances, and murder still persist³⁷. Those practices, which were also conducted under the military dictatorship, still continue to affect the Argentinian population. By way of illustration, and according to the CELS and the Coordinator Against Police and Institutional Repression (CORREPI)³⁸, more than 200 people have disappeared by cause of security forces in Argentina between 1983 and 2018³⁹. Approximately 6564 people have been killed by the State and its security forces since the democratic era from 1983 to February 2019⁴⁰.

For the purpose of this article, after describing the context of Argentina from a historical perspective, it is necessary to analyse the case of Luciano Arruga. The push for addressing his disappearance can be attributed not only to the context where the crime took place but it can also be attributed to a strong network of human rights organizations and his family who together played a key role in searching for the truth in the pursuit of justice⁴¹.

36 See Human Rights Watch, Events of 2018, available at: <https://www.hrw.org/world-report/2019/country-chapters/argentina>, last visited 12 August 2019. See also, FILIPPINI, Leonardo, *La persecución penal en la búsqueda de justicia...*, Op. Cit., p. 21.

37 See LESSA, F. *Beyond transitional justice: exploring continuities in human rights abuses in Argentina between 1976 and 2010*, Journal of human rights practice, 3(1), 25-48, 2011.

38 CORREPI means Coordinadora contra la Represión Policial e Institucional (Coordinator Against Police and Institutional Repression).

39 CORREPI, 2012. Informe anual de la situación represiva. Available at: <http://correpi.lahaine.org/?p=1165>, last visited 10 August 2019, also see CORREPI, A las calles contra la represión, Antirrepresivo 2018, informe de la situación represiva nacional, p. 29.

40 CORREPI, A las calles contra la represión..., Op. Cit., p. 21. See also CELS (Centre for Legal and Social Studies) Derechos Humanos en Argentina Informe 2019. Buenos Aires: Siglo Veintiuno.

41 As a consequence of their exposure, they have often been subject to reprisals and harassment not only by the security forces but also from the people of Luciano Arruga's neighbourhood.

4. The case of Luciano Arruga

Despite the fact that the Judiciary of Argentina has not held anyone responsible for the disappearance of Luciano Arruga, the case is considered a crime of enforced disappearance⁴². Due to many reasons, which will be described in the following section, there is strong evidence presented in the judicial case that he was illegally deprived of his liberty by police agents of Lomas del Mirador followed by the refusal to provide information of his whereabouts⁴³. Before his disappearance, and in order to better understand the case, Luciano Arruga's background and the event leading up to the case will be reconstructed in the following paragraphs.

Luciano Arruga, a 16-year-old boy, was last seen on the 31st of January 2009, at around 1:30 am close to his house. Luciano Arruga lived in a 6 square meter brick house with his mother and two brothers in Lomas del Mirador, La Matanza, Buenos Aires Province. Luciano Arruga's house, among other necessities, did not have a toilet⁴⁴. Consequently, Luciano Arruga, in order to

42 "The case of Luciano Arruga has been recognized by the three branches of the State as a case of enforced disappearance", see CELS, 24 April 2014, Habeas Corpus por la desaparición forzada de Luciano Arruga.

43 See CELS, Extracto del habeas corpus presentado por el Centro de Estudio Legales y Sociales en representación de Luciano Arruga. Also, see: FERNÁNDEZ, Bettina; ENCINA, Diego, *Desaparición forzada de persona: una herida que vuelve a sangrar*, Pensamiento Penal, also see: CFCP, Sala IV, 11/07/2014, "ARRUGA, Luciano Nahuel s/ recurso de casación", causa N°19327/2014, Reg. N°1447/14. The Judge Juan Carlos Gemignani expressed in Luciano Arruga's case that "in cases such as this one, in which serious human rights violations can be observed, Argentina is internationally obliged to clarify the facts and to identify those responsible, punish such atrocious acts and grant compensation to the families, especially in such a case of enforced disappearance". He also argued that "the State needs to adopt measures with the aim at complying with the international standards and promptly investigate the cause and conditions of the disappearance of the minor Luciano Nahuel Arruga, while informing his family members, who have the right to know the truth and punish those responsible for such acts." Likewise, Judge Gustavo M. Hornos also argued that "the Argentinian State is obliged to investigate and sanction those responsible whenever there are reasonable grounds to suspect that a person has been subjected to enforced disappearances".

44 Quién oyó gritar a Luciano Arruga?, Revista Mu, 28 October 2019, available at: <http://www.lavaca.org/mu29/quien-oyo-gritar-a-luciano-arruga/>, last visited 2 August 2019.

use a restroom⁴⁵, used to go to the petrol station nearby (the same place where police officers used to stop)⁴⁶, or alternatively to his sister, Vanesa's, house which was ten blocks away from his house. The neighbourhood "12 de Octubre" is considered to be quiet, residential, and have good infrastructure. One of the "two exceptions" is "La Villa 12 de Octubre", where Luciano Arruga's house is specifically located. "La Villa 12 de Octubre"⁴⁷ has been described as a small and informal shantytown, with a very high population density and narrow streets and houses when compared to the entire area of Lomas del Mirador⁴⁸. The neighbours from the wealthier areas demanded more security, and in order to fulfil their wishes, a separate police force was created⁴⁹.

According to his older sister, Vanesa, and mother, Mónica Raquel Alegre, on numerous occasions the police offered Luciano Arruga to work for them

45 CELS, Extracto del habeas corpus presentado por el Centro de Estudios Legales y Sociales en representación de la familia de Luciano Arruga, p. 2, available at: <http://www.cels.org.ar/common/documentos/HC%20Luciano%20Arruga.pdf>, last visited 2 August 2019.

46 The corner between the streets of Avellaneda and Mosconi, is the location of the Petrol Station that Luciano Arruga used and was also frequently used by the police officers. Based on a witness statement: "in January 2009 various police cars were stopping by the petrol station. There were so many that it actually looked like a Police Station" (Victorio Sequeira, fs. 3522).

47 The CESCR defines poverty as: a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security, and power necessary for the enjoyment of an adequate standard of living and other economic, social, and cultural rights". See: CESCR, Poverty and the International Covenant on Economic, Social and Cultural Rights, para. 8, Statement adopted by the CESCR on 4 May 2001, E/C.12/2001/10.

48 Portal Argentina, Barrio 12 de Octubre (Lomas del Mirador), available at: [https://nuestraciudad.info/portal/Barrio_12_de_Octubre_\(Lomas_del_Mirador\)](https://nuestraciudad.info/portal/Barrio_12_de_Octubre_(Lomas_del_Mirador)). La_Matanza.BA, last visited 2 August 2019. To better understand the social context of Lomas del Mirador, see Rodríguez Alzueta, La vecinocracia, el punitivismo de abajo, expresión antipolítica de la democracia, 10 February 2019, El cohete a la luna, Also see: RODRIGUEZ ALZUETA, Esteban, Vecinocracia, Olfato Social y linchamientos, Universidad de Quilmes, 2019.

49 On the 28th of December 2011, the police station was finally closed and transformed a month later into a Memory space as a symbol of the defense of human rights. See ANRed, Cierre del Destacamento policial de Lomas del Mirador, 28 December 2011, available at: <https://www.anred.org/?p=21626>, last visited 2 August 2019.

