



Human Rights Law Clinic Papers 2026

ENFORCED DISAPPEARANCES OF CHILDREN IN ARMED CONFLICT

To: Global Rights Compliance

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Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135

International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, Entered into Force 23 December 2010) (ICPED) UNTS 2716, 3

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (adopted 25 May 2000, entered into force 12 February 2002)

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)(adopted 8 June 1977, entered into force 17 December 1978) 1125 UNTS 609

Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) UNTS 2187(3)

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African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) CAB/LEG/24.9/49,(ACRWC)

American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR)

Inter-American Convention on Forced Disappearance of Persons (adopted 9 June 1994, entered into Force 28 March 1996) OAS Treaty Series No 68 (1994) (IACFD)

iii. Table of Abbreviations

ACRWC	African Convention on the Rights and Welfare of the Child
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHR	American Convention of Human Rights
CED	Committee on Enforced Disappearances
CRC	Convention on the Rights of the Child
CRC	Committee on the Rights of the Child
ED	Enforced Disappearance
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICPED	International Convention for the Protection of all People from Enforced Disappearance
ICL	International Criminal Law
ICCPR	International Covenant on Civil and Political Rights
IHL	International Humanitarian Law
IHRL	International Human Rights Law
NIAC	Non-International Armed Conflict
NSA	Non-State Actors
OPAC	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
RSF	Rapid Support Forces
The Commission	Independent International Commission of Inquiry on Ukraine
WGEID	Working Group on Enforced and Involuntary Disappearances

1. Introduction

There is growing attention to the instrumental use of Enforced Disappearance (ED) of children during armed conflict.¹ Increasingly, States and Non-State Actors (NSAs) are deploying a strategy of control to repress, assimilate and manipulate demographics.² When a child is taken from their family and displaced from their community, they are rendered profoundly vulnerable, deprived not only of protection but of the social and developmental structures essential to their well-being.³ This vulnerability is the reason that international law provides children with special protections. Yet, the core harm of an ED is that these protections collapse. Removed from their families, taken from their communities, and placed outside of the reach of the law, disappeared children are effectively stripped of their rights and protections. Such practices are not incidental to armed conflict but are strategically employed by both States and NSA groups.⁴ The deliberate concealment of the child's fate, combined with the removal of legal recognition, exposes them to further abuses.⁵ The harm extends beyond the disappearance itself; its consequences create conditions for additional human rights violations, amplifying the immediate and long-term consequences for the child.

In light of the issues children face, this memorandum will provide an examination of the relevant international human rights law (IHRL) and International Criminal Law (ICL) frameworks that apply to ED. It will draw interpretations from the International Covenant on Civil and Political Rights (ICCPR) and Human Rights Committee (HRC), International Criminal Court (ICC) and Rome Statute, International Convention for the Protection of all People from Enforced Disappearances (ICPED) and Committee on Enforced Disappearances (CED), Convention on the Rights of the Child (CRC) and Committee on the Rights of the Child (CRC), the European Court of Human Rights (ECtHR), Inter-American Court of Human Rights (IACtHR) and the African Convention on the Rights and Welfare of the Child (ACRWC) and African Committee of Experts on the Rights and Welfare of the Child (ACERWC) to analyse whether these frameworks sufficiently protect child victims of ED.

To begin, Section 1 establishes key concepts and children's rights principles, as well as elaborating the approaches adopted within IHRL and ICL to ED. Section 2 explores the rights

¹ UN Independent International Commission of Inquiry on Ukraine, 'UN Commission Concludes That Deportation and Forcible Transfer of Ukrainian Children by Russian Authorities, as Well as Enforced Disappearances, Amount to Crimes against Humanity' (12 March 2026, OHCHR) <<https://www.ohchr.org/en/press-releases/2026/03/un-commission-concludes-deportation-and-forcible-transfer-ukrainian-children>> Accessed 26 April 2026.

² Diane M Amann, 'Child-Taking' (2024) 45 Mich J Int'l L 305.

³ Working Group on Enforced or Involuntary Disappearances, 'General Comment No 12 (Children and Enforced Disappearances)' (14 February 2013) UN Doc A/HRC/WGEID/98/1, 6.

⁴ Jeremy J Sarkin & Elisenda Calvet Martinez, 'The Global Practice of Systematic Enforced Disappearances of Children in International Law: Strategies for Preventing Future Occurrences and Solving Past Cases' (2022) 71 CUL Rev 33.

⁵ Working Group on Enforced or Involuntary Disappearances, 'General Comment No 12 (Children and Enforced Disappearances)' (14 February 2013) UN Doc A/HRC/WGEID/98/1, 6.

violation that occur when children are disappeared as well as analysing whether these systems can sufficiently protect children. Section 3 will analyse whether these frameworks sufficiently respond to the potential rights violations that occur after a child has disappeared. Finally, this memorandum will then conclude by assessing the most effective pathways to justice for victims and their families.

2. Key Concepts and Principles

This section establishes key concepts that underpin our subsequent analysis, it provides a definition of ED, then briefly explaining the different IHRL frameworks approach to ED of children. Finally, it introduces key children's rights principles that underpin the analysis in subsequent sections.

2.1 Defining Enforced Disappearances

IHRL explicitly defines ED in the ICPED and IACFD as having the following characteristics: the arrest, detention, abduction or any form of a deprivation of liberty by the State or groups with authorisation or acquiescence of the State,⁶ accompanied by a refusal of the State to acknowledge this deprivation of liberty or a concealment of the fate or whereabouts of the disappeared person.⁷ IHRL interpretations influenced the acts considered to constitute ED in ICL, as they involve virtually the same characteristics, the only difference being there must be an intention to remove a person from the protection of the law for an extended period of time.⁸

2.2 Enforced Disappearances Under IHRL

In the Inter-American system the right to freedom from ED is not explicitly stated.⁹ Instead, States must not practice ED and punish those who commit ED.¹⁰ However, the IACtHR interprets ED to constitute an autonomous right, insofar as a victim can invoke this right in the IACtHR, without having to invoke, for example, the right to life or freedom from torture.¹¹ Additionally, the IACtHR finds that when a State violates this autonomous right then they automatically violate the right to life, freedom from torture, and right to liberty, without requiring

⁶ International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, Entered into Force 23 December 2010) (ICPED) UNTS 2716, 3, art 2; Inter-American Convention on Forced Disappearance of Persons (adopted 9 June 1994, entered into Force 28 March 1996) OAS Treaty Series No 68 (1994) (IACFD), art 2.

⁷ *ibid.*

⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) UNTS 2187(3), art 7(i).

⁹ IACFD, art 1; Ophelia Claude, 'A Comparative Approach to Enforced Disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence' (2010) *Intercultural Human Rights Law Review* Vol 5 407, 431.

