

**ALTERNATIVE REPORT ON COMPLIANCE BY THE
COLOMBIAN STATE WITH THE RECOMMENDATIONS
MADE BY THE UNITED NATIONS COMMITTEE ON
ENFORCED DISAPPEARANCES**

Working Group on Enforced Disappearances



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Table of Abbreviations

BPGD	Bank of Genetic Profiles of Disappeared Persons
CAI	Immediate Response Police Stations
CCEEU	Colombia Europe United States Coordination
CED	United Nations Committee against Enforced Disappearances
CNMH	National Center of Historical Memory
DAS	Administrative Department of Security
EQUITAS	Colombian Interdisciplinary Team of Forensic Work and Psychosocial Assistance
FGN	Attorney General's Office
FONDETEC	Technical and Specialized Defense Fund for Active or Retired Members of the Public Force
GNP	National Search Plan
IACHR	Inter-American Commission on Human Rights
ICRC	International Committee of the Red Cross
INMLCF	National Institute of Legal Medicine and Forensic Sciences
INPEC	National Penitentiary and Jail Institute
JEP	Special Jurisdiction for Peace
MBU	Urgent Search Mechanism
MDTDF	Working Group on Forced Disappearances
MOVICE	National Movement of Victims of State Crimes
OMC	Observatory of Memory and Conflict of the National Center of Historical Memory (Centro Nacional de Memoria Histórica)
PINR	Unclaimed Identified Persons
PNI	Unidentified persons
RND	National Registry of Missing Persons
SAR	Failure to Acknowledge Truth and Responsibility Section
SICLICO	Clinical Information System
SICOMAIN	Internet System for Mass Information Consultation
SIJUF	Judicial Information System of the Prosecutor's Office Law 600
SIRDEC	Missing Persons and Corpses Information System Network
SPOA	Oral Accusatory Penal System
UBPD	Missing Persons Search Unit

ALTERNATIVE REPORT ON COMPLIANCE BY THE COLOMBIAN STATE WITH THE RECOMMENDATIONS MADE BY THE UNITED NATIONS COMMITTEE ON ENFORCED DISAPPEARANCES

Introduction

Since its creation in November 2010, the Working Group on Enforced Disappearances (MDTDF for its initials in Spanish) has been characterized as a space for the articulation of organizations of relatives of detained-disappeared persons, human rights, psychosocial accompaniment and the provision of anthropological-forensic and legal support. The MDTDF has had the objectives of: position the issue of "enforced disappearance" in the human rights agenda of the country; monitor this reality and work on the construction and dissemination of proposals and actions for visibility; provide accompaniment to the demands of the victims and advocacy actions that lead to the search, location, identification and dignified delivery of victims of enforced disappearances; and contribute to the fight against impunity for enforced disappearances in Colombia.¹

The objective of this report² is to monitor the Colombian State's compliance with the recommendations made by the United Nations Committee on Enforced Disappearances (hereinafter CED) in 2016 from the perspective of victims', human rights and accompaniment organizations working on enforced disappearances in the country. It is important to note that there was no opportunity for civil society organizations or representatives to participate in during the preparation of the report presented in 2019 by the Colombian State. The persistence of the practice of enforced disappearance is evident, not just in a post-Peace Agreement context, but also in a context marked by measures established as part of the Mandatory National Lockdown³ decreed by the National Government to prevent the spread of COVID-19.

As argued in the report presented in October 2019 on compliance with recommendations 14, 20 and 26, "the Final Agreement for the termination of the armed conflict and the construction of a stable and lasting peace represented important progress in this area⁴". This progress has been limited due to the lack of political will from the Colombian government to implement the Peace Agreement signed in 2016. This has been evidenced in the defunding of the Unit for the Search of Persons Reported Missing (hereinafter UBPD) and attacks against the Special Jurisdiction for Peace (hereinafter JEP), which undermines the rights of victims to the truth and to the search and location of their missing relatives.

In addition, the non-implementation of the Peace Agreement has resulted in a constant increase in aggressions against social leaders, human rights defenders and ex-combatants, including the continuation of enforced disappearances. The Observatory of Human Rights and International Humanitarian Law operated by the Colombia - Europe - United States Coordination (hereinafter CCEEU) has expressed concern that the mandatory lockdown decreed by the National Government

¹ Colombia-Europe-United States Coordination. Enforced disappearance in Colombia. In Search of Justice. Bogotá D.C.: Editorial Codice Ltda., 2012. enforced disappearance. Alternative Report on the Situation of Enforced Disappearances in Colombia presented before the United Nations Committee against Enforced Disappearances. Bogotá D.C.: Colombia-Europe-United States Coordination, 2016.

² Important contributions to the preparation of this report came from the National Movement of Victims of State Crimes (MOVICE), the Corporación para el Desarrollo Regional, Corporación Jurídica Libertad, the Colombian Interdisciplinary Team for Forensic Work and Psychosocial Assistance (EQUITAS), the Committee for Solidarity with Political Prisoners, Fundación Progresar, Humanidad Vigente Corporación Jurídica, Corporación Jurídica Yira Castro, Colombian Jurists Commission, Fundación Progresar, Meta Civic Committee for Human Rights, and the Observatory of Human Rights and International Humanitarian Law operated by the Colombia - Europe - United States Coordination.

³ The Mandatory National Lockdown began on March 24, 2020.

⁴ Working Group on Enforced Disappearances. Alternate Report on the Colombian State's compliance with the recommendations made by the United Nations Committee on Enforced Disappearances. Bogotá D.C., October 2019.

has been used to facilitate the location and extermination of social leaders, as evidenced by the murder of 54 social leaders between the months of March and June 2020 during the mandatory lockdown. These crimes show that risks are increasing for social leaders at a time when the attention of the national and international community is focused on containing the health emergency. These circumstances have been used to further exterminate social leaders and people who defend human rights in Colombia. In addition to these murders, there has been an increase in enforced disappearances throughout the country, in addition to other forms of disappearances related to crimes such as human trafficking, enforced recruitment and child sexual exploitation.⁵

The structure of this report is divided into two sections. The first section contains a contextualization of the continuity of the crime of enforced disappearance in the strict sense, that is, by agents of enforced security forces or paramilitary structures acting with their acquiescence in Colombia following the recommendations made by the CED in 2016 using a territorial perspective. The second section details considerations regarding how these recommendations can be fully adopted. This involves returning to the content of the report presented by the Colombian State in October 2019, which was not socialized with civil society organizations.

Enforced Disappearance in Colombia: A crime that persists even during the pandemic.

The MDTDF expresses its concern regarding the persistence of the crime of Enforced Disappearance in Colombia, which evidences non-compliance with the obligations regarding the prevention of this crime against humanity. Neither the obligations derived from the Peace Agreement nor the context of the social emergency caused by the COVID-19 pandemic have constituted barriers to the occurrence of cases of Enforced Disappearance in the country.

This was also evidenced by the report from the International Committee of the Red Cross (hereinafter ICRC)⁶, which states that since the signing of the Peace Agreement in November 2016 a new case of disappearance related to the armed conflict has been registered every four days. This same organization has reported that in recent years they have recorded 376 cases of foreign persons (among them 216 of Venezuelan nationality) who have been reported as missing in departments located in border areas such as Norte de Santander, Nariño, Antioquia and Chocó.

During 2020, there was an increase in the number of cases of enforced disappearance, especially against social leaders, who have been victims despite the lockdown measures in the territories due to COVID-19. Among these cases is María Rocío Silva Caballero, leader of the processes of substitution of illicit crops in southern zone of the Department of Bolívar and member of the Community Action Board of Vallecito in the Municipality of San Pablo, Bolívar. María Rocío was reported missing on May 21, 2020. There is also the case of the peasant and community leader John Fredy Restrepo Monsalve, member of the Peasant Association of Bajo Cauca, who was reported missing on April 29 in the Municipality of Tarazá, Antioquia. Both of these cases have been attributed to members of the enforced security forces. Since the signing of the Peace Agreement, the United Nations Verification Mission in Colombia has verified 20 disappearances (all of them of men) of ex-combatants from the demobilized FARC-EP guerrilla group.⁷

In the department of Antioquia, the enforced disappearance of Didian Arley Agudelo was also reported in 2020. According to reports from community members, Didian Arley was detained by troops from the VII Army Division on February 26, 2020 in the Municipality of Campamento –

⁵ Coordination Colombia Europe United States. Special Bulletin No. 1 - The Coronavirus Emergency and the Murder of Social Leaders. March 27, 2020.

⁶ International Committee of the Red Cross (2018) Colombia: challenges of armed conflict and violence. Available at: <https://www.icrc.org/es/colombia-retos-humanitarios-del-conflicto-armado-y-la-violencia>

⁷ United Nations Verification Mission in Colombia (2020, December 29). Report to the Secretary-General.

Antioquia. Four days later he was found tied up and strangled in a heavily militarized zone. The same situation occurred with the social leader William Ramiro Montoya, vice-president of the Community Action Council for the Puerto Antioquia settlement in the Municipality of Tarazá, Bajo Cauca Antioquia. William Ramiro disappeared on March 3, 2020. Days later his body was found in the Cauca River near the Piamonte de Cáceres District. José Herrera, founder of the Peasant Association of Bajo Cauca (ASOCBAC) and the local branch of the Marcha Patriótica (Patriotic March) political movement in the Municipality of Ituango, northern Antioquia, disappeared on March 20, 2018. His body appeared in the Cauca River six days later. Leidy Juliet Correa Valle, Secretary of the Guayabal de Pená Community Action Council, Municipality of Peque Antioquia, disappeared on September 5, 2018. Her body was found buried near her home days later. Mónica Castro Rodríguez, community leader from the Municipality of Envigado, has been missing since May 4, 2018.