"illegally", but he refused to do so. As a consequence of his denial, the police arrested him on at least two occasions. The first time he was arrested was on the 22nd of July 2008, where he was taken to the police station in Don Bosco. The second time he was arrested, exactly two months later, was on the 22nd of September 2008. On this occasion, he was taken to the police station in Destacamento de Lomas del Mirador, and based on his sister's statement, he was beaten up while she was waiting for him to be released⁵⁰. After the incident, the same police officers stopped Luciano Arruga repeatedly. It is worth mentioning that the police station in Destacamento de Lomas del Mirador where Luciano Arruga was arrested and taken to was at that time not authorized to detain persons, therefore in that respect, there was no legal framework to have Luciano Arruga deprived of his liberty.

To better understand the context of Luciano Arruga's disappearance, according to CELS in terms of national security in the Buenos Aires Province and Capital Federal, there was an increase in the criminalization of poorer sections of the population. For example, people from excluded neighbourhoods, boys of poorer sectors, and also the homeless were targeted by official repressive policies, especially during 2009⁵¹.

According to the judicial case, the day Luciano Arruga disappeared, his mother, Mónica, filed a missing person's report at the police station in Lomas del Mirador, where they processed it as "determination of the fate and whereabouts" of a missing person⁵². That morning Mónica started looking for her son at 5am, not only in the "12 de Octubre" neighbourhood, but also in various hospitals and police stations in the area.

Meanwhile, on the same day of Luciano Arruga's disappearance, at 3:21am

50 On the 7th of January 2013, Julio Diego Torales was arrested because of his involvement in the first detention and torture suffered by Luciano Arruga in 2008.

51 Garber, Carolina, Pol, Luciana, *Violencia institucional y políticas de seguridad: refuerzo de las corporaciones y estigmatización de los sectores más vulnerables de la sociedad*, CELS, Informe 2010, Derechos Humanos en Argentina, p. 125.

52 Not only did Luciano Arruga not have an identification card when he was victim of torture, but he also did not have one when he was killed the night of the 1st of February 2009, see Télam, Luciano Arruga, el chico que nadie quiso buscar, 28 December 2014.

a car on the highway (in the crossing of General Paz and Emilio Castro) hit Luciano Arruga⁵³. As a result of the accident, he was taken to the Santojanni Hospital. According to the driver who was involved in the accident, Luciano Arruga “was running desperate, disoriented, as if he was escaping from somebody”⁵⁴. Another witness at the scene, also mentioned in the judicial case that even though he saw a police car, the police agents stayed away from the scene⁵⁵. The same night of the accident, Luciano Arruga’s family was also at the hospital where he was placed. Unfortunately, they were informed that there was only one man who entered the hospital, between the ages of twenty-five and thirty, who was run down by a car. Because the age did not match, the family kept looking elsewhere. Luciano Arruga died on the 1st of February 2009 at 5:30 am, and neither the family, nor the three branches of the State were aware of it⁵⁶. Because he did not have any kind of personal document for identification⁵⁷, he was initially registered in the hospital without a name. Subsequently, Luciano Arruga’s fingerprints were taken and he was finally buried in May of 2009 in the Chacarita cemetery in an unmarked grave. As Luciano’s identity was unknown at his burial, the family continued the search of his whereabouts.

In February of the same year, Mónica filed a habeas corpus petition arguing the disappearance of her son during the early morning hours of the 31st of January was unlawful. Furthermore, the mother also claimed the constant

53 According to the person who hit Luciano, “he was running desesperated, as if he was escaping from someone”. See: *La Nación*, Reconstruyeron el momento en el que Luciano Arruga fue atropellado, 4 December 2014.

54 *Télam*, Luciano Arruga, el chico que nadie quiso buscar, 28 December 2014.

55 *Ídem*. See also: *La Nación*, Reconstruyeron el momento en el que Luciano Arruga fue atropellado, 4 December 2014.

56 The three branches of the State of Argentina are the Executive, the Legislative, and the Judicial Powers

57 According to *Infojus Noticias*, Luciano Arruga did not renovate renew his identification card or his passport when he became 8 years old. He only had a birth certificate but it was without his fingerprints. See: *Infojus Noticias*, Paso a paso cómo identificaron el cuerpo de Luciano Arruga, 18 October 2014, available at: <http://www.archivoinfojus.gov.ar/nacionales/paso-a-paso-como-identificaron-el-cuerpo-de-luciano-arruga-6097.html>, last visited: 2 August 2019.

harassment and death threats Luciano Arruga received from the police officers months before his disappearance were also unlawful⁵⁸. The Guarantee Court N 5 of La Matanza rejected Mónica's habeas corpus petition. At the same time, the missing person's report filed by Mónica at the police station in Lomas del Mirador was still in active. After five days, the case was referred to Roxana Castelli in the Investigation Unit (UFI N7), who delegated the case to the police suspected of his disappearance. For the next forty-five days, the members of the police who were searching for Luciano Arruga were the same who have been accused of his disappearance⁵⁹.

After the delegation of Luciano Arruga's case to the suspected police, the general Prosecutor of La Matanza, Patricia Ochoa, decided to delegate the criminal case to Prosecutor Celia Cejas⁶⁰. In order to investigate the fate of Luciano Arruga, Prosecutor Cejas conducted an investigation with dogs and concluded that he had been at the police station N 8a (Comisaría 8a)⁶¹ and in one of the patrol cars⁶². After four years and numerous irregularities regarding Luciano

58 Poder Judicial de la Nación, Cámara Federal de Casación Penal – Sala 4, 4 FSM, 19327/2014/CFC1, Registro.

59 According to CELS, "the registration books and the patrol cars were cleaned with bleach in order to hide information", see CELS: habeas corpus por la desaparición forzada de luciano arruga, 24 April 2014, available in: <https://www.cels.org.ar/web/2014/04/habeas-corpus-por-la-desaparicion-forzada-de-luciano-arruga/>

60 The reason for the delegation was due to the violation of the Resolution 1390 of the General Prosecution that states the obligation to not delegate the investigation to the suspected police in these types of cases.

61 The Clandestine detention centre, commonly known as Sheraton or Embudo (1976–1978) was the place where kidnappings and homicides occurred. Among the kidnapped were: Mercedes Joloidovsky, Juan Carlos Guarino, Marcela Patricia Quiroga (she was twelve years old at that time), Juan Carlos Scarpati, Paula Elena Ogando Schuff, Julia Estela Sarmiento, Delia Bisutti, and María Cristina Ferrario. También estuvieron secuestrados y permanecen desaparecidos Adela Esther Candela de Lanzillotti, Pablo Bernardo Szir, Luis Salvador Mercadal, Juan Marcelo Soler Guinard and partner Graciela Moreno, José Rubén Slavkin, Héctor Daniel Klosowski, Roberto Eugenio Carri and partner Ana María Caruso de Carri and Héctor Germán Oesterheld. See CELS, comienza el juicio por el Sheraton, un centro clandestino que funciona en la matanza, memoria, verdad y justicia, 10 November 2017, available at: <https://www.cels.org.ar/web/2017/11/comienza-el-juicio-por-el-sheraton-un-centro-clandestino-que-funciono-en-la-matanza/>, last visted, 2 August 2019.

62 The family of Luciano Arruga at that point in the investigation were also investigated for a year and a half by the judge and the prosecutor, as suspects of the disappearance. See: CELS: habeas corpus por la

Arruga's disappearance, in January 2013, the investigation changed to "enforced disappearance" and was transferred to the Federal Court of Judge Salas. This was, among other reasons, due to the statements of Luciano Arruga's friends that helped build the leading theory of public authority participation which qualified it as an enforced disappearance⁶³.