¹⁰ *ibid.*, art 1(a),(b).

¹¹ *Serrano Cruz Sisters v El Salvador* (Series C) Inter-Am Ct HR (2005); *Heliodoro Portugal v Panama* (Series C) Inter-Am Ct HR (2008), para 112.

the court to analyse each right separately.¹² Finally, the IACtHR holds this right to be continuous in nature, meaning that from the moment a person disappears until either the individual or their body is found the State will be in violation of this right.¹³ Thus, victims and relatives can invoke this right at any point until the child is found.

The Inter-American system is the only regional system to have heard child cases of ED. This impacts the IACtHR's reasoning, insofar as the IACtHR emphasises the right of child victims to live with their family. As Article 17 ACHR places great importance on the family unit as 'the natural and fundamental group of society',¹⁴ the IACtHR establishes that States are obliged to help develop this unit and if a child is separated from this unit, it will 'in certain circumstances' violate this right.¹⁵ Therefore, the IACtHR emphasises that children 'have the right to live with their family' as it will 'satisfy their material, affective and psychological needs'.¹⁶ Violations of this right are acts that illegally or arbitrarily interfere with the family, including ED.¹⁷ In contrast, in adult cases Article 17 is assessed for relatives of the disappeared but not the adult victim themselves.¹⁸ Thus, the IACtHR's methodology is different when it comes to child cases.

The approach of the ECtHR is different from the other systems. Firstly, there is no autonomous right in the ECHR to be free from ED.¹⁹ Instead, the ECtHR assesses applicant's claims under the right to life, freedom from torture, right to liberty, but not under right to a private and family life.²⁰ In *Varnava*, the ECtHR stated that as a result of its findings under Articles 2, 3 and 5 that it had 'examined the main legal questions' and that there was 'no need to give a separate ruling' under Article 8.²¹ This is a pattern that has been repeated in additional cases by the ECtHR.²² Additionally, the ECtHR considers each potential right violation separately, 'as if they resulted from different situations' instead of it being viewed holistically, like the IACtHR.²³

The ECtHR has not heard a child ED case, however, the principles from their adult cases still apply to children, and since they will be referred to across this memorandum it is important to

¹² *Tiu Tojin v Guatemala* (Series C) No 190 Inter-Am Ct HR (2008), para 5.

¹³ IACFD, art 3; *Velasquez Rodriguez v Honduras* (Series C) Inter-Am Ct HR (1988), para 155.

¹⁴ American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123, art 17; *Rio Negro Massacres v Guatemala* (Series C) Inter-Am Ct HR (2012), para 145.

¹⁵ *ibid.*

¹⁶ *ibid.*; *Judicial Status and Human Rights of the Child* (Advisory opinion OC-17/02 Inter-American Court of Human Rights Series A No 17 (28 August 2002), para 71.

¹⁷ *ibid.*

¹⁸ *Alvarado Espinoza Et Al v Mexico* (Series C) Inter-Am Ct HR (2018), page 110.

¹⁹ Ophelia Claude, 'A Comparative Approach to Enforced Disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence' (2010) *Intercultural Human Rights Law Review* Vol 5 407, 432.

²⁰ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), art 2, 3, 5, 8.

²¹ *Varnava and Others v Turkey* App no 16064/90 (ECtHR, 18 September 2009), para 211.

²² *Cyprus v Turkey* App no 25781/94 (ECtHR, 10 May 2001), para 153; *Luluyev and Others v Russia* App no 69480/01 (ECtHR, 9 November 2006), para 133.

²³ Claude (n 19), 432.

explain some of the key principles here. The ECtHR primarily assess ED under Article 2, the right to life, of which there are three limbs, the negative obligation of the state to not unlawfully kill someone, the positive obligation to take steps to prevent loss of life and the procedural obligation to investigate deaths.²⁴ Regarding the negative obligation the ECtHR adopts a 'beyond reasonable doubt' standard of proof for ED cases.²⁵ For example, in *Bazorkina v Russia* the ECtHR established that the applicants must *prima facie* prove that the individual is dead. This switches the burden of proof to the State, that must then disprove that the person is dead, the failure to do so will lead to the finding of a violation of the right to life.²⁶ Regarding the positive obligation, States that 'knew or ought to have known' that there was a 'real and immediate risk to life' from a 'criminal act by a third party' must take measures to avoid that risk in ED cases.²⁷ Finally, the procedural obligation is triggered in ED cases when a debatable claim that an individual who was last seen in custody disappears.²⁸ The State has an obligation to conduct an effective investigation into the whereabouts of the disappeared person, and to identify and punish those involved.²⁹

In the ACRWC, there is also no autonomous right, only a right for a child to not be abducted.³⁰ Additionally, the ACERWC has never heard an ED case, so it is not possible to ascertain their approach.

The UN framework is more complex as there are a plethora of treaties and bodies that cover ED of children. The only UN mechanism that has heard child cases of ED is the HRC, but like the ECHR, the HRC does not recognise an autonomous right and potential violations are treated individually, under different rights of the ICCPR.³¹ This impacts their methodology as they have found violations of Article 24 ICCPR, which requires States to give special protections to children, in ED of children cases that would not be invoked in adult cases as that Article is specific to children.³² Under the ICPED, there has been no case or General Comment to determine how their approach differs when it comes to children. However, the CRC has relevant children's rights principles that will be discussed in the following section.

²⁴ *ibid*, 434-435.

²⁵ *ibid*, 424.

²⁶ *Bazorkina v Russia* App No 32357/96 (ECtHR, 27 July 2006), page 110; First, the government must not deny that the allegedly disappeared person was detained; second, witnesses must confirm that he was detained in circumstances that could reasonably be considered as life threatening; third, there must be no news from him since, and fourth, the government must not submit any plausible explanation as to what happened.

²⁷ *Osman v the United Kingdom* App No 87/1997/871/1083 (ECtHR, 28 October 1998), para 116.

²⁸ *Cyprus v Turkey* App no 25781/94 (ECtHR, 10 May 2001), para 132.

²⁹ *ibid*.

³⁰ African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) CAB/LEG/24.9/49, (ACRWC), art 28 (a).

³¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Art 6, 7, 9, 10.

³² ICCPR, art 24; Human Rights Committee, Communication Number 2132/2012, *Allioua and Kerouane v Algeria*, UN Doc CCPR/C/112/D/2132/2012 (20 November 2014), para 7.12; Human Rights Committee, 'General Comment No 17: Rights of the Child' (1989).