It is evident that Antioquia is one of the departments that reports the highest number of cases of enforced disappearance. According to data from the National Institute of Legal Medicine and Forensic Sciences (hereinafter INMLCF), in 2019 a total of 388 people were reported missing, of whom 94 were found alive, 12 were found dead and to date the whereabouts of 282 people are unknown. These figures represent an increase compared to the previous three years. While in 2016, 2017 and 2018 cases of disappearances numbered between 264-297, in 2019 this figure dramatically increased to 400 cases. In the first four months of the year (2019) the monthly average number of victims of enforced disappearance was 25.5, while in the final eight months of the year there was an accelerated increase that increased the average to 37.5, with May having the most cases (59) and December the fewest (14).

According to the Information System Network of Missing Persons and Corpses (hereinafter SIRDEC), in January 2020 in Antioquia there were 37 reports of missing persons, 16 more than in January 2019. Of these cases, nine were found alive, while one was found dead. This means that there are still 27 missing persons whose whereabouts are unknown. In 2020 the number of victims progressively increased. In the Municipality of Bello alone there were more than 30 presumed enforced disappearances. Several of the victims were dead with signs of torture and dismembered bodies wrapped in bags, while in other cases victims' bodies were thrown into the Medellín River. In 2020 the City Council of Medellín reported 199 reports of enforced disappearances: 80 women, of whom 69 were found alive, 3 dead and 8 are still missing; and 119 men: 67 found alive, 17 dead and 14 still missing. In total there were a total of 22 missing persons in 2020 in Medellín.

The Northwest Regional INMLCF reported that since 2017⁸, the bodies of 17 people (3 women and 14 men) were found in the Medellín River, all of whom had been reported missing: 3 in 2017, 4 in 2018, 9 in 2019 and 1 in 2020.

Another department with a high number of cases is Norte de Santander. According to INMLCF data 233 cases of enforced disappearance were reported in 2018, mostly in Cúcuta and other regions along the border with Venezuela. Between January and June 2019 a total of 79 cases of enforced disappearance were registered. The previous year 922 cases were reported in Bogotá and 188 in Valle del Cauca.

⁸ INMLCF data as of April 30, 2020.

Table 1 Cases of Enforced Disappearance 2016-2020

Department	2016	2017	2018	2019	2020	TOTAL
Antioquia	12	3	10	12	7	44
Arauca	1	1	8	3	1	14
Bogotá D.C.	2		2	2		6
Bolívar				1	1	2
Caldas	1				1	2
Caquetá		3	4	1		8
Casanare		1	1	1	1	4
Cauca	5	3	9	27	21	65
Cesar		2				2
Chocó	2	7	10	12	10	41
Córdoba	2	3	1	5	2	13
Cundinamarca					2	2
Guaviare		5		1		6
Huila	3	1			2	6
La Guajira		2	1			3
Magdalena	1			3		4
Meta	2	4	1			7
Nariño	2	8	18	12	12	52
Norte de Santander	8	8	9	18	25	68
Putumayo	4	1	1	6	10	22
Quindío	1					1
Risaralda	3				1	4
Santander	1		6	1	2	10
Sucre					1	1
Tolima		1	1			2
Valle del Cauca	14	11	12	3	10	50
Vichada	1			1	2	4
TOTAL	65	64	94	109	111	443

Source: Based on information provided by the Colombian Jurists Commission on cases of enforced disappearance.

This information from the INMLCF is related to the information collected in the database of the Colombian Commission of Jurists on cases of enforced disappearance (See Table 1). This shows that the crime continues to occur in the country, with reports in 26 of the 32 departments. The most concerning figures are in the departments of Norte de Santander, Cauca, Valle del Cauca, Nariño, Antioquia and Chocó with more than 40 cases during the last five years.

In the face of social pressures from some sectors of Congress and different sectors of the international community, the Duque government has decided to simulate that it is implementing the commitments from the Peace Agreement, pretending to respect the measures while making significant efforts to obstruct its fulfillment and coexisting with illegal economies linked to drug trafficking, illegal mining and paramilitarism. This situation is combined with the Integrated Strategic Intervention Zones (now Future Zones) initiative, which is a military control project that is returning the country to war.⁹

These Future Zones supersede and disregard the transformation processes in the territories most affected by the conflict in the 170 municipalities where Development Plans with a Territorial Approach

⁹ Observatory for Human Rights and International Humanitarian Law (2019) The humanitarian crisis and the reinstallation of war. Available at: <https://coeuropa.org.co/la-crisis-humanitaria-y-la-reinstalacion-de-la-guerra/>

have been implemented, as well as the municipalities where the National Intervention and Illicit Crop Substitution Plan were implemented. The strategy that is currently in place is to militarize the territories, subordinate civilian authorities and social organizations through military power, grant extraordinary powers to the enforced security forces and handover the coordination these plans and programs to the military. This is concerning considering that these Future Zones are located in three of the departments with the highest number of cases of enforced disappearances (Norte de Santander, Nariño and Antioquia), as shown in image No. 1.



Illustration 1 Location of Future Zones ¹⁰

The context of these departments is marked by an active conflict that has not paused after the signing of the Peace Agreements, and has actually worsened due to its lack of implementation and/or the simulation of an implementation process, taking into account the increase in cases of enforced disappearances after 2017. These departments have the presence of: illegal armed groups, including drug trafficking cartels and paramilitaries; persistent and intensive militarization; social humanitarian crisis without a response from the State; and with violent repression by the security forces of social protest scenarios; constant dispute over natural resources between communities and companies in the extractive sector; persecution, prosecution, stigmatization and murders of social leaders and human rights defenders; and, in general, an increase in violence, evidenced by the increase in cases of massacres and enforced disappearances.

Where Are They? Campaign



The organizations that belong to the MDTDF¹¹ have designed and implemented the "Where Are They?" awareness campaign since 2019, with the objective of demanding that the Colombian Government accept the authority of the United Nations Committee against Enforced Disappearances to receive and examine individual and international communications on behalf the victims and citizenry.

The central action of this campaign has been the collection of signatures on postcards (see Image 2) and virtually through the Change.org web

¹⁰ Source: Presidency of the Republic [@infopresidencia] (August 8, 2019) With the Future Zones, the National Government works to transform the regions most affected by violence. [Tweet] Twitter <https://twitter.com/infopresidencia/status/1159568212654219264?s=20>

¹¹ The MDTDF, promoted by the *Observatory of Human Rights and International Humanitarian Law* of the Colombia-Europe-United States Coordination (CCEEU), brings together the following organizations, among others: Fundación Nydia Erika Bautista (FNEB); Association of Relatives of Disappeared Prisoners (ASFADDES); Association of Relatives of Forcibly

platform¹². This action has been accompanied by national advocacy actions such as holding forums in universities, virtual discussions, design and dissemination of educational audiovisual material, joint actions with parliamentarians and the filing of different Rights of Petition addressed to the Colombian Government.

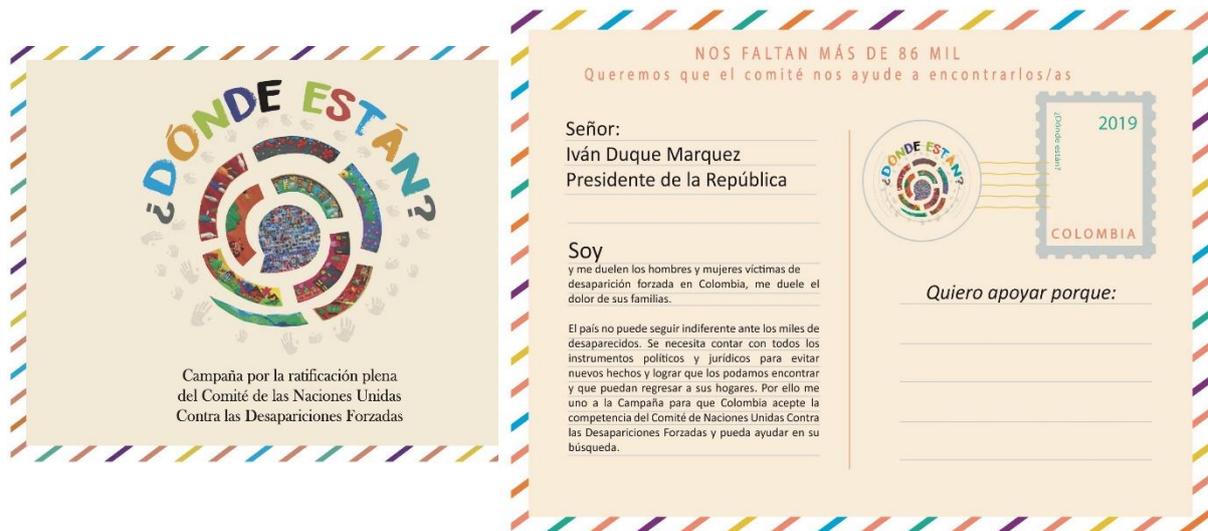


Illustration 2 Signature collection postcard

The MDTDF is concerned that in the report submitted by the Colombian State on October 14, 2019 to the Committee, there is no mention of the acceptance of its authority. These concerns are also evident in the responses received from the Right of Petition submitted to the Colombian Government, especially to the Foreign Ministry, which questioned the reasons why the authority of the Committee has not been accepted. It has been evidenced that there is no political will to accept this process.

"Colombia has internally evaluated the relevance of recognizing the authority of the Committee on Enforced Disappearances to hear individual cases or rights of petition. It was concluded that citizens have a solid legal and institutional framework to guarantee prosecution and reparations in cases of violations of the relevant human rights, and that, subsidiarily and having exhausted domestic remedies, the Inter-American Human Rights System that Colombia is a part of would be the appropriate instance to resolve these situations."¹³

The MDTDF considers it essential that the Colombian State accepts the authority of the CED as a guarantee of respect for the rights of the victims of Enforced Disappearance, to ensure compliance with international commitments and derived from the Peace Agreement, and taking into account that in Colombia there are still enforced disappearances caused by the armed conflict or the exercising of violence by the State. In addition there are more than 80,000 enforced disappearances that have the current status of complete impunity.