The family, with the help of the APDH in La Matanza and CELS, once again filed a habeas corpus petition. After the rejections of the First Instance and the Second Instance Court, the Court of Cassation granted the appeal and concluded that "the criminal investigation doesn't prevent or replace the Habeas Corpus, since the constitutional action is the ideal legal instrument to guarantee the right of Luciano Arruga's relatives to obtain the information..."⁶⁴. In addition, the judges stressed the State to ensure the adoption of all possible measures in order to determinate what happened to Luciano Arruga⁶⁵. Among other actions coordinated by the National Ministry of Security, fingerprint comparisons were used. Months after the submission of the habeas corpus petition and after five years and eight months of his search, the body was finally rediscovered on the 17th of October 2014⁶⁶. Presently, the Judiciary of Argentina has yet to determine who is responsible for the enforced disappearance of Luciano Arruga.

In that respect, even though those responsible for Luciano Arruga's enforced disappearance have not been found, the State of Argentina is bound to

desaparición forzada de luciano arruga, 24 April 2014, available at: <https://www.cels.org.ar/web/2014/04/habeas-corpus-por-la-desaparicion-forzada-de-luciano-arruga/>

63 Página 12, giro en el caso de la desaparición de Luciano, 10 January 2013.

64 CIJ, Centro Información Judicial, La Cámara de Casación hizo lugar a una acción de hábeas corpus por la desaparición forzada de Luciano Arruga, 12 July 2014, available at: <https://www.cij.gov.ar/nota-13735-La-C-mara-de-Casaci-n-hizo-lugar-a-una-acci-n-de-h-beas-corpus-por-la-desaparici-n-forzada-de-Luciano-Arruga.html>, last visited 2 August 2019.

65 Ídem.

66 After the body of Luciano Arruga was found, the family requested the impeachment of the prosecutors Castellí and Cejas along with the impeachment of the Banco which the Jury for the Prosecution of Magistrates approved" in August 2015.

respect, protect, and fulfil human rights⁶⁷. Consequently, when the domestic legal proceedings fail to address human rights abuses, international human rights standards are available not only at the regional level, but also at the international level in order to ensure the implementation, respect, and enforcement of those human rights standards at the domestic level. Consequently, the following section will attempt to briefly describe Argentina's domestic legal system while also analysing the international framework that is related to the case of Luciano Arruga.

5. Analysis of the International Human Rights normative framework in the case of Luciano Arruga

International human rights provide a framework of norms, which could shed some light on the case study. In this section, three elements or features are highlighted to better understand the components of the case, such as enforced disappearances, children's rights, and economic, social and cultural rights⁶⁸. While this section attempts to address the legal framework applicable to Luciano Arruga's case, the scope of this article is not to analyze the entire spectrum of human rights⁶⁹.

67 "By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect, and to fulfil human rights". See: the Foundation of International Human Rights Law, available at: <https://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>, last visited 1 November 2019.

68 The obligation of States to economic, social, and cultural rights, according to Abramovic and Courtis can be described as the following: to take immediate measures, to guarantee minimum essential levels of rights, the obligation of progressivity, and the prohibition of regressivity. See: ABRAMOVICH, Victor, COURTIS, Christina, *Hacia la exigibilidad de los derechos económicos, sociales y culturales. Estándares internacionales y criterios de aplicación ante los tribunales locales*, p. 34. Available at: <http://www.oda.ac.org/documentos/1366995147.pdf>, last visited 10 August 2019. See also: PINTO, M.; SIGAL, M, *Influence of the ICESCR in Latin America* in MOECKLI, D.; KELLER, H.; HERI, C. (eds.) *The Human Rights Covenants at 50: their past, present and future*, Oxford University Press, 2018.

69 The scope of this article was not to analyse the regional system of human rights protections, even though the Latin American region was the forefront not only for the debates that led to the adoption of the UN

Nevertheless, it is worth mentioning that in 1994, Argentina incorporated into its Constitutional reform nine international human rights treaties and two human rights declarations that have constitutional standing⁷⁰. Consequently, ordinary law cannot trump international human rights norms. The Constitution functions as a mirror regarding the scope, norm, and substance of these human rights treaties. Roberto Gargarella describes how the new Constitution embraced a strong commitment to human rights and, as a sign of recognition, increased protections of basic human rights. The Constitution assigned human rights treaties the same level of authority as the Constitution itself, sharing its supremacy while also defining its position over the laws⁷¹. The adoption of international

Declaration on the Protection of all Persons from Enforced disappearance in 1992, but also for its own jurisprudential doctrine and its unique historical context. See GARCÍA RAMÍREZ, Sergio, in BURGORGUE-LARSEN, Laurence and UBEDA DE TORRES, Amaya, *Les grandes décisions de la Cour interamericaine des droits de l'homme*, Bruzlant, Bruxelles, 2008, p. XXI; see also CRENZEL, Emilio, *La historia política del Nunca Más. La memoria de las desapariciones en la Argentina*. Siglo XXI, Buenos Aires, 2008; DULITZKY, Ariel, *The Latin-American Flavor of Enforced Disappearances*, Chicago Journal of International Law, 2019. The Interamerican Court's most notorious cases of enforced disappearances are Velásquez-Rodríguez v. Honduras (I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4.), Case of Godínez-Cruz v. Honduras, Merits, Judgment of January 20, 1989. Series C No. 5., Case of Caballero-Delgado and Santana v. Colombia Merits, Judgment of December 8, 1995. Series C No. 22.; Chitay Nech and others v. Guatemala. Analysing the jurisprudence of the Human Rights Committee was also not within the scope of this article.

70 Article 75, inc. 22: the American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Pact on Economic, Social and Cultural Rights; the International Pact on Civil and Political Rights and its empowering Protocol; the Convention on the Prevention and Punishment of Genocide; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Woman; the Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments; the Convention on the Rights of the Child. See also: ABRAMOVICH, Victor, COURTIS, Christina, *Hacia la exigibilidad de los derechos económicos, sociales y culturales. Estándares internacionales y criterios de aplicación ante los tribunales locales*, p. 30. Available at: <http://www.oda-alc.org/documentos/1366995147.pdf>, last visited 10 August 2019.

71 GARGARELLA, Roberto, *Lo "Viejo del "Nuevo" constitucionalismo latinoamericano*, Yale University p. 19,

human rights treaties also means the acceptance of human rights international bodies and their interpretation in the international sphere⁷². In addition, the application of international human rights law in Argentina, as Leonardo Filippini describes it, can also be understood as "the recognition of a constitutional practice that acknowledges the existence of principles and rules not written in the text of the Constitution"⁷³. The mentioned recognition of human rights treaties by the Constitution can also be understood as challenges in terms of implementation and impact. This is despite the fact that Argentina's internalization of human rights instruments is internationally recognized in prosecuting those who committed crimes against humanity during the military dictatorship⁷⁴.

In terms of international law, enforced disappearances are defined by article 2 of the International Convention for the protection of all persons from enforced disappearance "as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law". The UN Convention⁷⁵ is the first internationally binding

available at: https://law.yale.edu/system/files/documents/pdf/SELA15_Gargarella_CV_Sp.pdf, last visited 16 August 2019. According to Clérico and Novelli, the strong connection between international human rights law and domestic law is not only due to the constitutional framework, but also to the domestic case law giving meaning to this relationship and "the role of human rights movements, organizations, and defenders who have strengthened the effectiveness of human rights norms and the compliance with the decisions of international human rights bodies...". See CLÉRICO, Laura; NOVELLI, Celeste *"Argentina: The implementation of international human rights and the quest of compliance"*, in: GORTE, Rainer, MORALES, Mariela, PARIS, Davide, in: *Research Handbook on Compliance in International Human Rights Law*, Edward Elgar, Londres (2019) (aceptado en edición), p. 4.