2.3 General Children's Rights Principles

Establishing who is a child provides clarity over who the legal frameworks apply to in the subsequent sections. A child has been explicitly defined in both IHRL and ICL. Article 1 CRC defines a child as 'anyone under the age of eighteen years'.³³ All regional bodies accept this definition, and under ICL, the ICC for consistency with the CRC, also defines the child as anyone under eighteen years old.³⁴

The CRC identifies 'the best interests of the child' as a fundamental value and one of four general principles for 'interpreting and implementing all rights in the convention'.³⁵ This concept is defined in Article 3: 'In all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies the best interests of the child shall be a primary consideration'.³⁶ This is a substantive right. The CRC in *General Comment 14* established: 'In all actions means not only "decisions but also all acts, conduct proposals, services and any omissions".³⁷ Concerning, means "measures and decisions directly concerning a child" and other indirect measures that affect a child'.³⁸

The best interests of the child are to be established on a 'case-by-case basis' and should be 'flexible and adaptable' to the child of concern and situation,³⁹ including their 'personal context, situation and needs'.⁴⁰ The phrase 'shall be a primary consideration' places a 'strong legal obligation on States' to give sufficient weight to the child's best interests.⁴¹ This is because 'the child's best interests may not be considered on the same level as all other considerations'.⁴² For example, when there is competing interests or a conflict of rights between a child, parent, or the public, and a 'careful balance creating a suitable compromise' cannot be found, the child's interests should be a 'high priority' and not 'just one of several considerations'.⁴³ This is justified on the basis of the 'dependency, maturity, legal status and, often, the voicelessness' of children who, if decision-makers are not aware of their interests,

³³ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) (CRC) UNTS 1577(3), art 1.

³⁴ *Coselav v Turkey* App no 1413/07 (ECtHR, 9 October 2012), page 36; ACRWC, art 2; *Villagran Morales et al v Guatemala* (Series C) Inter-Am Ct HR (1999), para 188; International Criminal Court, 'Policy on Children' (Office of the Prosecutor, December 2023) < <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-children-en-web.pdf> > Accessed 3 April 2026.

³⁵ UN Committee on the Rights of the Child, 'General Comment No 14 (The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration)' (29 May 2013) CRC/C/GC/14, para 1.

³⁶ CRC, art 3.

³⁷ UN Committee on the Rights of the Child, 'General Comment No 14 (The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration)' (29 May 2013) CRC/C/GC/14, para 17.

³⁸ *ibid*, para 19-20.

³⁹ *ibid*, para 32.

⁴⁰ *ibid*.

⁴¹ *ibid*, para 36.

⁴² *ibid*, para 37.

⁴³ *ibid*, 39.

often get 'overlooked'.⁴⁴ Therefore, in any actions concerning a child, paramount weight should be given to the child's best interest.

To complement the best interests principle is the right of children to express their views where: 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child'.⁴⁵ This also was interpreted in *General Comment 14* to mean: 'Any decision that does not consider the child's views or does not give their views due weight according to their age and maturity, does not respect the possibility for the child or children to influence the determination of their best interests'.⁴⁶ Therefore, every child regardless of their situation and age has the right to express their views and have due weight afforded to their view.⁴⁷ To not fall afoul of this standard, communication with the child must result in meaningful participation.⁴⁸ Additionally, a representative speaking on behalf of a child must 'communicate accurately the views of the child'.⁴⁹

Having laid out these children's rights principles we will now move on to the substantive issues that occur when children are ED.

3. Examination of IHRL and ICL Frameworks Protecting Children When They are Disappeared

This section examines whether IHRL and ICL frameworks sufficiently protect children when they disappear. It will begin by briefly explaining the methods deployed by States and NSAs when children disappear in armed conflict, which will then be used as the foundation of our subsequent legal analysis. All cases referred to in this section specifically concern children, except for ECtHR cases.

3.1 Methods of Disappearing Children

Children disappear through various methods, but the themes that overlap are: first. there is a forcible removal from their parents; followed by a concealment of their whereabouts; then forced integration into their new environment. Children are often separated from their parents when their parents are detained, disappeared, or killed. This frequently occurs in a military or security operation, where State security forces enter the community during a raid or

⁴⁴ *ibid*, para 37.

⁴⁵ CRC, art 12(1).

⁴⁶ UN Committee on the Rights of the Child, 'General Comment No 14 (The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration)' (29 May 2013) CRC/C/GC/14, para 53.

⁴⁷ *ibid*, para 43.

⁴⁸ *ibid*, para 89.

⁴⁹ *ibid*, para 90.

counterinsurgency operation and take children while targeting or arresting political opponents.⁵⁰ NSA groups also remove children through raids of villages and schools.⁵¹ In some cases, new-borns have been taken from detained mothers who give birth in detention centres.⁵² Authorities may also remove infants directly from hospitals and inform the parents that they have died or that the infant has been transferred to seek medical attention elsewhere due to health complications, preventing families from maintaining contact with their children and obscuring their identities from birth.⁵³ Children may also be taken through broader displacement or evacuation operations.⁵⁴ Children are easier to remove in such cases due to heightened vulnerability, or where authorities claim to be relocating children from conflict zones for humanitarian protection.⁵⁵ In other circumstances, the removal of children occurs through deception rather than overt force. Officials may convince parents that their children will be transferred elsewhere for education, medical treatment, or safety.⁵⁶ This manipulation creates confusion and prevents families from tracing their children.

The disappearance of children during raids, military operations, mass displacement events, hospitals, or from detained parents raises several concerns under IHRL and ICL. Under the discussed definitions of ED, these practices would likely amount to an abduction, as when children are taken in these contexts it is unlikely there is a lawful reason for that specific child to be taken, such as an arrest warrant with judicial oversight.⁵⁷

If the child is abducted by agents of the State, such as the military or police, then this will satisfy the ED definitions.⁵⁸ The abduction of children by NSAs during an internal conflict is problematic as IHRL and ICL require ED to be conducted by persons or groups of persons acting with authorisation, support, or acquiescence of the State.⁵⁹ The CED has clarified this: for actions of NSAs to fall under Article 2 ICPED, NSA's must have authorisation 'written or orally', support such as information sharing, funding, weapons or training, and acquiescence of the State, where the State 'knew, had reasons to know or ought to have known' that NSAs

⁵⁰ Sarkin (n 4).

⁵¹ Amann (n 2), 307.

⁵² Working Group on Enforced or Involuntary Disappearances, 'General Comment No 12 (Children and Enforced Disappearances)' (14 February 2013) UN Doc A/HRC/WGEID/98/1.

⁵³ *Petrović and Others v Croatia* App no 32514/22, 33284/22 and 15910/23 (ECtHR, 14 January 2025).

⁵⁴ Amann (n 2) 307.

⁵⁵ *ibid.*

⁵⁶ Sarkin (n 4).