Disappeared Persons for Mutual Support – Founding Area (Familiares Colombia); National Movement of Victims of Crimes of State (MOVICE); Regional Development Corporation (CDR); Legal Freedom Corporation (CJL); Colombian Interdisciplinary Team of Forensic Work and Psychosocial Assistance (EQUITAS); Ecclesiastic Commission of Justice and Peace (CIJYP); Meta Civic Committee of Human Rights; Colombian Jurists Commission (CCJ); Corporación Claretiana Norman Pérez Bello; Colectivo Sociojurídico Orlando Fals Borda (Colectivo OFB); Fundación Hasta Encontrarlos; Fundación Familiares Palacio de Justicia; Mujeres caminando por la Verdad; Corporación Vínculos; Fundación Guagua; Fundación Progresar; Corporación Vida-paz; Corporación Poder, Democracia y Paz - PODERPAZ; Fundación Desarrollo y Paz - FUNDEPAZ; Corporación Jurídica Yira Castro; Asociación Red de Defensores y Defensoras de Derechos Humanos DH Colombia; and, the Centro de Investigación y Educación Popular. (CINEP).

¹² www.change.org/dondeestan

¹³ Ministry of Foreign Affairs of Colombia (2019, July 8) File No. S-GAIIID-19-033557. Response to the Petition for the Fulfillment of Rights filed by the MDTDF.

The ratification of Articles 31 and 32 of the International Convention for the Protection of All Persons from Enforced Disappearance (Law 1418 of 2010) is required to guarantee the search and location of victims. The justification for excluding the authority of the CED to process cases of enforced disappearance committed after the signing of the Convention, with the argument that in Colombia the justice system deals efficiently with clarifying and punishing this crime and the State takes action to prevent enforced disappearance, search for victims and provide reparations to their relatives, is false and far from reality. Today we do not know what the policies and goals of President Duque's government are in relation to the search for missing persons in Colombia.

Observations of the recommendations of the United Nations Committee against Enforced Disappearances to the Colombian State in 2016.

Below we present an analysis conducted by the MDTDF of the recommendations that the United Nations Committee against Enforced Disappearances made to the Colombian State in 2016, based on the Complementary Information document presented by the Government of Colombia in October 2019 and the follow-up by member organizations of the Committee.

1. Definition and typification of enforced disappearance

a. Register for persons subjected to enforced disappearance

Law 589 of 2000 created the National Register of Missing Persons (hereinafter RND for its initials in Spanish), which is administered by the INMLCF, although other enforced entities are responsible for entering and updating information. The RND consists of three platforms: a) Information System Network of Missing Persons and Cadavers: this allows for the full registration of cases of missing persons since January 1, 2007; b) Internet System for Mass Information Consultation (hereinafter SICOMAIN): this stores unprocessed information from all institutions from before January 1, 2007; and c) Clinical Information System (hereinafter SICLICO): this contains clinical information for patients with non-lethal wounds.

The RND reports that from its three platforms there are 156,285 records of missing persons as of July 2020. However, 79% of the records (123,465) are in the SICOMAIN platform, which is information from before 2007 that has not yet been processed and correctly classified. This situation is concerning since 79% of cases do not have the victim correctly identified, the type of disappearance that they were a victim of, the alleged perpetrator, as well as other information that is essential when undertaking effective search actions to ascertain the fate and whereabouts of the missing persons.

After issuing Communiqué #62 for the peace talks in Havana, which established immediate confidence-building measures to facilitate the exchange of information about missing persons and institutional strengthening actions for the search process, as well as creating the UBPD after the signing of the Peace Agreement, the Technical Committee for the purging of information from the RND led by INMLCF was created. The Committee had the participation of victims' organizations and independent forensic technicians. However, it only met on a couple of occasions and to date the results of the process of purging and consolidating the information contained in the RND are still unknown.

The Colombian State has other information systems and records for cases of disappearance such as the Single Registry of Victims that is operated by the Unit for Integrated Assistance to Victims, the database from the Observatory of Memory and Conflict operated by the National Center of Historical Memory (hereinafter OMC) and the Judicial Information System for Law 600 operated by the Prosecutor's Office and the Information System for Justice and Peace Law 975 operated by the Attorney General's Office (hereinafter FGN). All of these databases contain information on victims of

disappearance and enforced disappearance that has not yet been cross-checked and analyzed with the information contained in the RND.

The lack of the unification of information systems has not been resolved by the UBPD, which still does not have a Single Victims Registry. This situation affects search processes, the monitoring of cases and guarantees for family members searching for victims of enforced disappearance. In most cases the people who appear alive have family members who report the situation. In 2020, the MDTDF learned about the case of Mr. Nestor Jaider Urrego Gaviria, who was reported missing on April 18, 2020. Despite having activated the Urgent Search Action, he was only heard from three months after waking up from a coma in a hospital in the municipality of Bello, Antioquia, where he had been taken after an attempted homicide by paramilitary groups.

The recommendation made by the Committee has not been adopted to date. The MDTDF request that the process of purging and consolidating data and achieving the interoperability of the RND is completed so that it is possible to determine the universe of missing persons; individualize victims; identify the type of disappearances, alleged perpetrators and possible whereabouts of victims; and follow up on the actions taken for the search, recovery, identification and delivery by the different entities that are responsible, as well as by victims and accompanying organizations.

b. Crime of enforced disappearance

The Committee considers that one of the essential elements of the definition of enforced disappearance in Colombia, contained in Article 2 of the Convention, "is the direct or indirect intervention of State agents in criminal conduct, which differentiates it from other similar conduct, as can be inferred from a combined reading of Articles 2 and 3. The Committee considers that including non-State actors in the definition of the crime of enforced disappearance dilutes the responsibility of the State".

With respect to this consideration, it is important to remember that before the 1991 Political Constitution in Colombia, there was no express prohibition of the crime of enforced disappearance. With the enactment of the Constitution, this conduct was prohibited in the following terms: "No one shall be subjected to enforced disappearance, torture or cruel, inhuman or degrading treatment or punishment" (Article 12).

Nine years after the Political Charter was established, and under pressure from victims' and human rights organizations, the Congress of the Republic criminalized enforced disappearance as an autonomous conduct through Article 165 of Law 599 of 2000. However, its criminalization promoted a narrative in which illegal armed groups were positioned as the main active subject of the conduct, contrary to the international tradition that establishes that the perpetrator of enforced disappearance is an agent of the State or someone acting under their orders or acquiescence¹⁴. Although this includes public officials or private individuals as possible perpetrators of these acts, the way in which the Article is written indicates that the person responsible for these acts is, in general, a person belonging to an illegal armed group.

In response to the Committee's consideration in which it expresses concern about the definition of the crime of enforced disappearance in Colombia, we agree that this definition effectively distorts international provisions and the close relationship that this phenomenon has with State crimes. Under the pretense of broadening the conceptualization of the crime to become apparently more protective,

¹⁴ "International norms and jurisprudence specify that it is only necessary to demonstrate at least two elements: one, the deprivation of liberty by government agents or organized groups acting on behalf or with the authorization of the government, and two, the refusal to recognize that the person is deprived of liberty or that the subject is deprived of the respective legal protection" In: Constitutional Court, Decision C-317, 2002. M.P. Clara Inés Vargas Hernández.

the responsibility of the State is diluted both in the prevention of the crime, as well as in the execution, investigation and punishment.

To this consideration, we believe that there is an intention to denaturalize the active subject of the conduct, particularly because a close relationship between the Colombian State and paramilitary groups can be observed in the legal and historical complexity of this crime in Colombia, which has been proven in numerous national and international court rulings.

The Inter-American Court has on several occasions declared the aggravated responsibility of the Colombian State. It considered the fact that the State encouraged the creation of paramilitary groups through domestic legislation, in addition to forming a proven close relationship and facilitating collaboration between these groups and State security forces. Impunity for these crimes was the common denominator¹⁵.

As expressed by the Committee, the broad definition of enforced disappearance in Article 165 of the Criminal Code has consequences at other levels, the first of which is the lack of clarity in available statistics, which is evident to this day.

The UBPD estimates that the universe of people forcibly disappeared during the armed conflict is around 120,000 people, while the National Center for Historical Memory (hereinafter CNMH) has a record of 80,742 people who were forcibly disappeared between 1958 and 2018.

According to FGN figures, as of 2019 there are 127,583 cases of enforced disappearance registered. Of the total number of cases registered by the FGN, it is not known how many correspond to cases that allegedly directly or indirectly involve State security agents in the commission of the crime.

It is possible to perceive the level of responsibility of the Colombian State in the commission of the crime of enforced disappearance based on the legal status of existing cases that have been charged: 1,140 perpetrators currently have allegations made against them while 2,760 persons have been formally charged, of whom 677 are registered as members of the public security forces¹⁶.

According to information requested from the FGN, the following table details the current status of legal proceedings for the crime of enforced disappearance in which members of the security forces are allegedly involved, broken down by case status (active-inactive) and procedural stage:

Table 2 Enforced Disappearance proceedings in which members of the security forces are alleged to have been involved

PROCEDURAL STAGE	CURRENT STATUS		TOTAL PROCESSES
	Active	Inactive	
Enforcement of sentences	1	14	15
Instruction Stage	165	44	209
Preliminary Inquiry Stage	182	88	270
Trial stage	7	5	12
Inquiry	83	28	111
Investigation	17	12	23
Trial	10	5	15
Actionable	0	1	1
Early termination	0	2	2
No record	2	3	5

¹⁵ Council of State. Third Section - Subsection A. Judgment of September 14, 2016. C.P. Hernán Andrade Rincón. Procedure Number: 25000232600020010182502.