72 ABRAMOVICH, Víctor, COURTIS, Christina, *Hacia la exigibilidad de los derechos económicos, sociales y culturales. Estándares internacionales y criterios de aplicación ante los tribunales locales...*, Op. Cit. p.p.. 30/31.

73 FILIPPINI, Leonardo, *La persecución penal en la búsqueda de justicia...*, Op. Cit., p. 21.

74 Ídem. Also see: KECK, M.E.; SIKKINK, K., *Activists Beyond Borders: Advocacy Networks in International Politics*, Cornell University Press, Ithaca-London, 1998.

75 International Convention for the Protection of All Persons from Enforced Disappearance.

document that focuses on enforced disappearances. State parties are obliged to prevent such a practice (article 17, 21 and 23), investigate and sanction those responsible (articles 3, 8, 12 and 24.6), while also adopting measures to ensure protection and victim's rights (articles 12, 18, 19, 20 and 24). In addition, the instrument states that the practice of enforced disappearance as widespread or systematic crime constitutes a crime against humanity (article 5). Article 25 (a), of the UN Convention concerns the "wrongful removal of children who are subjected to enforced disappearances". Fact Sheet No. 6 of the Office of the United Nations High Commissioner for Human Rights (OHCHR) clearly refers to children who are subjected to enforced disappearances as individuals⁷⁶, and the document states that "Children can also be victims of enforced disappearances, both directly and indirectly"⁷⁷.

In regard to the scope of the Convention on the Rights of the Child (CRC) and according to the General Comment No. 7, there are general principles identified by the Committee on the Rights of the Child that provide a framework for the implementation and interpretation of all rights within the UN Convention⁷⁸: the right to be heard, which is the right to freely express their views with due weight (article 12); the best interest of the child must be a primary consideration in all actions involving children (article 3.1); the right to life, survival, and development, which should be understood in a broader sense taking into account social, spiritual, psychological, and emotional development of the child, such as the right to an adequate standard of living (article 6, including article 27 the right to play and article 31); and the right to equality or non-discrimination, which places an obligation on the State to apply all the rights of the Committee on the Rights of the Child to all children at all times (article 2).

The Committee on the Rights of the Child established that States are required to provide appropriate assistance to parents in the development of their child-rearing responsibilities (articles 28.3 and 18.3), which also includes assisting parents in "providing living conditions necessary for the child's development (article 27.2) and to ensure children's protection and care (article

76 OHCHR, Enforced or Involuntary Disappearances, Fact Sheet No. 6/REV.3, p. 9.

77 OHCHR, Enforced or Involuntary Disappearances, Fact Sheet No. 6/REV.3, p. 4.

78 Committee on the Rights of the Child, General Comment No. 7, 2005, CRC/C/GC/7/Rev.1.

3.2)"⁷⁹. Of special interest is Article 19 which addresses all forms of violence against children (physical and mental), and requires States to implement social, administrative, and educational measures to protect children, especially those who are in more vulnerable situations (article 20, 22, and 23). The enforced disappearance of a child, as the WGEID General Comment No. 12 expressed it, "constitutes an exacerbation of the violation of the multiplicity of rights protected by the Declaration..."⁸⁰.

Furthermore, the WGEID expresses the intrinsic connection between enforced or involuntary disappearances and economic, social, and cultural rights. A study conducted by the WGEID explicitly states the indivisibility, interdependency, and interrelation of civil and political rights, as well as economic, social, and cultural rights. In other words, the violation of one set of rights usually means the violation of the other. While enforced disappearances are normally understood as violations against civil and political rights, they should also be analysed through the lenses of economic, social, and cultural rights, which provide a more comprehensive approach in examining Luciano Arruga's case. The WGEID, from its foundation, has highlighted the connection between enforced disappearances; economic, social, and cultural rights; and the means of affecting such rights of the disappeared person as well as his family and others⁸¹.

Regarding the legal obligations of States, the WGEID takes into consideration the analysis of the causes of enforced disappearances and the context in which the crime takes place⁸². According to the Declaration on the Protection of All Persons from Enforced Disappearances articles 2 and 19, States are obligated to prevent, eradicate, and seek those responsible for the enforced disappearance

79 *Ibidem*, para. 20.

80 General Comment on children and enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances at its ninety-eight session (31 October – 9 November 2012), A/HRC/WGEID/98/1, 14 February 2013, preamble. See also: United Nations study on violence against children (A/61/299, 29 August 2006).

81 See E/CN.4/1492, para.165, E/CN.4/2006/56/Add.1, para. 59, A/HRC/22/45, para. 51, A/HRC/WGEID/98/2, A/HRC/WGEID/98/1.

82 Involuntary Disappearances and Economic, Social and Cultural Rights, 9 July 2015, A/HRC/30/38/Add.5, para. 6, See also E/CN.4/1986/Add.1, para. 42.

and provide reparation, social assistance, and rehabilitation to the family affected. It should be noted that those measures by the State should also address the structural context in terms of the vulnerability that lies beneath the disappearance in order to secure the “prevention, eradication, investigation, punishment, reparation and guarantees of non–repetition of enforced disappearances”⁸³.

The people, especially those in vulnerable situations, who file a criminal case of enforced disappearance, have the right to an impartial investigation conducted by an independent State authority. This is done in order to identify those responsible for the crime (article 13 of the Declaration), and effectively criminalize them in the domestic legal system (article 4 of the Declaration). The obligation to investigate the crime should also contemplate the analysis of the economic, social, and cultural rights affected, as well as the context in which the crime took place⁸⁴. In regard to reparation, all rights that have been violated should be taking into consideration, such as legal and social rehabilitation, and the restoration of personal liberty, family life, citizenship, employment, and property, among others⁸⁵. The family affected should also be supported by the State and count on social benefits such as health care, special education programmes, and psychological assistance⁸⁶. States are obliged, when the enforced disappearance takes place, to provide immediate, adequate, and effective reparation to victims⁸⁷.

What is of particular interest to Luciano Arruga’s case is the circumstance of living in extreme poverty in which victims of enforced disappearances typically live in. As the WGEID expressed, “those extreme poverty conditions are considered both as a cause and a consequence of enforced disappearances”⁸⁸.

83 *Ibidem*, para. 44.

84 Report of the Working Group on Enforced or Involuntary Disappearances, Addendum, Study on enforced or involuntary disappearances and economic, social and cultural rights, 9 July 2015, A/HRC/30/38/Add.5, para. 6, see also E/CN.4/1986/Add.1, para. 54.

85 See E/CN.4/1998/43, para. 68 and A/HRC/22/45, paras. 46.

86 Report of the Working Group on Enforced or Involuntary Disappearances, Addendum, Study on enforced or involuntary disappearances and economic, social and cultural rights, 9 July 2015, A/HRC/30/38/Add.5, para. 60. Also see A/HRC/22/45, paras. 53–54 and 59.

87 *Ídem*.

88 *Ibidem*, para. 2, See also (E/CN.4/1986/18/Add.1).

In other words, the dissatisfaction with economic, social, and cultural rights is a transcendental component that influence or contributes to enforced disappearances⁸⁹. The Committee on Economic, Social and Cultural Rights defines the concept of poverty as multidimensional and as

“... a human rights condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights”⁹⁰.