⁵⁷ Human Rights Committee, Communication Number 778/1997, *Coronel et al v Colombia*, UN Doc CCPR/C/76/D/778/1997, para 9.4; Human Rights Committee, Communication Number 2132/2012, *Allioua and Kerouane v Algeria*, UN Doc CCPR/C/112/D/2132/2012 (20 November 2014), para 7.7.

⁵⁸ ICPED, art 2; IACFD, art 2; Rome Statute, art 7(i).

⁵⁹ *ibid.*

were going to commit ED.⁶⁰ However, if the RSF who are fighting against the Sudanese government, conducted a raid and ED children, it would not satisfy these requirements.⁶¹

In recognition of this issue, the CED has attempted to clarify ‘the scope of applicability’ of the ICPED to NSAs acting without the authorisation, support or acquiescence of the State.⁶² Article 3 elaborates that States have an obligation to ‘investigate acts defined in Article 2 committed by persons or groups of persons without the authorisation, support or acquiescence of the State’.⁶³ Yet for acts committed by NSAs to fall under this obligation it must be ‘perpetrated in the context of a non-international armed conflict (NIAC), as defined by international humanitarian law (IHL), or by an NSA ‘exercising effective control and/or government-like functions over a territory’.⁶⁴ The second clause reflects Additional Protocol 2 to the Geneva Conventions,⁶⁵ which has been criticised for being too narrow, as few NSA groups will meet this standard.⁶⁶ As the CED did not interpret ‘government-like functions’, this may be as narrow as the Additional Protocol, but the law is unclear here. This is crucial as if acts committed by NSAs without the authorisation, support or acquiescence of the State do not meet either of these criteria then the CED only considers them to be ‘kidnapping or abduction’ and not ED for the purposes of the ICPED.⁶⁷

The IACtHR, attributed the actions of NSAs that have ED children during a raid to the State and found the State has violated the right to life for failing to protect its people.⁶⁸ This was because the State, by ‘encouraging the creation’ of the NSA group in the first place ‘objectively created a dangerous situation for its inhabitants’.⁶⁹ Moreover, in the IACtHR’s view, the State subsequently failed to ‘adopt all the necessary measures to avoid the paramilitary group committing unlawful acts’.⁷⁰ For example, it was insufficient for the State to merely declare the

⁶⁰ Committee on Enforced disappearances, ‘Statement on non-State Actors in the Context of the International Convention for the Protection of All persons From Enforced Disappearances’ (2 May 2023) CED/C/10, para 2-8.

⁶¹ Office of The High Commissioner for Human Rights, ‘Sudan: RSF Violations in Capture of El Fasher Amount to War Crimes’ (Press Release, 13 February 2026) <<https://www.ohchr.org/en/press-releases/2026/02/sudan-rsf-violations-capture-el-fasher-amount-war-crimes>> Accessed 3 April 2026.

⁶² *ibid.*

⁶³ ICPED, art 3.

⁶⁴ Committee on Enforced disappearances, ‘Statement on non-State Actors in the Context of the International Convention for the Protection of All persons From Enforced Disappearances’ (2 May 2023) CED/C/10, para 18; IHL defines a NIAC as ‘armed conflict not of an international character occurring in the territory of one of a high contracting party’, Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 art 3.

⁶⁵ Committee on Enforced disappearances, ‘Statement on non-State Actors in the Context of the International Convention for the Protection of All persons From Enforced Disappearances’ (2 May 2023) CED/C/10, para 18; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)(adopted 8 June 1977, entered into force 17 December 1978) 1125 UNTS 609 art 1.

⁶⁶ Monika Hlavkova, ‘Reconstructing the Civilian/Combatant Divide: A Fresh Look at Targeting in Non-International Armed Conflict’ (2014) 19(2) JCSL 251.

⁶⁷ Committee on Enforced disappearances, ‘Statement on non-State Actors in the Context of the International Convention for the Protection of All persons From Enforced Disappearances’ (2 May 2023) CED/C/10, para 18.

⁶⁸ *Pueblo Bello Massacre v Colombia* (Series C) Inter-Am Ct HR (2006).

⁶⁹ *ibid.*, para 126, 151.

⁷⁰ *ibid.*

group to be illegal, this should have been followed by ‘sufficient and effective measures’ to prevent the ED.⁷¹ In deriving their view, IACtHR, looked at the ECtHR’s approach in relation to State responsibility for the actions of NSAs.⁷² In the European system this issue would likely be assessed under the positive obligation of the right to life. States that ‘knew or ought to have known’ that there was a ‘real and immediate risk to life’ from a ‘criminal act by a third party’ must take measures to avoid that risk.⁷³ If the State was aware of the raid by an NSA and did not take measures to protect or warn people, then it violates their positive obligation.⁷⁴ Thus, the IACtHR adopted a ‘foreseeable and avoidable risk’ approach that is derived from the ECtHR.⁷⁵ Under this approach, the ‘degree of State contribution’ to ‘creating or maintaining the risk’ is a key factor when ‘evaluating whether the risk was avoidable and foreseeable’.⁷⁶

In contrast, the ICC interprets the ICL definition to be committed either by the State or a ‘political organisation’.⁷⁷ Groups, such as the RSF, who intend to become the government of their State, could be considered a political organisation and, thus, individuals associated with the RSF can be held responsible for ED of children.⁷⁸

3.2 The Approach of the IACtHR

For the disappearance of children, in the circumstances set out above, to amount to a violation of the autonomous right to be free from ED and automatically violates multiple rights, the IACtHR has set out the criteria that must be proved.⁷⁹ It requires that there is a governmental practice of ED that the disappearance can be linked to.⁸⁰ Once this standard is reached, it is presumed that a person has disappeared, the burden then falls to the State to prove otherwise.⁸¹ If the State cannot prove otherwise then it automatically violates the right to life, as ‘the very nature of forced disappearance’ means ‘the victims are in an aggravated situation of vulnerability’.⁸² It also violates all provisions of the right to personal integrity and the right to

⁷¹ *ibid.*

⁷² Jimena Reyes, Susan Farbstien, Sabrina Ochoa et al, ‘Harmonizing Legal Approaches to Enforced Disappearances: Evidentiary Challenges, Emerging Developments, and the Role of Non-State Actors’ (2024) HHRJ 27(169), page 189.

⁷³ *Osman v the United Kingdom* App no 87/1997/871/1083 (ECtHR, 28 October 1998), para 116.

⁷⁴ *ibid.*

⁷⁵ Reyes, (n 72).

⁷⁶ *ibid.*

⁷⁷ Situation in the Republic of Burundi (Public Redacted Version of Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Burundi) ICC-01/17-9-Red (25 October 2017), para 119.

⁷⁸ Mat Nashed, ‘Why Sudan’s RSF Chose this Parallel Government Ahead of Peace Talks’ (Aljazeera, 28 July 2025) <<https://www.aljazeera.com/news/2025/7/28/why-sudans-rsf-chose-this-parallel-government-ahead-of-peace-talks>> Accessed 3 April 2026.