¹⁶ Supplementary information submitted by Colombia under Article 29, Paragraph 4 of the Convention* [Date received: October 14, 2019. Pp. 7.

Total	467	202	669
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Source: Consultation in SIJUF and SPOA.

According to the information shown in Table 2, there are 669 cases of enforced disappearance involving members of the enforced security forces, figures that contrast abysmally with the results of other databases operated by the State, including the CNMH registry.

The CNMH recognizes the following figures on the perpetrators: paramilitary groups were responsible for 46.1% of the cases registered between 1970 and 2015 (a total of 13,562); guerrillas, 19.9% (5,849); post-demobilization groups, 8.8% (2,598) and State security agents, 8% (2,368). As a result, in the Colombian context, 62.9% of the cases of enforced disappearance could be attributed to the State¹⁷, taking into account that added to its direct participation in the cases attributed to State security agents are enforced disappearances carried out by paramilitary and post-demobilized groups.

A report was prepared by Fidel Mingorance, Francisco Gómez Nadal and Erik Arellana Bautista, members of the team responsible for the www.desaparicionforzada.co portal, which is a digital repository that contains all of the figures provided by these entities and a cartography of enforced disappearance in Colombia. Based on their monitoring of the INMLCF, Victims Unit, FGN and CNMH databases, the report showed that there was an evident manipulation of the data by the latter two entities in the final months of 2020.

"Specifically, the National Center for Historical Memory, which has not updated its information on the crime of enforced disappearance since 2018, published last August on the Twitter social network that the total number of victims of enforced disappearance had "dropped" by 4,152 people, which was consolidated by the OMC in September 2018. Given that the OMC registered 80,472 victims of this crime against humanity between 1958 and September 15, 2018, the tweet on the occasion of the International Day of the Victims of Enforced Disappearance showed that the National Center for Historical Memory stated that there had been only 76,320 victims of enforced disappearance in Colombia.

Fidel Mingorance, researcher at desapariciónforzada.co, explains that, "although the OMC has not given any explanation, the reduction in the official figure has consisted in reducing the years of the count to the period between 1964 and 2016, and removing 4,133 victims for whom there is no record of the date of the crime". In any case, "what the public receives is a final figure of 76,230 victims, which is substantially lower than the previous figure of 80,472 people."

Meanwhile, the Attorney General's Office has carried out a similar process, but more in-depth. Data from the Oral Accusatory Penal System (SPOA), which has been published monthly on Colombia's open data portal since August 2018, was increasing at an accelerated rate and in April 2020 and counted 98,930 victims of enforced disappearance between 1997 and April 2020. Just before surpassing the 100,000-case barrier, the Attorney General's Office changed the time range and now only reports on cases between 2010 and 2020, reducing the overall number of victims of enforced disappearance in Colombia to 34,978 in October 2020."¹⁸

If the overall figure presented by the CNMH includes some cases that are typically categorized as kidnapping (given that these kidnappings are committed by an insurgent group, and were situations in which information on the situation and condition of the person deprived of liberty was delivered, but the ultimate destination of the person was not established), the percentage of State responsibility for enforced disappearances could be close to 100%.

¹⁷ See more in: CNMH. What we know about disappeared persons in Colombia. n.d. Available at: <http://www.centrodehistoriamemoria.gov.co/micrositios/balances-jep/desaparicion.html>

¹⁸ Colombia Plural (2020, November 5) Prosecutor's Office and National Memory Center 'disappear' thousands of disappeared persons. Available at: <https://desaparicionforzada.com/fiscalia-y-centro-nacional-de-memoria-desaparecen-a-miles-de-desaparecidos/>

The impossibility of obtaining an accurate number of cases of enforced disappearance involving the responsibility of enforced agents is a serious sign of the lack of clarity of information contained in the FGN's databases, and others operated by the State combines with the absence of measures to ensure accurate and effective search processes. The Committee observed "deficiencies in the searches for missing persons and criminal investigations that require differentiated methods and strategies (Arts. 2, 3 and 4)".

Regarding criminal investigations, according to the FGN itself, between 2017 and 2019 there have been no convictions in cases of enforced disappearance where there is alleged involvement with the security forces¹⁹.

If there is no clarity on the responsibility of the State for the commission of the crime of enforced disappearance in past decades, it is worrying that these deficiencies continue to be reproduced in relation to the investigation and sanctioning of cases that have occurred in recent years. Enforced disappearance continues, as evidenced by the following table produced by the FGN, which shows that between January 2016 until July 2019 (cut-off date for the consultation), 5,075 cases of enforced disappearance were registered:

Table 3 Cases of Enforced Disappearance by year

Year	Cases
2016	1442
2017	1420
2018	1469
2019	744
Grand total	5075

Source Consultation in SIJUF and SPOA

c. Criminal liability of the hierarchical superior

While it is true that the ratification of the Rome Statute involves the recognition and possible application of the grounds for *responsibility of direct commanders and other superiors* contemplated in Article 28 of the Statute, the Committee has noted that it is necessary for domestic legislation and legal and judicial operators to adopt measures in the framework of Article 6, paragraph 1(b) of the Convention, as recommended in the Committee's last report on Colombia.

As of the date of preparing this report, the Colombian State has not generated the recommended legislative changes, which does not involve clarifying the participation of those most responsible for the commission of crimes such as enforced disappearance and extrajudicial executions. This contributes to the high rates of impunity for these crimes in a context *that denies* their commission and limits judicial investigations to enforced agents directly responsible for the crimes, without escalating criminal responsibility to their commanders.

Both the grounds of responsibility contained in the Rome Statute and the International Convention for the Protection of All Persons from Enforced Disappearance have been ignored by the domestic legal system. Other forms of responsibility such as *perpetration-by-means* have also been unexplored.

Although elements have been generated in international law to establish the responsibility of those who hold commanding positions within military structures, both the laws issued by the Congress of the Republic and the judicial decisions and jurisprudence of the Constitutional Court are outdated in relation to developments in international law and decisions made by the Courts.

¹⁹ Response filed: 20196110610582.

There is evidence of a strategy of impunity and protecting high-ranking army commanders from prosecution for these crimes, specifically in relation to enforced disappearances. An example of this is the recent promotion of Major General Eduardo Enrique Zapateiro Altamiranda, commander of the National Army, despite statements and claims made by victims' organizations for his alleged responsibility in the enforced disappearance of Jaime Enrique Quintero Cano, which occurred on March 9, 1995 in the municipality of Carepa, Antioquia, when Major General Zapateiro was an army captain in the 17th Brigade. In addition, the investigation of the enforced disappearance of Nydia Erika Bautista remains in impunity and its perpetrators remain unpunished. Paradoxically, in 2017 the Third Section of the State Council condemned the Attorney General's Office for the capture of the non-commissioned officers Army Julio Roberto Ortega Araque, Luis Guillermo Hernández González and Mauricio Angarita who were accused of having participated in the disappearance, torture and subsequent murder.

Only the JEP has undertaken to investigate and punish the responsibility of commanders, both in the guerrilla and military, in cases that constitute grave violations of human rights and war crimes committed in the context or on the occasion of the armed conflict.

Article 24 of Legislative Act 01 of 2017 establishes that for the determination of *command responsibility* the following factors must concur: 1. The punishable conduct or conducts have been committed in the area of responsibility assigned to the unit under their command in accordance with their corresponding hierarchical level and that they are related to activities under their responsibility; 2. The superior has the legal and material capacity to issue orders and modify to enforce them; 3. The superior has the effective capacity to implement and execute operations in the area where the punishable acts were committed in accordance with their corresponding level of command; and 4. The superior has the material and direct capacity to take appropriate measures to avoid or repress punishable conduct or conducts of their subordinates, provided that they have updated or updatable knowledge of their commission.

Although this represents an advance, this norm does not take into account the provisions of Article 28 of the Rome Statute and requires the concurrence of factors that make it almost impossible to establish such responsibility. It also obliges victims to prove that the army commanders had full knowledge and absolute control of the crimes committed by their subordinates, ignoring international criminal jurisprudence in this regard.

There is a concern that the JEP has established a limited system for achieving accountability of those most responsible, aggravated by the fact that it is limited to the condition that all serious human rights violations, such as enforced disappearances, are analyzed as conducts committed within the framework of the conflict. Additionally, being a selective court of justice has favored the provision of guarantees to perpetrators without participation of the victims in decisions about these legal benefits. This is the case of General (R) Jesús Armando Arias Cabrales, sentenced by the Supreme Court of Justice to 35 years in prison for the enforced disappearance of 11 people when he was commander of the XIII Brigade and was responsible for the military response to the taking of the Palace of Justice by a guerrilla group in November 1985. Despite this sentence, on May 15, 2020 the Juridical Situations Definition Chamber of the JEP determined that this soldier *"fulfills the factors of personal, temporal and material competence of the Special Jurisdiction for Peace. This means that he is a member of the enforced security forces, that these events occurred before December 1, 2016 and that they are directly related to the internal armed conflict in the year 1985"*²⁰. It also granted him transitional and early release. This decision did not take into account the opposition of relatives who consider that this decision contributed to impunity since Arias Cabrales had been convicted, has never contributed to

²⁰ JEP Comunicado 069: [https://www.jep.gov.co/Sala-de-Prensa/Paginas/JEP-acepta-el-sometimiento-y-otorga-libertad-transitoria,-condicionada-y-anticipada-al-general-\(RA\)-Arias-Cabrales.aspx](https://www.jep.gov.co/Sala-de-Prensa/Paginas/JEP-acepta-el-sometimiento-y-otorga-libertad-transitoria,-condicionada-y-anticipada-al-general-(RA)-Arias-Cabrales.aspx)

the truth and has sustained a denialist position that justifies the crimes. In this case and others involving commanders with hierarchical responsibility, the JEP has not consulted the victims and relatives, nor has it taken their opinions into account.