The lack of effective enjoyment of economic, social, and cultural rights within a society can be caused by the limited legal access to claim other human rights violations. When such poverty conditions prevailed and those impoverished people cross paths with the criminal justice system, the result is that they are not able to question or contest the criminal justice process they come up against (in terms of arrest, trial, conviction, detention, and release)⁹¹. It is important to mention that States are obliged to respect, protect, and fulfil the right to an effective remedy,⁹² regardless of the economic, cultural, and social stance

89 Ibidem, para. 6. See also E/CN.4/1986/Add.1, paras. 93-100 and 110.

90 CESCR: Poverty and the International Covenant on Economic, Social and Cultural Rights, para. 8, Statement adopted by the CESCR on 4 May 2001, E/C.12/2001/10.

91 Report of the Special Rapporteur on extreme poverty and human rights, Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives, 9 August 2012, A/67/278.

92 See Universal Declaration of Human Rights article 8; International Covenant on Civil and Political Rights, article 2.3; Convention on the Elimination of All Forms of Racial Discrimination, article 6; Convention against Torture, article 13 and 14); the right to a fair trial (e.g., Universal Declaration of Human Rights, article 10; International Covenant on Civil and Political Rights, articles 14-15); and the right to equality and equal protection of the law (e.g., Universal Declaration of Human Rights, article 7; International Covenant on Civil and Political Rights, article 26); the right to equality before the courts and tribunals (e.g., International Covenant on Civil and Political Rights, article 14.1); the right to legal assistance (e.g., Universal Declaration of Human Rights, article 11.1; International Covenant on Civil and Political Rights, article 14.3 (b)-(d)).

of the person affected⁹³. Impunity, which often prevails in cases of enforced disappearances, is the result of a lack of accountability and, as a consequence, may contribute to the future recurrence of such crimes. The lack of economic resources means that the people who cannot afford legal assistance are not able seek justice to search for their loved ones. Reasonable access to justice is vital to a society in order to exercise all human rights as a whole.

On the other hand, not only does the State need to provide reasonable access to justice, it must also eradicate any obstacles that might interfere with the normal course of the investigation⁹⁴. Furthermore, the fear of reprisal of actors (such as the police or other authorities) and general mistrust of the justice system are key factors for persons living in poverty to be averse to relying upon formal legal processes⁹⁵. The fear of repercussions by authorities that may be involved in such a crime, may be a key factor that leads to the relocation of the affected family to a more secure place. In addition, due to the lack of State presence in certain areas, such as marginalized neighbourhoods, police forces tend to operate with less control than in more affluent areas. Second class citizens⁹⁶ are systematically discriminated against by a State that continues to justify the lack of information on the whereabouts of the disappeared.

93 The principle of non-discrimination is found: Universal Declaration of Human Rights, article 2; International Covenant on Civil and Political Rights, article 2; International Covenant on Economic, Social and Cultural Rights, article 2); the right to seek and receive information (e.g., International Covenant on Civil and Political Rights, article 19.2); and the right to recognition as a person before the law (e.g., Universal Declaration of Human Rights, article 6; International Covenant on Civil and Political Rights, article 16; Convention on the Elimination of All Forms of Discrimination against Women, article 15; Convention on the Rights of Persons with Disabilities, article 12).

94 Involuntary disappearances and economic, social and cultural rights, 9 July 2015, A/HRC/30/38/Add.5, para. 6. See also E/CN.4/1986/Add.1, para. 55. Also see: A/67/278, para. 12.

95 Report of the Special Rapporteur on extreme poverty and human rights, Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives, 9 August 2012, A/67/278, para. 21.

96 According to the Collins dictionary, a second class citizen can be defined as “a person whose rights and opportunities are treated as less important than those of other people in the same society”, available at: <https://www.collinsdictionary.com/dictionary/english/second-class-citizen>

According to a UN study on children, police brutality and the lack of reasonable access to justice is often found in societies affected by violence⁹⁷. Consequently, governments, in order to control crime and gang violence, adopt repressive measures such as large-scale detention related to "arbitrary, inefficient and violent law enforcement" which directly contributes to increased violence and the stigmatization of disadvantaged youth⁹⁸. The violence within a community, which in Luciano Arruga's case is conducted by the police, is also a significant factor that affects marginalized children such as those living on the streets. Common findings in the UN study were verbal harassment, rape, sexual violence, torture, and disappearance⁹⁹.

The right to adequate housing, which is understood as a source of protection against enforced disappearances and it was a crucial factor in the development of Luciano Arruga's case, is directly removed when the access to adequate housing is not been fulfilled¹⁰⁰. Children who live in poverty and are not able to go to school, are especially susceptible to becoming victims of enforced disappearance. Those living or working on the streets are in even more likely to become victims¹⁰¹.

97 Human Rights Watch, *Easy targets: Violence against children worldwide*, New York, 2001.

98 See UN General Assembly, *Rights of the child, promotion and protection of the rights of children*, A/61/299, 29 August 2006, para. 73.

99 See: WERNHAM, M, *An outside chance: Street children and juvenile justice – An international perspective*, London, Consortium for Street Children, 2004. Also see: UN General Assembly, *Rights of the child, promotion and protection of the rights of children*, A/61/299, 29 August 20106, para. 76. Among the conclusions and recommendations of the UN study are the following: the distant reality between the international commitments to protect children from violence and the inaction in the national level; measures to address violence against children are in general "reactive, focusing on symptoms and consequences and not causes" to develop a framework to respond to cases of violence against children; the prohibition of all violence against children; prioritizing prevention; to ensure accountability and end impunity; to develop systematic data collection; to reduce social and economic inequalities, among others. See UN General Assembly, *Rights of the child, promotion and protection of the rights of children*, A/61/299, 29 August 2006, para. 90.

100 See CHR, *Report of the Working Group on Enforced or Involuntary Disappearances – Mission to Colombia*, E/CN.4/2006/56/Add.1, para. 30 and CHR, *Report by the Special Rapporteur on adequate housing*, E/CN.4/2004/48, paras. 35–37.

101 HRC, *General comment on children and enforced disappearances adopted by the Working Group on*

According to articles 18 and 27 of the CRC, and as the Committee on the Rights of the Child in the General Comment No. 13 expresses, “State parties have a positive and active obligation to support and assist parents and other caregivers to secure, within their abilities and financial capacities and with respect for the evolving capacities of the child, the living conditions necessary for the child’s optimal development”¹⁰². Regarding the right to adequate housing and according to article 11 (1) of the International Covenant on Economic, Social and Cultural Rights, the State parties “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. As General Comment No. 4 expresses, the right to housing should be interpreted as the right to live somewhere in “security, peace and dignity”.

The right to housing should be ensured to all persons regardless of their economic situation. It should also be interpreted not merely as the right to housing but more specifically the right to *adequate* housing. That means the Committee selected certain factors that play a key role in order to satisfy the right to adequate housing in any particular context¹⁰³. These factors include: legal security of tenure (all persons should have a degree of security of tenure that protects them against any threats); availability of services, materials, facilities, and infrastructure (adequate housing should “have safe water, energy and cooling, heating and lighting, sanitation and washing facilities, food storage, refuse disposal, site drainage and emergency services”)¹⁰⁴; affordability (the household costs should not compromise other basic needs); habitability (the house should have an adequate space which is protected from heat, cold, rain, wind, and dampness, among other factors); accessibility (disadvantaged groups should be prioritized in the housing sphere); location (the house must be in a place with

Enforced or Involuntary Disappearances at its ninety–eighth session, A/HRC/WGEID/98/1, (31 October – 9 November 2012), 14 February 2013, para. 3.

102 Convention on the Rights of the Child, General comment No.13 (2011), the right of the child to freedom from all forms of violence, CRC/C/GC/13, para. 5.