⁷⁹ *Velasquez Rodriguez v Honduras* (Series C) No 4 Inter-Am Ct HR (1988), para 126: in order to prove that someone disappeared, the claimant must show: 1) there is a governmental practice of disappearances, and 2) the disappearances of the specific individual were linked to that practice.

⁸⁰ *ibid.*

⁸¹ *ibid.*

⁸² *Gudiel Alvarez et al v Guatemala* (Series C) No 4 Inter-Am Ct HR (2012), para 205.

liberty. Therefore, the IACtHR places importance on there being a pattern of disappearances. However, an isolated incident of a child being disappeared would not violate the autonomous right in the absence of a governmental practice of disappearing children in that manner.

3.3 The Approach of the ECtHR

In the European system, the disappearance of children would be assessed under the right to life in the absence of an autonomous right.⁸³ However, these issues raise concerns as to whether the ECtHR would find a violation of the negative obligation of the State to not unlawfully kill or endanger someone. This is because the *Barzorkina* criteria can allow the State to avoid responsibility for a negative right violation, by imposing establishing excessive onerous evidentiary standards on the victims.⁸⁴ For example, the requirement that there 'must be witnesses' to confirm 'he was detained in circumstances reasonably considered life threatening' is difficult to establish.⁸⁵ Specifically in the case of raids or military operations, the complex situation means there are unlikely to be witnesses to confirm whether a child was detained in circumstances that are 'life threatening'. In relation to mass displacement events, if the State sent vehicles to transport children to safe areas it might not appear to witnesses as life threatening, particularly if the State's justification is accepted.

If a parent is detained, it is possible that there will not be witnesses to confirm the disappearance of the child, except for agents of the State. Finally, in the context of babies taken in hospitals, again there may not be witnesses, as babies can be taken from cots at night or straight from medical examination rooms. In the absence of witnesses, the State could offer plausible alternatives, and deny they abducted the child.⁸⁶ For example, in the case of mass displacement events, the State can justify the removal on the basis of trying to save the child's life by removing them from the conflict zone. In relation to children taken from hospitals, the State may claim the baby has died or has been transferred elsewhere, although acknowledging they have taken the child, in the absence of witnesses to confirm whether the situation was 'life threatening', this would not reach the *Barzorkina* requirements.⁸⁷ Therefore, the ECtHR defers too readily to States, which, in turn allows States to conceal their actions and avoid a finding of a violation of the negative obligation under the right to life.

⁸³ ECHR, art 2.

⁸⁴ *Bazorkina v Russia* App No 32357/96 (ECtHR, 27 July 2006), page 110; First, the government must not deny that the allegedly disappeared person was detained; second, witnesses must confirm that he was detained in circumstances that could reasonably be considered as life threatening; third, there must be no news from him since, and fourth, the government must not submit any plausible explanation as to what happened.

⁸⁵ *ibid.*

⁸⁶ *ibid.*

⁸⁷ *ibid.*

Nonetheless, the ECtHR ‘almost systematically finds a violation of the procedural right’ to life.⁸⁸ This obligation is triggered when a debatable claim that an individual who was last seen in custody disappears.⁸⁹ The State has an obligation to conduct an effective investigation into the whereabouts of the disappeared person, and to identify and punish those involved.⁹⁰ This requirement is likely inadequate in the context of ED of children, as it requires a child to last be seen in the custody of the authorities, in contexts that are unlikely to have witnesses, as discussed.

However, the children's rights principles have the potential to influence the ECtHR's reasoning. For example, it can be claimed that a State abducting children during a raid or military operation will not have the best interests of the child as a priority. Best interest arguments could also be used to argue for the weakening of the *Barzorkina* criteria given that the abduction of children will endanger their life. Additionally, the removal of the child from a hospital may satisfy the *Barzorkina* criteria requirement that the circumstances are life threatening, as it would remove their access to healthcare and potentially impact their right to life. This would then transfer the burden of proof to the State, that would have to provide a plausible explanation as to why the child is no longer in the hospital and if they admit the child is transferred elsewhere or is dead, they would have to disclose where it is.

The interpretations of the Independent International Commission of Inquiry on Ukraine (the Commission) may also influence the reasoning of the ECtHR on the issue of children taken in mass displacement events, as in the Russia and Ukraine conflict there has been consistent practice of Russian authorities removing children under the auspices of ‘evacuations’ to protect them from an ‘imminent security risk’ from the Ukrainian government.⁹¹ Despite this, the Commission found that these measures contravened the best interests of the child, and amounted to ED, on the basis of their prolonged nature, they were against the wishes of the child and had the potential to result in other rights violations.⁹² Therefore, if there is a consistent practice of children taken under the guise of mass displacement activities justified by safety concerns, that is not in their best interests, it could amount to a life threatening situation, as required by the *Barzorkina* criteria and violates their right to life. Therefore, best interests arguments could be raised to lower the standard established by the *Bazorkina* criteria.

3.4 The Approach of the ACERWC

⁸⁸ Claude (n 19), 438; *Baysayeva v Russia* App no 74237/01 (ECtHR, 24 September 2007), para 130; *Varnava and Others v Turkey* App no 16064/90 (ECtHR, 18 September 2009), para 133.

⁸⁹ *Cyprus v Turkey* App no 25781/94 (ECtHR, 10 May 2001), para 132.

⁹⁰ *ibid.*

⁹¹ Human Rights Council, ‘I am Still Looking for my Daughter: Crimes Against Humanity Committed by the Russian Authorities against Children From Ukraine’ (2026) UN Doc A/HRC/61/CRP.8, para 8.

⁹² *ibid.*, para 69-70.

In the African system, again due to the lack of an autonomous right, children taken in raids, military operations, mass displacement events, hospitals, or from detained parents cases would be assessed under the right to life.⁹³ In the ACRWC, Article 5(1) stipulates that all children have the right to life, this is complemented by Article 5(2) which requires States to 'ensure to the maximum extent possible the survival, protection and development of the child'.⁹⁴ This right requires States to provide an; '[a]dequate standard of living for children including the right to life and their physical, mental, spiritual, moral, psychological and social development'.⁹⁵ To achieve this, States must 'protect' children's access to healthcare, education, water, a safe environment and protect them from abuse.⁹⁶ Therefore, taking a child from their home in a raid, from a hospital or from their parents would violate this right as it not only deprives access to healthcare facilities, but also their access to a safe environment, as they will no longer be with the family, which is needed for their social development and to protect them from abuse.