The JEP's Non-Acknowledgment of Responsibility Session has documented 435 enforced disappearances in Comuna Trece in Medellín, Antioquia between 1978 and 2016. At least 130 were committed between 2002 and 2003 as part of military operations or covert actions with the support of military structures while General (r) Mario Montoya Uribe served as commander of the army's Fourth Brigade. Despite the existence of an investigation by the Attorney General's Office through the Supreme Court of Justice, the investigation never advanced and victims are still missing. Additionally, during his time as commander of the Seventh Division and General Commander of the Armed Forces, there were 2,429 civilian killings presented as combat casualties, many of whom are still missing.

The JEP has also received information on enforced disappearances committed by battalions and brigades in the departments of Sucre, Cesar, Guaviare, Meta, Antioquia, among others. Despite this, the high-ranking army commanders who have appeared before the JEP have not been questioned about these events, and as part of the Conditionality Regime they have not been required to effectively collaborate with the Truth Commission and the Unit for the Search for Disappeared Persons. The crime of enforced disappearance has not been prioritized for opening cases, which has been constantly requested by family members, victims' organizations and human rights organizations.

The National Movement of Victims of State Crimes (MOVVICE) and Coordination Colombia Europe United States (CCEEU) have demanded that the FGN and the JEP investigate the responsibility of General (R) Nicasio de Jesús Martínez Espinel, Colonel (R) Juan Carlos Barrera Jurado, Adolfo León Hernández and Marcos Evangelista Pinto, among others, evidencing the relationship that exists between the murder of civilians presented as combat casualties and enforced disappearances. In most of these cases the victims were disappeared, many of them are still unaccounted for or recovered bodies have not been identified.

In the report²¹ presented to the JEP about the BAJES Battalion of the Fourth Brigade, there are 143 bodies that have not been identified and 125 consolidated records from the XIV Brigade. In another of the reports²², there is evidence of the responsibility of General Adolfo León Hernández when he served as commander of Artillery Battalion No. 2 La Popa, with jurisdiction in the Department of Cesar. Another report²³ outlines the responsibility of Lieutenant Colonel Publio Hernán Mejía, commander of the La Popa Battalion, attached to the Tenth Brigade, Major Heber Hernán Gómez Naranjo, second commander of the same Battalion, and José Pastor Ruíz Mahecha, head of the Intelligence Office, who also served as Chief of Operations of the La Popa Battalion, for at least 121 cases of enforced disappearances and 208 cases of extrajudicial executions that occurred between 2003 and 2008. Despite this, on December 4, 2020, the Senate approved the promotion of 46 high-ranking officers in the enforced security forces, which included Brigadier General Marcos Evangelista Pinto Lizarazo, General Edgar Alberto Rodríguez Sánchez, General Miguel Eduardo David Bastidas (investigated for 14 enforced disappearances), General Mauricio José Zabala Cardona. All of these soldiers were accused

²¹ The "man in charge" responsibility in extrajudicial executions. Analysis of cases from the Eastern, Northeastern and Magdalena Medio regions of Antioquia. Presented in 2019 by: Corporación Jurídica Yira Castro; Corporación Jurídica Libertad; Humanidad Vigente Corporación Jurídica and the Colombian Interdisciplinary Team of Forensic Work and Psychosocial Assistance.

²² "Deaths illegitimately presented as combat casualties by State agents". Prepared and submitted to the JEP in 2019 by the Colombian Commission of Jurists, the José Alvear Restrepo Lawyers' Collective and the Committee in Solidarity with Political Prisoners.

²³ Report "And we will return to sing with the winds of peace and the longing for justice", presented in 2020 by the Colectivos de Abogados José Alvear Restrepo, the Committee for Solidarity with Political Prisoners and the National Movement of Victims of State Crimes.

for their alleged responsibility in serious human rights violations and crimes against humanity such as enforced disappearances.

Although it is evident that the cases involve systematic and generalized plans, which constitute serious human rights violations, the commanders most responsible remain unpunished. When investigations are opened, the crime of enforced disappearance is not investigated. In most cases those responsible are not even investigated for these acts, ignoring the rights of relatives to have the victims located, exhumed, identified and handed over. Impunity continues to be a reality in Colombia. SPOA's analysis shows that investigations for the crime of enforced disappearance usually lack a methodological investigation program, only reach a preliminary stage and in most cases are archived or investigations are initiated against the perpetrators, but not against the superiors.

By October 2018, the FGN had a record of 54,046 cases (with 46,370 victims) in the SPOA of possible cases of enforced disappearance. Of these 41,799 cases are in the inquiry stage 1,574 cases are in the preliminary investigation stage. 206 cases are in the investigation stage, 891 cases are in the investigation stage, 201 cases are in the prosecution stage, 207 cases are in the trial stage, the status of 1 case is unknown and 337 cases have been sentenced. Of these 337 cases, the FGN submitted a report to the JEP in which it states that: 22 were sentences given to members of the FARC-EP, 9 to members of the National Police, 1 to a public official from the now defunct DAS (Administrative Department of Security), 77 to members of Organized Armed Groups operating outside the Law, 7 to individuals and 159 to members of the National Army.

So far the JEP has not opened a case involving enforced disappearances despite the seriousness and high number of cases that have been documented in the reports and statements from some of the participants in case 003, which investigates the "Deaths illegitimately presented as combat casualties by State agents". Participants in the case have provided information on events that occurred in the context of military operations. However, it is important to highlight the momentum of the Precautionary Measures requested by MOVICE that have led to intervention in different sites and cemeteries where it is presumed that victims of enforced disappearance were buried. These measures have favored the initiation of a joint action between the JEP and the UBPD.

2. Criminal liability and judicial cooperation in relation to enforced disappearance

a. Complaints and investigations of cases of enforced disappearances

Regarding the Committee's recommendation on the guarantee "that when there are reasonable grounds to believe that a person has been subjected to enforced disappearance, a thorough and impartial investigation should be carried out without delay, even if no formal complaint has been filed", it should be noted that omissions and delays continue to occur with the activation of the Urgent Search Mechanism (hereinafter MBU for its initials in Spanish).

The purpose of the Urgent Search Mechanism "*is for judicial authorities to immediately take all necessary steps to locate the disappeared person, as an effective mechanism to prevent the commission of the crime of enforced disappearance*" (Law 971 of 2005). It establishes that the authorities or public officials who receive a complaint or report of a disappearance must process it and initiate relevant proceedings within 24 hours after the complaint is filed or the report is made²⁴. However, officials continue to argue that it is necessary to wait 72 hours to file the report and initiate search actions. When the MBU is activated, it is limited to sending official letters without guaranteeing

²⁴ EQUITAS, Comparative Experiences in the Search for Missing Persons in Conflict Scenarios, EQUITAS 2020.

effective search actions such as telephone interceptions, issuing of search warrants, declaration of evidence and others.

The lack of immediate activation from the MBU in terms of subsequent investigative actions is the main obstacle that prevents finding victims of disappearance and enforced disappearance alive.

According to data from the Statistical Development and Analysis Unit, part of the Statistics Division in the Superior Council of the Judiciary, in the period 2017 to 2019 in the Metropolitan Area of Medellín (which covers an area of ten municipalities including Medellín and Bello, cities with the highest rates of disappearances reported in the entire department of Antioquia) only eleven cases reached trial for enforced disappearance and four people were convicted. This evidences the lack of investigation and consequent impunity of the crimes.

b. Investigation of disappearances perpetrated without the authorization, support or acquiescence of State agents

The Attorney General's Office has reported that of the 127,977 investigations for the crime of enforced disappearance that have been opened, 6,152 have been initiated informally, which is approximately 5%. In relation to the number of victims this is quite low. The time period has not been specified and the data doesn't evidence whether or not a recommendation to lay charges has been accepted.²⁵

*Table 4 Statistics on proceedings related to the crime of enforced disappearance for the period 2015 – 1st quarter of 2019.*²⁶

YEAR	NUMBER OF CASES	AVERAGE MONTHLY NUMBER OF CASES	EFFECTIVE CASES	AVERAGE MONTHLY EFFECTIVE CASES	TOTAL FINAL NUMBER OF CASES	SENTENCED			
						UNDER LAW 600	WITH ACCEPTANCE OF CHARGES	IN ORAL TRIAL	WITH PRE-AGREEMENTS
Total 2019	227	76	215	72	241	15	0	0	2
Total 2018	1.142	102	961	82	306	48	1	3	4
Total 2017	929	80	748	64	289	53	0	27	26
Total 2016	929	189	752	155	237	18	1	8	5

A review of the data provided by the Statistical Development and Analysis Unit of the Superior Council of the Judiciary shows that impunity continues to be a characteristic of the proceedings for the crime of enforced disappearance when examining the low conviction rates in relation to the number of cases that are opened and then dismissed.

Similarly, declarations made by the Attorney General's Office in the report to the Inter-American Commission on Human Rights (IACHR) state "there were no missing persons, but rather misidentifications and the mistaken delivery of bodies to the victims' families", have caused concern.²⁷

²⁵ Response to the Right of Petition submitted by the Observatory of Human Rights and Humanitarian Law, Coordination Colombia - Europe - United States with file number 20199430002833, Subdirectorate of Public Policies and Institutional Strategy, Attorney General's Office of the Nation. 27/08/2019

²⁶ Response to the Right of Petition submitted by the Observatory of Human Rights and Humanitarian Law, Coordination Colombia - Europe - United States with file number UDAEO19-1444, Superior Council of the Judiciary, Development and Statistical Analysis Unit. 15/07/2019

²⁷ El Tiempo (August 28, 2019) What the Prosecutor's Office says about missing persons from the Palace of Justice. Available at: <https://www.eltiempo.com/justicia/investigacion/la-fiscalia-dijo-que-no-hubo-desaparecidos-en-el-palacio-de-justicia-405840>

These statements were later rectified²⁸. They constitute a disregard of the investigations that have been carried out over 34 years and the international sentences that already exist in the area.