103 CESCR, General Comment No. 4: the right to adequate housing (art. 11 (1) of the Covenant), sixth session (1991), para. 8.

104 *Ibidem*, para. 8 (b).

access to health care, employment, and schooling, among others); and cultural adequacy (the cultural identity and diversity of housing should be respected in terms of building materials and the policies supporting it)¹⁰⁵. States are obligated under the CRC to demonstrate all steps to ascertain the full extent of inadequate housing within their jurisdiction¹⁰⁶.

Furthermore, many victims of enforced disappearances are deprived of their liberty in secret places where they could be subject to torture and degrading treatment or punishment, among others things. As a result, the right to health, not only physical health but also psychological integrity, is also disrupted¹⁰⁷. When it comes to the health of the victim's family members or close relatives, the absence of the person victim creates a constant strain. The WGEID have described the effects as "a drawn-out shock, a state of latent and prolonged crisis, in which the anguish and sorrow caused by the absence of the loved one continues indefinitely." A number of rights of the victims of enforced disappearances and their families are also affected, such as the right to education, the right to a cultural life, the right to social security, the right to property, the right to family life, and the right to housing, among others¹⁰⁸.

According to article 3 of the Declaration on the Protection of All Persons from Enforced Disappearances, states are obligated to prevent enforced disappearances by taking effective, administrative, legislative, and judicial action. According to article 9 of the Declaration, prevention can be understood as the need to determine the whereabouts or the state of health of the person deprived of liberty and/or to identify the authorities who carried out the arrest. Another form of prevention by states can be to take effective measures to alleviate

105 *Ibidem*, para. 8.

106 *Ibidem*, para 13. In this regard, states should provide detailed information about those groups within their society that are vulnerable and disadvantaged with regard to housing. Specifically, those without basic amenities, living in "illegal settlements" [...] and low-income groups.

107 See article. 12 International Covenant on Economic, Social and Cultural Rights.

108 HRC, Report of the Working Group on Enforced or Involuntary Disappearances, Addendum, Study on enforced or involuntary disappearances and economic, social and cultural rights, 9 July 2015, A/HRC/30/38/Add.5, para. 6. See also E/CN.4/1986/Add.1, para. 23.

poverty¹⁰⁹. States should take legislative measures in order to guarantee that social security benefits can also be reached by those in need. Judicial, political, and administrative mechanisms can be implemented to enable people from poorer areas to participate in cultural life where their voices can be heard in the public sphere; while at the same time these disadvantaged people can challenge the inequalities and diverse vulnerabilities they face, in order to acknowledge their own needs and contribute to their healing. By way of illustration, measures can be understood as cultural interventions to make the victim more visible¹¹⁰.

6. UN Special Procedures and Treaty Body visits to Argentina

The following section of this article will analyze the recommendations made to Argentina from the UN Special Procedures¹¹¹ and Treaty Bodies since January 2009¹¹² in order to better understand the context of where the enforced

109 HRC, Involuntary disappearances and economic, social and cultural rights, 9 July 2015, A/HRC/30/38/Add.5, para. 6. See also E/CN.4/1986/Add.1, para. 48.

110 See A/HRC/25/49, paras. 47 and 66.

111 The UN Special Procedures Reports on their Mission to Argentina were chronologically the following: Special Rapporteur on Trafficking in Persons, Especially Women and Children, 24 May 2011, A/HRC/19/53/Add.1; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 21 December 2011, A/HRC/19/53/Add.1; Special Rapporteur on the rights of indigenous peoples, 4 July 2012, A/HRC/21/47/Add.2; Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, 2 April 2014, A/HRC/25/50/Add.3; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Argentina, 18 April 2017, A/HRC/35/41/Add.1; Special Rapporteur on violence against women, its causes and consequences, on her mission to Argentina, 12 April 2017, A/HRC/35/30/Add.3; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his mission to Argentina, 9 April 2018, A/HRC/38/43/Add.1. See: View Country visits of Special Procedures of the Human Rights Council since 1998, OHCHR, available at: https://spinternet.ohchr.org/_layouts/15/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=ARG, last visit 1 August 2019.

112 The UN Treaty Bodies concluding observations to Argentina are the following: Human Rights Commit-

disappearance of Luciano Arruga occurred. According to the Office of the UN High Commissioner for Human Rights, on the 3rd of December 2002, Argentina extended a standing invitation, which means that the State announced their willingness to accept requests from all UN Special Procedures¹¹³.

The Committee on Economic, Social and Cultural Rights on the fourth periodic report of Argentina, found it unacceptable that the State, considering its level of development, still remains with a structural poverty at a floor of twenty-five to thirty per cent of the population, especially in greater Buenos Aires and in the north of the country¹¹⁴. In the words of the Committee, "more than 5 million children and adolescents are living in poverty and that current devaluation and inflation have had an adverse impact on poverty and inequality"¹¹⁵. The Committee was also concerned with the great increase on rates of basic services such as water, gas, electricity, transportation, and medicine affecting people in situations of vulnerability. They recommended to the State "to adopt and implement a comprehensive, long-term poverty reduction

tee, 2010, CCPR/C/ART/CO/4; Committee on the Elimination of Racial Discrimination, 2010, CERD/C/ARG/CO/19-20; Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography, 2010, CRC/C/OPSC/ARG/CO/1; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2010, CRC/C/OPAC/ARG/CO/1; Committee on Migrant Workers, 2011, CMW/C/ARG/CO/1; Committee on the Rights of Persons with Disabilities, 2012, CRPD/C/ARG/CO/1; Committee on Enforced Disappearances, 2014, CED/C/ARG/CO/1; Human Rights Committee, 2016, CCPR/C/ARG/CO/5; Committee on the Elimination of Discrimination against Women, 2016, CEDAW/C/ARG/CO/7; Committee on the Elimination of Racial Discrimination, 2017, CERD/C/ARG/CO/21-23; Committee against Torture, 2017, CAT/C/ARG/CO/5-6; Committee on the Rights of the Child, 2018, CRC/C/ARG/CO/5-6; Committee on Economic, Social and Cultural Rights, 2018, E/C.12/ARG/CO/4. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=7, last visited 2 August 2019.

113 United Nations Human Rights Office of the High Commissioner, available at: https://spinternet.ohchr.org/_layouts/15/SpecialProceduresInternet/StandingInvitations.aspx, last visit 5 August 2019.

114 CESCR, Concluding observations on the fourth periodic report of Argentina, 1 November 2018, E/C.12/ARG/CO/4, para. 43.

115 Ídem.

strategy with specific, measurable targets and human rights approach”¹¹⁶. The Committee also pointed out the increase in informal settlements without access to basic services. There are more than 4000 informal settlements; of those, over ten per cent have no running water and over thirty per cent have no wastewater services. Particularly, Committee on the Rights of the Child raised its concerns regarding the current high level of multidimensional poverty and particularly children living in poverty, where these people are living in situations such as housing of substandard quality and limited access to basic services¹¹⁷.

In addition, the Committee on the Rights of the Child reviewed Argentina in its concluding observations, and expressed specifically on Luciano Arruga’s disappearance:

“The Committee is also concerned at a case of enforced disappearance of a child (L.A.) in the province of Buenos Aires during police detention in January 2009, and that the investigation into the allegations was not launched promptly. Moreover, the Committee is concerned at the absence of any information on prompt investigations into these allegations, their results, including sentencing of those responsible, and on putting an end to the practice”¹¹⁸.