Article 30 ACRWC seeks to protect children of 'incarcerated and imprisoned' parents, is also relevant.⁹⁷ This is interpreted to include detention in 'secret places' such as the secret prisons that hold victims of enforced disappearances.⁹⁸ The protections afforded to children are: statistics of children of imprisoned parents should be kept 'consistently';⁹⁹ decisions for the child to live with the detained parent must be judicially reviewed and consider the 'individual characteristics of the child' such as age or sex as well as the child's own views;¹⁰⁰ if a child is detained with the parent, then the best interests of the child should be the primary consideration in any action by the authorities that concern the child.¹⁰¹ Thus, the abduction of a child from a detained family member will violate this provision, as it will not be judicially reviewed, and neither will the child's best interests be considered.

4. Violations After the Initial Abduction of the Child

The analysis so far has centred around the issues that occur when children are initially disappeared, but once disappeared children are often subjected to processes intended to

⁹³ ACRWC, art 5.

⁹⁴ *ibid*, art 5(1)(2).

⁹⁵ *Centre for Human Rights (University of Pretoria) and La Rencontre Africaine pour la Defense des Droits de l'Homme (Senegal) v Senegal (Decision)* ACERWC Comm No 003/Com/001/2012, para 42.

⁹⁶ *ibid*.

⁹⁷ ACERWC, General Comment No 1 on Article 30 of the African Charter on the Rights and Welfare of the Child; Children of Incarcerated and Imprisoned Parents and Primary Caregivers (8 November 2013).

⁹⁸ *ibid*, para 13.2.

⁹⁹ *ibid*, para 16.

¹⁰⁰ *ibid*, para 16, 24(c).

¹⁰¹ ACERWC, General Comment No 1 on Article 30 of the African Charter on the Rights and Welfare of the Child; Children of Incarcerated and Imprisoned Parents and Primary Caregivers (8 November 2013).

reshape their identity, including ideological education, cultural assimilation, language suppression, or religious conversion.¹⁰² Some children are subsequently placed with families connected to State authorities through illegal adoption procedures, where legal safeguards are bypassed or manipulated.¹⁰³ The disappearance of children is often further concealed through bureaucratic and legal mechanisms as authorities may falsify birth records, issue new identity documents, declare children ‘abandoned’ or ‘orphans’, or alter civil registries so that children’s real identities and family ties are legally erased.¹⁰⁴ As a result, children become extremely difficult to trace and reunite with their families as authorities place children into State run institutions, such as orphanages, boarding schools, re-education centres, or religious institutions. Through these mechanisms, the ED of children involves the removal of the child, and a systematic effort to conceal and hide the whereabouts of the child. Thus, the consequences of the disappearance are long-term, and violate multiple rights. The analysis will now focus on the issues that occur after the initial abduction of a child, starting with the deprivation of liberty and separation from family, before assessing the sexual exploitation and recruitment into armed forces.

4.1 Deprivation of Liberty

The right to liberty under the ICCPR and ACHR states, ‘no one shall be subjected to arbitrary arrest or detention’.¹⁰⁵ The ECHR contains a right to liberty and security of the person, but also enumerates five exceptions.¹⁰⁶ Regarding ED, the HRC interprets this to be an aggravated form of arbitrary detention.¹⁰⁷ The IACtHR views the right to liberty as the ‘principle right denied’ by ED; establishing that a disappearance is an ‘arbitrary deprivation’ of liberty, that violates all provisions of Article 7.¹⁰⁸ This is because the Court established that to detain someone who has disappeared is a ‘clear instance of abuse of power’.¹⁰⁹

The ECtHR in its first case of ED ruled that arbitrarily detaining someone constituted a ‘particularly grave violation’ of Article 5.¹¹⁰ This has been confirmed in its subsequent jurisprudence.¹¹¹ Although the ECtHR views disappearances to be a grave violation, it departs from the IACtHR approach, as it does not consider the whole of Article 5. Instead, the ECtHR

¹⁰² Amann (n 2).

¹⁰³ Sarkin (n 4).

¹⁰⁴ Working Group on Enforced or Involuntary Disappearances, ‘General Comment No 12 (Children and Enforced Disappearances)’ (14 February 2013) UN Doc A/HRC/WGEID/98/1.

¹⁰⁵ ICCPR, art 9, ACHR, art 7.

¹⁰⁶ ECHR, art 5.

¹⁰⁷ Human Rights Committee, Communication Number 449/1991, *Mojica v Dominican Republic*, UN Doc CCPR/C/51/D/449/1991, para 5.4.

¹⁰⁸ Claude (n 19), para 444; *Velasquez Rodriguez v Honduras* (Series C) Inter-Am Ct HR (1988), para 155; *Cantoral-Benavides v Peru* (Series C) No 69 Inter-Am Ct HR (2000), para 77.

¹⁰⁹ *La Cantuta v Peru* (Series C) No 162 Inter-Am Ct HR (2006), para 109.

¹¹⁰ *Kurt v Turkey*, para 129.

¹¹¹ *Barzorkina v Russia*, para 147.

focuses on two positive obligations; the obligation to account for detainees and to take effective measures to safeguard against the risk of their disappearance, and the duty to investigate allegations that persons in custody have disappeared.¹¹² For example, in *Kurt v Turkey* the Court found that withholding of records that relate to the detainee is ‘incompatible with the very purpose’ of Article 5,¹¹³ an approach confirmed in subsequent jurisprudence.¹¹⁴

The practice of placing children into State run institutions after they have been initially abducted can amount to a deprivation of liberty. The way a child is abducted is relevant to the determination of whether there has been a deprivation of liberty. For example, in *Allioua*, the HRC found a violation of Article 9, when the State failed to give sufficient explanations as to why the child victims were arrested, who were then not brought before a judge and their families were not provided with information about their detention.¹¹⁵ Moreover, in *Coronel*, the HRC found detentions to be a violation of Article 9 in the absence of an arrest warrant and the failure of the State to deny this fact.¹¹⁶

The lack of judicial oversight when children are abducted does not allow for the determination of the best interests of the child or the child to express their views on the placement into a State run institution. As the nature of ED places, a child in in ‘legal limbo’ and outside ‘the protection of the law’ it is likely that the children confined to these institutions will not be allowed to leave and will be under strict regimes of supervision.¹¹⁷ Places such as orphanages or schools which *prima facie* are not detention places become places of detention when contact with the outside world is prohibited. In *Tabitha*, concerning the immigration detention of a five-year-old, the applicants successfully argued, under Article 5 ECHR, ‘when a minor was detained, a stricter review would be required’ that would require the State to prove that the detentions of minors was in their best interests.¹¹⁸ In response, the ECtHR found that although the detention fell within one of the listed exceptions to Article 5, the facts disclosed a violation as the place of detention had not adapted to the extreme vulnerability of the child.¹¹⁹ Therefore, when child victims of ED are placed into State run institutions this may violate Article 5 ECHR, if they are not appropriately adapted to ensure the best interests of the child.