In the implementation of the Integrated System for Truth, Justice, Reparation and Guarantees of Non-Repetition, procedures and investigations acquire other dimensions, reinforcing the principle of the centrality of the victims. For this reason, there is concern about the guidelines that the Colombian Army has given to its soldiers to construct a coordinated version among members of the military about what happened during the armed conflict.

The document titled Plan 002811 dated March 13, 2019, is addressed to the heads of the Army Command General Staff. In this document, Martinez orders them to have a coordinated plan for the appearance of military personnel before the two entities of the Integral System of Truth, Justice, Reparation and Non-Repetition that were formed as part of the Peace Agreements with the FARC guerrilla group. The document establishes the "lines of counter-argumentation" that the Army will use when providing evidence to these entities with the goal of constructing a coordinated institutional truth.

²⁹

This strategy has also been reported by the media in recent months, where it has been stated that "the JEP has statements from several members of the military who have applied to this special jurisdiction and who claim that in several legal discussions during 2019 and early 2020, lawyers from the Technical and Specialized Defense Fund for active or retired members of the Public Forces (hereinafter FONDETEC) provided them with instructions regarding information they should include in their statements given to the transitional justice system. Specifically they mentioned a lawyer named Vargas, who in his recommendations allegedly suggested not mentioning Generals in order to avoid problems."³⁰

Taking this into account, it is concerning that the transitional justice scenarios that started out as an achievement for the guarantee of Victims' Rights are being torpedoed by this type of strategies that do not contribute to the truth but rather to concealment. This has even been evidenced by Luz Marina Monzón, director of the UBPD, who regarding the contributions of information by the military members in the JEP stated that "the behavior of those who are subject to the JEP from the FARC and who talk with the Unit is very different to those who are subject to the JEP from the enforced security forces. Collaboration has not been fluid at all, the relationship has had many setbacks and we have not made any serious progress."³¹

²⁸ "[...] this version changed as the hours went on. In a media tour by the Public Prosecutor Sarmiento on several radio stations during the morning of Wednesday, August 28, the public official clarified that the information contained in the media report had been a hasty generalization and that his new hypothesis was only related to the five people who had already been identified. 'These victims were not deprived of their freedom, nor were their bodies hidden, and at no time was there any refusal to recognize this deprivation, as they were misidentified and their remains were found in the place where other victims were resting,' said the Attorney General's Office in a brief response to Sarmiento's revelations." El Espectador (August 28, 2019) Reproaches to the Prosecutor's Office on the hypothesis of the missing persons of the Palace of Justice. Available at: <https://www.elespectador.com/noticias/judicial/los-reproches-la-fiscalia-sobre-los-desaparecidos-del-palacio-de-justicia-articulo-878209>

²⁹ El País (August 21, 2019) The Colombian Army prepares a coordinated version on the conflict. Available at: https://elpais.com/internacional/2019/08/19/colombia/1566244001_904750.html

³⁰ INFOBAE (2021, February 10) Report of a "pact of silence" orchestrated by Fondetec so that military officials do not accuse high commanders in cases of False Positives. Available at: <https://www.infobae.com/america/colombia/2021/02/10/denuncian-pacto-de-silencio-orquestado-desde-fondetec-para-que-militares-no-acusen-a-altos-mandos-por-casos-de-falsos-positivos/>

³¹ El Espectador (2021, March 7) "Information found about 1,724 missing persons who were not registered": Director of the Search Unit. Available at: <https://www.elespectador.com/colombia2020/justicia/desaparecidos/hallamos-informacion-de-1724-desaparecidos-que-no-estaban-registrados-directora-de-la-ubpd/>

Similarly, in December 2020, the Commission for the Clarification of Truth, Coexistence and Non-Repetition (hereinafter CEV) reiterated the difficulties it has faced with receiving confidential information from public entities in a hearing organized by the IACHR.³²

c. Search for missing persons

According to figures from the Attorney General's Office, as of June 2020 only 10,083 persons have been recovered, of whom 5,242 have been identified and handed over to their families and 4,841 remain unidentified. If a simple comparison is made between the number of recoveries and identifications and the total number of victims of enforced disappearance reported by the RND (156,285 missing persons), the results reported by the FGN are minimal and do not even reach 10% of the total number of registered persons, taking into account that the RND faces problems with under-reporting.

Colombia has had a methodological instrument in place for the search for missing persons since 2007, when the Commission for the Search for Missing Persons adopted the National Search Plan (hereinafter PNB). The PNB is an "instrument that contains specific guidelines for the investigation, search, location, identification and surrender of missing persons and establishes that the strategy must consider the participation of victims' relatives, respecting their right to receive information about the process and the judicial investigation"³³.

Although the PNB was adopted in 2007, it was not until 2011 that its obligatory nature was established in Article 178 of the Victims Law. This has had an impact on the adoption of the Plan as a strategy that is an essential part of the investigative process of disappearances in the country. The Search Plan is generally confused with the methodological plan for the investigation that serves to determine the circumstances of time, manner and place of the disappearance but does not investigate the fate and whereabouts of the victims.

In requests for information made to the Attorney General's Office and the Commission for the Search for Missing Persons, these entities report not having quantitative information regarding the number of Search Plans implemented and the number of persons recovered, identified and handed over to relatives through the implementation of Search Plans. The lack of figures on the subject clearly evidences the lack of importance of the Search Plan in the framework of judicial investigations.

In May 2020, the UBPD issued its version of the National Search Plan, which presents guidelines for addressing cases of persons reported missing who are found alive and the location, recovery and identification of the bodies of persons reported missing who are presumed dead. This plan incorporates strategies for the participation of victims' families, civil society organizations and guidelines for the search and delivery of persons reported missing belonging to black, raizal and palenque communities, indigenous and Romany peoples. This National Plan proposes the design of regional plans that are adjusted to the context of the territories.

This new Plan is designed within the framework of the obligations established by Decree 589 of 2017 that regulates the Unit for the Search for Persons Reported Missing. However, it is not clear if the 2007 National Search Plan is still in force and will be exclusively used by the Attorney General's Office and the Commission for the Search for Missing Persons, or if the new Search Plan that uses extrajudicial and humanitarian approaches will be used by the relevant public institutions. This needs to be publicly clarified so that victims are clear about the different existing institutional mechanisms for the search of missing persons.

³² Truth Commission (2020) The five requests of the Truth Commission to the IACHR to facilitate access to information. Available at: <https://comisiondelaverdad.co/actualidad/noticias/cinco-peticiones-comision-verdad-a-cidh-para-facilitar-acceso-informacion>

³³ EQUITAS, Comparative Experiences in the Search for Missing Persons in Conflict Scenarios, EQUITAS 2020.

Regarding the publication of the new Search Plan, it is of significant concern that the document states that the Plan is in its first phase and its operational development is still pending. The organizations that form the Working Group on Enforced Disappearances called for "greater clarity on the timing and methodologies for the completion of this second phase, given the concerns of the victims and their organizations regarding the need to identify the stages of the PNB much more quickly and easily in order to have clarity on the application of its principles"³⁴.

It is necessary to provide clarity regarding the timing, indicators, responsible parties and mechanisms for victim participation in an expeditious manner as the design and implementation of the first phase took a little more than a year to complete.

About the Genetic Profiles Bank:

Through the Law of Homage to Victims of Enforced Disappearance (Law 1408 of 2010) and its Regulatory Decree 303 of 2015, the Genetic Profiles Bank for Disappeared Persons (hereinafter BPGD) was created in which the State's Forensic Genetics laboratories must process, index, organize and store information about genetic profiles obtained from the bodies and remains of the victims as well as the biological reference samples of relatives of the victims with their prior unified and voluntary informed consent (Article 5). This represented the possibility of carrying out database searches to make technical crosschecks between the genetic information of the relatives of missing persons with the genetic profiles of the recovered unidentified bodies to search for matches and promote the identification processes.

Although the creation of the BPGD represented a step forward for the large-scale identification of missing victims, there are still problems with the number of reference samples taken from family members for each missing victim and matching them with those taken from unidentified recovered bodies. In order to ensure greater effectiveness and certainty through the matching process, it is recommended that at least 3 reference samples are taken for each missing victim, especially from first-degree relatives. This means that there should be three times as many samples taken and entered in the BPGD as the number of persons registered as missing.

There are still problems with the collection of antemortem data, especially information that contributes to the identification of the victims. It is necessary to strengthen the staff responsible for the collection of information and samples so that they can generate spaces for dialogue with relatives that are based on respect and trust, build family trees to guide the identification process and ensure the appropriate collection of biological samples from a sufficiently large group of highly informative relatives for genetic analysis.

In different reports the INMLCF has stated that it has had to "concentrate the majority of sampling campaigns...in urban areas". This is of special concern given that most of the victims registered are from rural areas, who are often located in zones that are of significant distance from population centers and/or are hard to access. It is necessary to use strategies so that these institutions can reach remote areas, especially in cases in which family members are elderly or have some illness or physical condition that prevents their travelling to urban centers. A communication and pedagogical strategy should be established and widely disseminated to clearly explain why and for what purpose the genetic sample is taken and to schedule visits by the entities to the rural areas of interest. These actions could be carried out in consultation with regional organizations and community members.

Finally, "taking into account the disposal scenarios used for the concealment of the bodies, it should be considered that these can be recovered in conditions that involve the advanced state of degradation of the tissue and hinder the development of medical-legal analysis. This requires further

³⁴ Working Committee on Enforced Disappearance, National Search Plan of the Unit for the Search for Missing Persons: Comments made by the Colombia-Europe-United States Coordination Working Table, 2020.

strengthening of scientific and forensic research with biodemographic standards adjusted to the Colombian population, not just by State entities, but also by academics and independent forensic teams that contribute to the search for missing persons in the country³⁵.