The media in Argentina, according to the Special Rapporteur on racism, reproduces sociocultural patterns, which contributes to exclusion and inequalities. Consequently, some social groups are excluded by the media, affecting the equal exercise of the right to freedom of expression. The media not only emulates the already existing social inequalities but it also amplifies them, and as a result, obstructs social and political participation in a way that “has a silencing effect since the voices and demands of these marginalized groups are devalued by mainstream media, thereby further entrenching the invisibility of

116 *Ibidem*, para. 43-44.

117 CRC, Concluding observations on the combined fifth and sixth period reports of Argentina, 1 October 2018, CRC/C/ARG/CO/5-6, para. 35.

118 CRC, Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Argentina, 21 June 2010, CRC/C/ARG/CO/3-4, para. 42.

their condition"¹¹⁹. The Committee on the Rights of the Child in its concluding observations in 2010, expressed its concerns regarding the stigmatization of affected adolescents living in poverty in urban centres¹²⁰. The Committee on the Rights of the Child, in its last concluding observations, critically observed the violence used by the security forces in cases of disadvantaged children and adolescents in police custody, the impunity of perpetrators of violence against children in detention centres, the lack of information on remedies for children affected by violence, and abuse and neglect under the State responsibility, among others¹²¹. As a consequence, the Committee on the Rights of the Child recommended to the State

“... to adopt a comprehensive strategy to end all abuse of children in institutional care settings, to systematically monitor the situation of children in institutions and to prioritize investigations into all instances of violence, ensuring the identification and immediate removal of staff members responsible for violence and abuse; [...] To investigate thoroughly and impartially all allegations of torture, violence, harassment and abuse, including by the police, and to ensure that perpetrators are prosecuted and, if convicted, punished commensurately with the seriousness of their acts...”¹²².

The mentioned recommendations have also been shared by the Human Rights Committee in its concluding observations, pointing out the necessity to investigate all perpetrators who committed the acts of torture, and/or ill treatment, and bring them to justice¹²³.

119 Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Argentina, A/HRC/35/41/Add.1. 18 April 2017, para. 82.

120 CRC, Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Argentina, 21 June 2010, CRC/C/ARG/CO/3-4.

121 CRC, Concluding observations on the combined fifth and sixth period reports of Argentina, 1 October 2018, CRC/C/ARG/CO/5-6, para. 21.

122 *Ibidem*, para. 22.

123 Human Rights Committee, Concluding observations on the fifth periodic report of Argentina, 10 August 2016, CCPR/C/ARG/CO/5, para. 14.

Furthermore, the Committee Against Torture (CAT) in its concluding observations, expressed its concern with the frequent use of torture and ill treatment within the security forces and the prison staff, “who still operate within the militarized corporate structure of the past”¹²⁴. In addition, the Human Rights Committee attributes such institutional violence in prisons to the existence of a self-governance system, the very few convictions of those who commit acts of violence, and the small penalties that they receive because of those acts¹²⁵. The CAT recommends to the State to

“... take urgent steps to assess the practice of torture and ill-treatment in federal and provincial detention facilities with a view to developing the necessary prevention policies and control mechanisms [...] and investigates without delay, thoroughly and impartially all cases of violence committed in detention facilities and assess whether the States officials or their superiors are responsible”¹²⁶.

These recommendations have also been shared by the Human Rights Committee, while adding that the State should ensure that those who are affected by such a crime receive appropriate reparation such as health and rehabilitation services, and to also

“... expedite the adoption of the necessary legal measures to ensure that the national preventive mechanism is established in all regions of the country, [...] and ensure that this mechanism is provided with sufficient human and financial resources to enable it to function efficiently”¹²⁷.

124 Committee against Torture, Concluding observations on the combined fifth and sixth periodic report of Argentina, 24 May 2017, CAT/C/ARG/CO/5-6, para. 11.

125 Human Rights Committee, Concluding observations on the fifth periodic report of Argentina, 10 August 2016, CCPR/C/ARG/CO/5, para. 13.

126 Committee against Torture, Concluding observations on the combined fifth and sixth periodic report of Argentina, 24 May 2017, CAT/C/ARG/CO/5-6, para. 12-14.

127 Human Rights Committee, Concluding observations on the fifth periodic report of Argentina, 10 August 2016, CCPR/C/ARG/CO/5, para. 14.

Specifically, the Committee on Enforced Disappearances expressed its awareness of cases which have not been correctly investigated, and recommends that the State make certain that all cases of enforced disappearances are "investigated in a complete, impartial, diligent and effective manner, even in the absence of a formal complaint, and that those investigations be pursued until the fate or the whereabouts of the disappeared person have been established"¹²⁸. The CED also noted that within the existing norms of the country, it is not clear how to prevent those suspected of committing enforced disappearances from obstructing the normal course of the investigations. In that respect, the CED expressed its awareness of reports where the judicial authorities did not keep the suspected people away from the investigations¹²⁹.

The CAT, in its concluding observations, was also concerned about the federal and provincial security forces use of violence and arbitrary behaviour in cases concerning socially marginalized children and adolescents deprived of their liberty without a court order¹³⁰. The Human Rights Committee in this particular matter, raised its concerns about "taking people into custody without a warrant in order to verify their identity and then detaining them for lengthy periods of time without bringing such persons before a judge or other officer authorized by law to exercise judicial supervision of their detention (article 9)"¹³¹.

Such violent patterns by security forces could lead to attempted murder, enforced disappearances, and acts of torture. In terms of the investigation of claims of torture and ill treatment, the CAT raised its concerns regarding the reports that impunity still persists. Reasons for the concern include

128 Committee on Enforced Disappearances, Concluding observations on the report submitted by Argentina under article 29, paragraph 1, of the Convention, 12 December 2013, CED/C/ARG/CO/1, para. 16-17.

129 Committee on Enforced Disappearances, Concluding observations on the report submitted by Argentina under article 29, paragraph 1, of the Convention, 12 December 2013, CED/C/ARG/CO/1, para. 22.

130 Committee against Torture, Concluding observations on the combined fifth and sixth periodic report of Argentina, 24 May 2017, CAT/C/ARG/CO/5-6, para. 13.

131 Human Rights Committee, Concluding observations on the fifth periodic report of Argentina, 10 August 2016, CCPR/C/ARG/CO/5, para. 17.

inadequate judicial investigations, tendencies of judicial officials to support the official version given by security forces, and categorizing such acts as lesser offenses¹³².

In its concluding observations, the CED found it promising that the State had made progress in the prosecution of those who were responsible for enforced disappearance during the military dictatorship. Nevertheless, the CED expressed its concerns about the new “cases of enforced disappearance in recent times, particularly targeting young persons in situations of extreme poverty and social marginalization; the disappearances are characterized by police violence and arbitrary detention and are being used to cover up crimes and escape punishment (articles 6 and 12)”¹³³. In that respect, the CED recommends eradicating these contemporary forms of enforced disappearances and promoting a security forces reform to investigate, prosecute, and punish those officials who commit such offenses¹³⁴.

Moreover, even though there are no longer any secret detentions in Argentina, the CED observed that persons could be deprived of their liberty in administrative detentions with no evidence an offense had been committed, without a warrant or judicial review¹³⁵. Regarding the diverse laws of reparation to victims of human rights violations suffered during the military dictatorship, the CED found there is no law that covers victims of enforced disappearances after December 1983. It also points out that the State is obligated to provide reparation for the victims and seek the truth regarding the circumstances of such a crime¹³⁶.

132 Committee against Torture, Concluding observations on the combined fifth and sixth periodic report of Argentina, 24 May 2017, CAT/C/ARG/CO/5-6, para. 29.