¹¹² Alister Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights* (Hart Publishing, 2004), 75; *Baysayeva v Russia* App no 74237/01 (ECtHR, 24 September 2007), para 147.

¹¹³ *Kurt v Turkey* App no 15/1997/799/1002 (ECtHR, 25 May 1998), 125.

¹¹⁴ *Baysayeva v Russia*, para 146.

¹¹⁵ Human Rights Committee, Communication Number 2132/2012, *Allioua and Kerouane v Algeria*, UN Doc CCPR/C/112/D/2132/2012 (20 November 2014), para 7.7.

¹¹⁶ Human Rights Committee, Communication Number 778/1997, *Coronel et al v Colombia*, UN Doc CCPR/C/76/D/778/1997, para 9.4.

¹¹⁷ UN Working Group on Enforced or Involuntary Disappearances, General Comment on the Right to Recognition as a Person Before the Law in the Context of Enforced Disappearances (2 March 2012) UN Doc A/HRC/19/58/Rev 1, para 1.

¹¹⁸ *Mubilanzila Mayeka And Kaniki Mitunga v Belgium* App no 13178/03 (ECtHR, 12 January 2007), para 93.

¹¹⁹ *ibid*, para 95-105.

Additionally, such places of detention raise concerns under the right to be free from torture and inhumane treatment. In *Allioua*, the HRC recognised that the ‘degree of suffering involved in being held indefinitely without contact with the outside world’ and found a violation of Article 7.¹²⁰ Moreover, in *Atachahua*, the ‘abduction and disappearance of the victim and prevention of contact with her family and with the outside world’ amounted to cruel and inhuman treatment in contravention of Article 7.¹²¹ This reasoning is supported by the IACtHR which views ‘[t]he mere subjection of an individual to prolonged isolation and deprivation of communication is in itself cruel and inhuman treatment’ and that ED ‘violates every dimension of personal integrity’.¹²²

In the African system, abuse and torture are ‘strictly prohibited’ under Article 16 ACRWC this includes all physical and mental injury and sexual abuse.¹²³ The African Charter also requires States to prosecute any instances of abuse and torture and to provide support for the victims.¹²⁴ The ACREWC defined inhuman and degrading treatment to be acts ‘which humiliate the individual or force him or her to act against his will or conscience’.¹²⁵ This is relevant as the incommunicado nature of detention places the child in a situation of heightened vulnerability. Additionally, Article 16 covers ‘mental’ anguish, the constraints placed on children by being removed from society and their family would amount to violations of the right to be free from torture and inhumane treatment.¹²⁶

Although under the HRC, IACtHR and ACERWC these practices would violate the right to freedom from torture, this may not be the case with the ECtHR. In *Kurt v Turkey* the ECtHR did not find a violation of Article 3 ECHR, as they were not ‘presented with any specific evidence of ill treatment’.¹²⁷ This is because in detention related cases that invoke Article 3 the Court looks at cumulative factors, such as ‘[t]he provision of heating, ventilation, lighting, food and water, medical treatment, toilets, etc’, and weighs the effects they have on the individual.¹²⁸

As the State has abducted children it is likely they would conceal actions that would violate Article 3, meaning that it is impossible to evidence the conditions in which a child is being held.

¹²⁰ Human Rights Committee, Communication Number 2132/2012, *Allioua and Kerouane v Algeria*, UN Doc CCPR/C/112/D/2132/2012 (20 November 2014), para 7.5; ICCPR, art 7.

¹²¹ Human Rights Committee, Communication Number 540/1993, *Atachahua v Peru*, UN Doc CCPR/C/56/D/540/1993 (16 April 1996), para 8.5.

¹²² *Velasquez Rodriguez v Honduras* (Series C) No 4 Inter-Am Ct HR (1988), para 187.

¹²³ ACRCW, art 16; *Minority Rights Group International and Others v Mauritania* (Decision) ACERWC Comm No 007/Con/003/2015, para 85.

¹²⁴ *Centre for Human Rights (University of Pretoria) and La Rencontre Africaine pour la Defense des Droits de l’Homme (Senegal) v Senegal (Decision)* ACERWC Comm No 003/Com/001/2012, para 66.

¹²⁵ *ibid*, para 64; *International Pen and Others (on behalf of Saro-Wiwa) v Nigeria I* (2000) AHRLR 212 (ACHPR 1998).

¹²⁶ ACRWC, art 16.

¹²⁷ *Kurt v Turkey* App no 5/1997/799/1002 (ECtHR, 25 May 1998), para 116.

¹²⁸ Claude (n 19), 443.

Thus, finding violations can be difficult in the European system. To compound this, the ECtHR in *Bazorkina* noted that: '[t]he failure to investigate a claim of inhuman treatment did not raise a separate issue since it examined deficiencies of investigation under procedural Article 2'.¹²⁹ Therefore, the ECtHR may not engage with the substantive and procedural aspect of Article 3 to sufficiently protect child victims of ED.

Under ICL, although the offence of ED explicitly states 'arrest, detention or abduction', the ICC interprets this to cover all deprivations of liberty.¹³⁰ As acknowledged by the text of the offence, it requires an individual to be removed from the 'protection of the law'.¹³¹ However, the nature of how a child disappears, such as from a raid, mass displacement or from a hospital may leave little evidence of this intention. Nonetheless, the ICC is able to make inferences based on how the deprivation of liberty occurred and can, therefore, infer intention.¹³² They will look at factors such as whether there was a 'court order' for detention, whether the individual was abducted by 'cars without license plates and tinted windows', whether they were detained 'in secret' and in an 'unofficial' prison and whether there are 'records of their detention'.¹³³ Although placing children in orphanages or schools may not appear like there is an intention to remove them from the protection of the law, the ICC can infer from how they arrived an intention to remove from the eyes of the law. It is important to note that under ICL the removal of an individual must be 'for prolonged time' such as 'several months or years'.¹³⁴

4.2 Separation of Children from their Family

As the separation of children from their family leaves them 'vulnerable to various forms' of harm, the CRC enumerated substantial protections for separated children.¹³⁵ For example, not only is a best interests assessment required in all decisions regarding the separated child, but it must include a 'comprehensive assessment of the child's identity, vulnerability and protection needs' and must be conducted in a 'friendly and safe atmosphere by trained professionals', where the views of the child are considered.¹³⁶ After which, they should be granted a 'competent guardian expeditiously'.¹³⁷ If placed in a facility for protection or care after being disappeared, such as in orphanages or boarding schools, these should be 'periodically

¹²⁹ *Bazorkina v Russia* App No 32357/96 (ECtHR, 27 July 2006), para 136.