When a person is missing the family goes to the nearest entities that they know of, which are generally *municipal offices of public institutions and police stations*. In capital cities people go to the CTI - Prosecutor's Office (responsible for the planning, organization, management, control and execution of the Judicial Police functions in the FGN). In these institutions they fill out *the National Form for the Search of Missing Persons*. The data from this form must be entered into the SIRDEC.

When the families report the case to the CTI of the Prosecutor's Office, they assume that the corresponding judicial report has been made and they are waiting for the progress of the investigation. When the criminal report number of the crime is required for a specific procedure, months or years may have passed and the families realize that they do not have a criminal report number from the Prosecutor's Office. They then have to make the report in an office of the Attorney General's Office, leading to revictimization by the public official who asks them why they have waited so long to file a report. The public officials do not recognize that families did not receive sufficient guidance to take this following step after making the initial report at an office of the Attorney General's Office.

- *We do not understand why the CTI in the Prosecutor's Office, when it has knowledge of an enforced disappearance and receives the report of the disappearance, does not register the complaint and assigns a criminal report number so that an investigator can be assigned and the judicial process can move forward immediately.*

- If the internal procedures do not allow the CTI in the Prosecutor's Office to register a criminal complaint for this crime, then it is their duty to provide sufficient guidance to families so that they can immediately go to an Attorney General's Office to file the respective complaint and an investigator can be assigned to the case.

In the larger cities there are public and private closed circuit television (CCTV) cameras that are stored for a period of 10 days. If there is no timely response from the investigators of the Attorney General's Office then this evidence is lost or it is impossible to access it. On many occasions the location of these cameras is identified and provided by the relatives in the first report. Access to cell phone conversations as a means for the search for victims of enforced disappearance is limited by the unwillingness of investigators to carry out the process in a timely manner and by delays in the provision of information from telephone network operators. This happens if there is pressure from human rights organizations, but similar to the cameras, it is not a practice that is included in the first inquiries of the investigation.

There are no time periods that establish when investigators should inform families about the progress of investigations along with new analyses and the construction of investigative and search hypotheses. This leaves inexperienced families with the burden of gathering new evidence so that cases can move forward.

The delay with interviewing witnesses provided by family members can sometimes take between 6 months and a year, which prevents timely information for the search of the missing person.

The way in which family members interact with staff from the Attorney General's Office must be transformed, as they generally involve an atmosphere of distrust, aggravated by changes in the prosecutors or investigators assigned to the case:

- The FGN does not believe that the person has disappeared. The first hypothesis is that the person left voluntarily for some reason and therefore its guidance to the family and investigators is to wait

³⁵ EQUITAS, *ibidem*.

for them to appear. This leads to the loss of valuable time for the search. This is also evident in the activation of the MBU, which, although it receives the reports of a missing person, this does not imply that pertinent and timely actions are taken to quickly establish their location.

- The Attorney General's Office assumes that if the person has disappeared it was because he or she owed money to someone, making the family members feel as if they were responsible for "a crime". This intimidates them and does not generate a space of trust in which family members can calmly narrate the facts, sharing all of the details that they remember, which may help the investigation. On many occasions these details are remembered more clearly when the report of the disappearance is made to a human rights organization.

It is necessary to separate the cases of missing persons from the units in the Attorney General's Office that investigate kidnapping cases because these are crimes that have different motives and forms of action and require different methods of investigation. The FGN still does not take into account in its methodological investigation plans the contexts in which the disappearances occurred, which can establish whether they are enforced disappearances or other modalities of disappearance linked to crimes such as human trafficking, enforced recruitment and the sexual exploitation of children and youth, among others.

The investigators assigned to the cases are rotated on a permanent basis. When families interact with the newly assigned investigators they are asked to again provide them with information about the case when there are already proceedings pending due to requests submitted by the family members. This gives the impression that there is no general file for the case being investigated.

Cemeteries

Although the situation with the cemeteries has been a constant concern, in recent years it has become more evident with reports from organizations of family members, particularly in relation to the Precautionary Measures promoted by MOVICE and the MDTDF before the JEP. Currently, the Section of the Absence of the Recognition of Truth and Responsibility (hereinafter SAR), in coordination with the UBPD, is carrying out actions in at least 15 cemeteries in which they have been able to confirm the high risk of evidence being affected due to the lack of care and protection, and despite the existence of hundreds of Unidentified Persons (PNI) and Unclaimed Identified Persons (PINR). But the reality is more complex, as the UBPD itself has acknowledged that there are about 4,000 cemeteries with about 30,000 unidentified persons. This means that a Cemetery Plan articulated with the National Search Plan and the Local Search Plans is urgently required.

Despite the fact that some years ago the Ministry of the Interior carried out an assessment of some cemeteries in the country, necessary measures were not taken to stop their deterioration and guarantee their protection. Today, most of the cemeteries are completely overcrowded, which has been aggravated by the pandemic. There is a risk that bodies are removed to make room for the burial of people killed by COVID-19.³⁶ In response to this situation, the UBPD has taken measures to coordinate actions with local administrations to avoid this situation, however it is not clear whether these measures are being complied with. Additionally, some of those appearing before the JEP (military) are giving information about victims of extrajudicial executions who were buried in cemeteries. This means that it is urgent to protect these places so that they are not altered and bodies are protected, preventing them from being lost, as has happened in other circumstances.

³⁶ MDTDF (2020, April 6) The order from the National Inspector General to Municipal Mayors puts the identification of thousands of disappeared persons and the right to the truth at serious risk. Available at: <https://coeuropa.org.co/la-orden-de-la-procuraduria-general-de-la-nacion-a-los-alcaldes-pone-en-riesgo-grave-la-identificacion-de-miles-de-personas-desaparecidas-y-el-derecho-a-la-verdad/>

d. Protection of persons reporting and/or participating in the investigation of an enforced disappearance

The situation of risk for family members and human rights defenders searching for victims of enforced disappearance continues. The context of aggression against social leaders in Colombia is extremely serious, which affects the possibility of searching for victims in the territories. Since the signing of the Peace Agreement in November 2016 and July 2020, more than 600 social leaders have been killed and hundreds of others have been the victims of threats, displacement and enforced disappearances. Added to this is the increase in armed clashes between the security forces and insurgent groups and acts of violence committed by paramilitary structures and drug trafficking groups against the civilian population.

Members of organizations that are part of the National Working Group on Enforced Disappearances continue to face risks when carrying out their work. This is the case for members the Nydia Erika Bautista Foundation, the National Movement of Victims of State Crimes, the Colombian Interdisciplinary Team for Forensic Work and Psychosocial Assistance (hereinafter EQUITAS), the Libertad Legal Corporation, Mujeres Caminando por la Verdad and the Progresar Foundation. These organizations have reported attempts to steal information, surveillance, harassment or threats against some of their members. One of the most recent cases is that of human rights defender Wilfredo Cañizales (who has reported as a victim of enforced disappearance in the border region between Colombia and Venezuela), who was the target of accusations by Colonel José Luis Palomino, Commander of the Police Department of Cúcuta, putting his safety and life at risk. In addition, an attack was made against the spokeswoman of Mujeres Caminando por la Verdad in Comuna Trece in Medellín on November 30, 2020.

Relatives of victims who have participated in the hearings held in Antioquia and Sucre by the Section of the Absence of Recognition of Truth Responsibility of the JEP in the framework of the Precautionary Measures on burial sites of victims of enforced disappearance, have been subject to threats and harassment before and after the hearings. In Antioquia, several of the spokeswomen of the Mujeres Caminando por la Verdad organization were followed while two received threats and had to move to other neighborhoods in the city. One of the women was subjected to sexual violence by a member of the paramilitary structure operating in Comuna 13. The Ríos Vivos Movement has suffered threats and persecution, not just for opposing the construction of the Hidroituango hydroelectric dam, but also for denouncing that the dam was built without addressing the demands of the peasant population who for years have reported enforced disappearances and the existence of illegal graves on the banks of the Cauca River in the department of Antioquia. Threats were also made to several members of the Sucre chapter of MOVICE, including Adil José Meléndez Márquez, a human rights defender from the Municipality of San Onofre.

Despite this situation, the Colombian State has not implemented actions to comply with the recommendation to activate effective protection mechanisms, as established in Article 12 of the Convention. These mechanisms are for protection against mistreatment, intimidation or any other type of aggression against family members and their organizations. There are no specific protocols for the provision of assistance to risk situations while entities including the National Protection Unit or the National Search Commission do not have mechanisms to verify the situations experienced by family members. The SIVJNR has not implemented any specific protection actions.

The UBPD has made progress in the design of the National Search Plan, but it does not have clear mechanisms to address situations that can arise. The Special Jurisdiction for Peace does not have a security protocol for victims who decide to be accredited by this jurisdiction or who face risks due to their participation in its various mechanisms. Although the Investigation and Indictment Unit (UIA) of the JEP has a Group for the Protection of Victims, Witnesses and other participants, with whom some

actions have been agreed upon in the framework of some of the hearings, it also does not have a mechanism for addressing the demands of family members who have decided to participate.

In the ICRC's 2020 report, the ICRC states that "families must have better security conditions to be able to report their cases". This is due to the fact that cases of enforced disappearance have increased throughout the country, as detailed in this report, but families have expressed their reluctance to report these cases due to fears of retaliation from illegal armed groups or members of the enforced security forces that are present in the territories.

3. Measures to prevent enforced disappearances

a. Communication of persons deprived of liberty

In the case of people temporarily detained, it is important that effective measures are taken to put an end to irregularities that violate regulations and procedures related to administrative transfers (Articles 155 and 157 of the National Code of Police and Coexistence), which may expose people to other human rights violations during their detention, such as torture, cruel, inhuman or degrading treatment³⁷, sexual violence or enforced disappearance. These measures should include considerations on communication with and registration of persons deprived of their liberty, as well as others related to the minimum legal requirements for protection transfers.