133 Committee on Enforced Disappearances, Concluding observations on the report submitted by Argentina under article 29, paragraph 1, of the Convention, 12 December 2013, CED/C/ARG/CO/1, para. 14.

134 *Ibidem*, para. 15.

135 *Ibidem*, para. 24.

136 *Ibidem*, para. 34.

7. Final remarks

This article attempts to analyse the case of Luciano Arruga as a contemporary form of enforced disappearances while looking at elements between enforced disappearances, children's rights, and economic, social and cultural rights. Presently, such a crime should not only be studied as a matter of the past under the so-called "national security" strategies of states but should also be found in the era of democratic governments such as in Argentina. The fact that enforced disappearances are occurring in diverse contexts is something the international community urgently needs to address.

As the WGEID expressed, states are not only obligated to analyse the causes of enforced disappearances but also the structural context that lies beneath them. The obligation to investigate should take into account peoples' economic, social, and cultural rights. These rights can also be transferred to those affected by these conditions, such as the state of families in terms of health, education, and assistance. When it comes to enforced disappearances of victims in situations of extreme poverty, those conditions should be understood as a cause, and as a consequence, of the crime.

In that respect, key factors that could be derived from poverty conditions should be taken into account when enforced disappearances occur. These include the limited access to the judicial system, impunity, fear of reprisal by the official authorities, the recurrence of the crime, mistrust of the justice system, systematic discrimination of persons as second class citizens, arbitrary detentions, torture, disruption of health, lack of State presence in marginalized areas, lack of accountability within the police forces, limited access to adequate housing and a basic standard of living, and limited access to participation in cultural life and education, among others.

Particularly, regarding the context of Luciano Arruga's enforced disappearance, Argentina's structural poverty, and its level of development, should not be acceptable. Additionally, the UN human rights mechanisms observed that the following circumstances that should be addressed by Argentina within the near future: the increased number of informal settlements with limited access to basic services, the role of the media in contributing to exclusion and discrimination while devaluating the voices of the marginalized groups and the stigmatization

of adolescents living in poverty in urban centres, the use of violence by security forces in cases of disadvantaged adolescents in police custody and their impunity, the frequent usage of torture and mistreatment by the security forces who still operate within arbitrary detentions, inadequate judicial investigations, or the military structure of the past.

Argentina, being a State party of the ICPPED, the CRC, the CDESCR, and numerous other human rights treaties, is obligated to prevent, investigate, and sanction those responsible for enforced disappearances. Argentina must also adopt administrative, legislative, and judicial measures to ensure the protection of the victims of enforced disappearances. In particular, the ICPPED considers children who can be subjected to such a crime, and the CRC requires the State to provide appropriate assistance to parents in the child's development and ensure his protection and care, especially those who are in a more vulnerable situations.

Despite the obligation of the State to ensure that detention of children be used only as a measure of last resort under the article 37 of the CRC, the detention of Luciano Arruga was not used as an exception but rather as means of discipline by the police forces. Additionally, according to the CRC provisions¹³⁷, the State should have separate facilities for apprehended children in order to prevent abuses by adults. The detachment facility where Luciano Arruga was held did not have any separate holding area for children, nor was the facility authorized by the law to make arrests at that time.

Even though international human rights instruments can be seen as a form of protection from human rights violations and as vital legal frameworks that contain large numbers of rules and principles aimed at preventing enforced disappearances, in Luciano Arruga's case, those principles were not enough to initially find Luciano Arruga and to subsequently seek those responsible for committing the enforced disappearance. It took factors to become involved to shedding light on Luciano Arruga's case, such as the fight of his family to seek the truth and seek justice and the push from the human rights movements.

Corrupt institutions, gross irregularities within the investigation, independency of the police without any independent control, marginalized areas with

137 See UN General Assembly, Rights of the child, promotion and protection of the rights of children, A/61/299, 29 August 20106, para. 63.

limited access to basic rights, and Luciano Arruga's refusal to work illegally for the police forces are among the factors that played crucial roles in Luciano Arruga case. In that respect, cases like this generate important questions within a democratic society. How can society be safe if their own police force conducts crimes of enforced disappearances? Why did the judiciary delegate the case to the police officers suspected of the crime? How many Luciano Arrugas could be missing? Is there a *continuum* of enforced disappearances between the times of military dictatorship and the existing period of democracy? If states are obligated to respect, protect, and fulfil the human rights of its people, how can Luciano Arruga's case be explained in current democratic times? Where is the justice for Luciano Arruga's enforced disappearance?

Second class citizens are systematically discriminated against by a State that justifies the lack of information to know the whereabouts of the disappeared. The aim is to transform the system and give a voice to the invisible people that live in the peripheries of society. Unfortunately, the only way for marginalized groups to be addressed by the State is through abnormal ways, such as participating in criminal activities, deprivation of liberty, torture, enforced disappearances, institutional violence, and the list could go on. The response to inequality should never be repression, and instead the response should be the access to basic rights such as those considered by the International Covenant on Economic, Social and Cultural Rights.

The last dictatorship and its legacy was a brutal and traumatic period that lasts to this day in the memory and cultural identity of Argentinian society. Luciano Arruga's enforced disappearance can be understood as a clear sign that Argentina's dark past has still not been left completely behind, and still lingers in the present in forms of contemporary atrocities such as the case of study.

8. AnnexArgentina's Status of International Treaty Ratifications¹³⁸

Treaty Description	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	04.Feb.85	24.Sep.86
Optional Protocol of the Convention against Torture	30.Apr.03	15.Nov.04
International Covenant on Civil and Political Rights	19.Feb.68	08.Aug.86
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty	20.Dec.06	02.Sep.08
Convention for the Protection of All Persons from Enforced Disappearance	06.Feb.07	14.Dec.07
Convention on the Elimination of All Forms of Discrimination against Women	17.Jul.80	15.Jul.85
International Convention on the Elimination of All Forms of Racial Discrimination	13.Jul.67	02.Oct.68
International Covenant on Economic, Social and Cultural Rights	19.Feb.68	08.Aug.86
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	10.Aug.04	23.Feb.07
Convention on the Rights of the Child	29.Jun.90	04.Dec.90
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	15.Jun.00	10.Sep.02
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	01.Apr.02	25.Sep.03
Convention on the Rights of Persons with Disabilities	30.Mar.07	02.Sep.08

138 OHCHR, available in: <https://tbinternet.ohchr.org/>. Last visited 5 August 2019.

Treaty Description	Acceptance of individual complaints procedures	Date of acceptance/ non acceptance
Individual complaints procedure under the Convention against Torture	YES	24.Sep.86
Optional Protocol to the International Covenant on Civil and Political Rights	YES	08.Aug.86
Individual complaints procedure under the International Convention for the Protection of All Persons from Enforced Disappearance	YES	11.Jun.08
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	YES	20.Mar.07
Individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination	YES	05.Feb.07
Optional protocol to the International Covenant on Economic, Social and Cultural Rights	YES	24.Oct.11
Individual complaints procedure under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	N/A	
Optional Protocol to the Convention on the Rights of the Child	YES	14.Apr.15
Inquiry procedure under the Convention against Torture	YES	24.Sep.86
Inquiry procedure under the International Convention for the Protection of All Persons from Enforced Disappearance	YES	14.Dec.07
Inquiry procedure under the Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women	YES	20.Mar.07
Inquiry procedure under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	N/A	

Inquiry procedure under the Optional Protocol to the Convention on the Rights of the Child	YES	14.Apr.15
Inquiry procedure under the Convention on the Rights of Persons with Disabilities	YES	02.Sep.08

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