¹³⁰ Situation in the Republic of Burundi (Public Redacted Version of Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Burundi) ICC-01/17-9-Red (25 October 2017), para 118.

¹³¹ Rome Statute, art 7(i).

¹³² Situation in the Republic of Burundi (Public Redacted Version of Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Burundi) ICC-01/17-9-Red (25 October 2017), para 120.

¹³³ *ibid.*

¹³⁴ *ibid.*

¹³⁵ Committee on the Rights of the Child, 'General Comment No 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin' (1 September 2005) UN Doc CRC/GC/2005/6, para 23.

¹³⁶ *ibid.*, para 19-22, 25.

¹³⁷ *ibid.*

reviewed' for their needs.¹³⁸ Finally, as a general rule, separated children should never be deprived of their liberty.¹³⁹ The CRC have not applied these provisions to ED, because the very nature of when a child disappears means they do not have access to these protections.

The IACtHR examines arbitrary interferences with the child's right to live with their family in ED cases. When analysing the right to family life, the IACtHR explicitly states that any 'decision' regarding the separation of child from parent 'must be justified by the best interests of the child'.¹⁴⁰ In *Rochac Hernandez*, as the victims were children, the Inter-American Commission found it 'pertinent' to assess the 'obligations derived' from Article 17 finding that, '[e]ven in an exceptional situation, the State, through its agents, must protect the institution of the family as an essential mechanism for safeguarding the rights of the children under its jurisdiction'.¹⁴¹ This means that if a child is separated from its family, as is the case in disappearances, the State should intervene to 'reincorporate that child back to their family', provided it was in their best interests to do so.¹⁴² If the State fails to do so, this will be a continuous violation of Article 17 until they are reunited with their family and their 'material, affective and psychological needs' are met.¹⁴³

However, the separation of children from their family also raises questions of the effectiveness of IHRL in relation to the ED of children. For example, the ECtHR does not typically, examine ED cases under Article 8.¹⁴⁴ Similarly, after finding violations of Articles 6, 7 and 10, the HRC does not assess Article 17 separately, an approach that is repeated in numerous cases.¹⁴⁵ There is potential for the ECtHR to protect children in this area since they interpreted Article 8 to mean that 'harmonious relations between parents and children are a fundamental component of family life' and that 'one of the gravest interferences is that which leads to division of a family'.¹⁴⁶ Significantly, the ECtHR has been willing to regularly apply the best interests of the child principle to Article 8 cases.¹⁴⁷ For example, the ECtHR recognised that

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰ *Rochac Hernandez et al v El Salvador* (Series C) Inter-Am Ct HR (2014), para 98.

¹⁴¹ *ibid.*

¹⁴² *ibid.*

¹⁴³ *Rio Negro Massacres v Guatemala* (Series C) Inter-Am Ct HR (2012), para 145; Juridical Status and Human Rights of the Child, Advisory Opinion OC-17/02, IACtHR Series A No 17 (28 August 2002).

¹⁴⁴ *Varnava and Others v Turkey* App no 16064/90 (ECtHR, 18 September 2009), para 211.

¹⁴⁵ Human Rights Committee, Communication Number 950/2000, *Jegatheeswara v Sri Lanka* UN Doc CCPR/C/78/D/950/2000; Human Rights Committee, Communication Number 2064/2011, *Milan Mandic v Bosnia and Herzegovina* UN Doc CCPR/C/115/D/2064/2011; Human Rights Committee, Communication Number 2134/2012, *Rosa Maria Serna et al v Colombia* UN Doc CCPR/C/114/D/2134/2012.

¹⁴⁶ Juridical Status and Human Rights of the Child, Advisory Opinion OC-17/02, IACtHR Series A No 17 (28 August 2002), para 72: Mutual enjoyment of harmonious relations between parents and children is a fundamental component of family life The Court itself has pointed out that the essential content of this precept is protection of the individual in face of arbitrary action by public authorities. One of the gravest interferences is that which leads to division of a family.

¹⁴⁷ European Court of Human Rights, 'Guide on the Case-law of the European Convention on Human Rights: Rights of the Child' (Guide, 31 August 2025, pages 10-15) <https://ks.echr.coe.int/documents/d/echr-ks/guide_rights_of_the_child_eng> Accessed 8 April 2026.

'it is imperative to consider the long-term effects which a permanent separation of a child from its natural mother might have'.¹⁴⁸ Therefore, it is possible that the ECtHR would engage in an analysis of Article 8 in a child disappearance case, drawing on the principle of best interests of the child, even though they have not done so in cases concerning adult ED.

5. Pathways to Justice and Conclusion

This memorandum provides analysis of the IHRL and ICL frameworks relevant to the child victims of ED. Section 1 established the key concepts and approaches of ED in ICL and IHRL systems, as well as relevant child rights principles. Section 2 provided an examination of the methods to disappear children, which was used to analyse the issues that arise under IHRL and ICL. Section 3 provided an analysis of the rights that are subsequently violated by ED of children, focusing specifically on the rights to liberty, family life, freedom from sexual exploitation, and freedom from recruitment and participation in armed hostilities.

Although IHRL provides various avenues for child victims of ED to seek justice, significant barriers remain across the frameworks. The European system is the most limited pathway for justice for child victims, as their approach places significant evidentiary burdens on applicants, who must demonstrate violations of each right separately, rather than presenting the disappearance as a unified violation, like the holistic approach of the Inter-American system. Access to bodies such as the HRC and the CED is limited by State ratification and non-binding decisions. ICL provides individual accountability, but its criminal thresholds and the need for mechanisms such as the ICC to prosecute individuals responsible provides significant barriers to justice.

The African system provides one of the most promising pathways to justice for child victims of enforced disappearance. The ACERWC provides a specialized justice mechanism focused specifically on children's rights under the ACRWC. The Committee monitors implementation of the Charter and accepts communications concerning violations of children's rights, including protections relating to abduction and armed conflict. This focus creates a pathway for addressing cases involving the enforced disappearance of children, as the experiences suffered by disappeared children often implicate multiple rights under the Charter. Although the Committee's jurisprudence is relatively underdeveloped, it has strong potential for accountability since every African State has ratified the ACRWC and all, but Egypt allows for individual communications before the Committee.¹⁴⁹ In summary, this memorandum has

¹⁴⁸ *Jansen v Norway* App No 2822/16 (ECtHR, 6 September 2018), para 104.

¹⁴⁹ African Committee of Experts on the Rights and Welfare of the Child, 'Ratifications Table' (Information, 2026) <<https://www.acerwc.org/ratifications> Accessed 17 March 2026> Accessed 26 April 2026.

provided a comprehensive legal analysis of the issues that occur when children are ED during armed conflict and analysed how different IHRL and ICL systems respond to these issues. It has then analysed the viability of possible pathways to justice for child victims.

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