The excessive duration of the so-called protection transfers, many of which exceed the time limits established by law (12 hours for protection transfers and 6 hours for police procedure transfers), and delays with presenting the detained persons before the competent authorities to define their situation, are of concern. For example, on January 21, 2020, and within the framework of the mobilizations that formed part of the National Strike, the *Defend Freedom Campaign: Everyone's Business* issued an early warning³⁸ addressed to the relevant authorities in which it reported that since 7:00 a.m., 33 protection transfers had been presented within the framework of the Strike, but by 2:00 p.m. none had arrived at the Protection Transfer Center. In Medellín, on June 15, 2020, the Foundation for Freedom of the Press³⁹ reported that 3 journalists who were covering social protests were detained for more than 24 hours and were going to be prosecuted without any grounds for their arrest.

Other irregularities that occur in these procedures and that expose arbitrarily detained persons to other human rights violations are: the lack of information provided to the detained person about the reasons for their transfer; the transport of detainees to places not authorized by law, such as the Immediate Response Police Stations (hereinafter CAI) and other police stations in the case of protection transfers; the irregular use of vehicles without identification to detain people, as happened when plainclothes police detained a female protestor on a bicycle for no apparent reason in a private car, with the entire event recorded on video⁴⁰; non-compliance with the guarantee to record the operations and procedures of the National Police; the persistence of incomplete reports provided following at the arrests; the inappropriate custody of the property of detained persons; the denial of information to the relatives of the persons and/or lawyers; and the failure to make the detainees

³⁷ Defend Freedom Campaign." Last November 21 in the framework of the #National Strike and the operations of the @PoliciaColombia in the Bosa Brasilia neighborhood, Johan Altamiranda was tortured after being run over with a motorcycle." <https://twitter.com/defenderliberta/status/1200467145714491392>

³⁸ Early Warning on risk of human rights violations: 21E National Strike Campaign, January 21, 2020. At <https://defenderlalibertad.com/activacion-de-alerta-temprana-preventiva-sobre-situacion-de-riesgo-de-violaciones-de-derechos-humanos-paro-nacional-21e/>

³⁹ Harrison Agudelo, Juan Carlos Londoño and Juan Pablo Herrera

⁴⁰ This occurred with the arrests of two young men on December 10, 2019 in the vicinity of the National University, who were enforced by police officers to enter cars that did not have official identification. At: <https://www.eltiempo.com/bogota/errores-del-esmad-y-la-policia-en-el-procedimiento-frente-a-la-universidad-nacional-442864>

available to family members who are on site and could assume their protection, among others. In relation to the effective and prompt communication of detainees with their lawyers, it is common that this communication is obstructed, prevented or delayed, as evidenced in arrests made in the city of Medellín, on June 15, 2020 where it was reported that several of the detainees, about 53 people (in Immediate Reaction Units, Protection Transfer Centers and Police Stations), in addition to being assaulted and beaten, were prevented from meeting with lawyers.

In addition, the mass transfers that occur during social protest scenarios in response to the exercising of fundamental rights such as the right to assembly, association and freedom of expression, transfers are not used *exceptionally* (Constitutional Court. Ruling C-281/17) to protect the life or physical integrity of any person exposed to imminent risk, but to limit the right to freedom of persons and peaceful protest in a disproportionate manner. From the start of Iván Duque's government on August 7, 2018, until June 30, 2020, 2,331 arbitrary detentions of protesters were registered in the SIAP⁴¹, of which 86% were administrative transfers. Most of these detentions occurred in the framework of the National Strike (21N) which extended until 2020. Between November 2019 and February 2020 the SIAP recorded 1,477 detentions (75% in Bogotá), of which 1,363 were administrative and 114 for judicialization purposes. This means that, during 3 months of the National Strike, an average of 15 people were administratively transferred per day, while 38 people were detained for judicialization purposes each month.

It is the obligation of the National Penitentiary and Prison Institute (hereinafter INPEC) to guarantee communication and the exchange of information between detainees and their families and relatives at times when their lives and health are at risk has been repeatedly breached. An example of were the cases of inmates who were seriously wounded during a riot that occurred at La Modelo prison in Bogotá on March 23rd, 2020 that left 24 dead⁴². After going to the prison several times, the family of Diego Fernando Álvarez Colmenares did not obtain satisfactory information. After several days of inquiries, they filed a report about his possible disappearance so that investigative authorities from the Attorney General's Office could go to the prison and identify his location⁴³. The same situation happened with the monitoring of the health status of another prisoner wounded by a firearm. Information about this prisoner was only obtained a month later through intermediation by the Committee in Solidarity with Political Prisoners⁴⁴.

It should be noted that in the prisons run by INPEC, prison transfers are recurrent and detainees are not allowed to inform their families and defenders that they will be transferred⁴⁵. In addition, persons deprived of their liberty have denounced that these transfers occur without any reason or have the purpose of punishing persons deprived of their liberty⁴⁶. In most cases, when the destination is geographically distant from their place of origin, the prisoner may spend days or even weeks incommunicado without knowing in which prison they are being held. Unfortunately, it takes a few days for this information to appear in the "Registry of the Population Deprived of Liberty" application.

⁴¹ This database includes information from the media (mass and alternative) and information reported by different social organizations that accompany the social protest in situ as members of the Verification and Intervention Commissions.

⁴² EL Espectador. March riot in La Modelo left 24 dead, one more than INPEC has admitted. EL Espectador. May 5, 2020. Available at: <https://www.elespectador.com/coronavirus/motin-de-marzo-en-la-modelo-dejo-24-muertos-uno-mas-de-los-que-ha-admitido-el-inpec-articulo-917944/>

⁴³ EL Espectador. The story of the inmate reported missing after the March 21 riot at La Modelo. May 4, 2020. See <https://www.elespectador.com/noticias/judicial/el-interno-dado-por-desaparecido-tras-el-motin-del-21-de-marzo-en-la-modelo-articulo-917799/>

⁴⁴ El Tiempo. Uncertainty: a mother's account of the events at La Modelo. April 2, 2020. See at: <https://www.eltiempo.com/justicia/investigacion/la-historia-de-una-madre-sobre-los-hechos-en-la-modelo-479880>

⁴⁵ "It's inhumane": FARC on conditions of transferred political prisoners; EL Espectador; March 31, 2020; <https://www.elespectador.com/colombia2020/pais/es-algo-inhumano-farc-sobre-condiciones-de-presos-politicos-trasladados-articulo-912231/>

⁴⁶ "INPEC arbitrarily transfers political prisoner with leukemia"; Complaint by the Committee for Solidarity with Political Prisoners; <http://www.comitedesolidaridad.com/es/content/inpec-traslada-de-forma-arbitraria-presos-pol%C3%ADticos-con-leucemia>

While this is happening, public officials in the prison system deny access to information about the whereabouts of inmates to their lawyers and family members.

b. Records of persons deprived of liberty

The case of people who disappeared in Colombian prisons between 1997 and 2001 remains uninvestigated, unclarified and in total impunity. Since 2016, former paramilitaries reported in the Justice and Peace jurisdiction that people deprived of their liberty were murdered and disappeared inside the same prisons. In addition, people who were kidnapped and taken to see heads of paramilitary groups in the prisons and disappeared there. More than 100 people are known to have been tortured, murdered, dismembered and disappeared in the prisons La Modelo in Bogotá, San Isidro in Popayán, La Modelo in Bucaramanga and El Bosque in the city of Barranquilla.

The Attorney General's Office opened an investigation and it is known that it has only managed to identify the identity of five victims⁴⁷. However, there is no willingness from the investigating entity to clarify the identity of the victims and the patterns and modus operandi used in these crimes. It wasn't until October 2019 that the FGN summoned for questioning the retired General and former director of INPEC Fabio Campo Silva, who served as Director General of INPEC between February 16, 2000 and July 6, 2001. Also under investigation are: Major (r) Jaime Gallo Zuleta, external advisor to INPEC, 2000-2001, Colonel (r) Luis Bernardo Maldonado Bernate, Deputy Director General of INPEC, for the period from April 20, 1999 to July 5, 2001 and Reinaldo Fierro Rico, Director of the Bogotá La Modelo Prison for the period from November 5, 1999 to July 6, 2000. Despite this, the victims remain unaccounted for.

4. Measures for the reparations and protection of children from enforced disappearance.

a. National Center of Historical Memory

In early February 2019, Rubén Darío Acevedo Carmona was appointed as director of the CNMH⁴⁸. The MDTDF does not consider that this political appointment meets the criteria of impartiality, since throughout his professional career he has not shown the objectivity required to conduct a credible and truthful analysis of the history of the war. His position denotes an extremely dangerous bias for the construction of memory in Colombian society. Acevedo publicly denies the existence of an armed conflict in Colombia, which is against the definitions of IHL signed by Colombia (Protocol II), the concept of war established by the United Nations and social sciences, and also goes against the rights of victims already enshrined in Law 1448, which states that there has been an armed conflict in Colombia.

During Mr. Dario Acevedo's time as head of the CNMH we have observed a clear intention to privilege or superimpose some memories over others, with the purpose of denying the memory of the victims. An example of this is Law 1979 of July 25, 2019, which stipulates in Article 9 that: "The National Center of Historical Memory, created by Article 146 of Law 1448 of 2011, will have a physical space in the Museum of Memory designed to share with the public the life stories of veterans from the State

⁴⁷ According to the newspaper El Espectador, the victims are named as follows: Carlos Candia, Joaquín Gallego, Jorge Vargas, Luis Norberto Osorio and Janer Torres. Article from March 25, 2018: <https://www.elespectador.com/colombia2020/justicia/desaparecidos/el-expediente-desconocido-de-las-desapariciones-en-la-carcel-modelo-articulo-856457/>

⁴⁸ On November 6, 2018, by means of a public letter, and on November 27, 2018, by means of a letter filed in the office of the Presidency of the Republic (EXT. 18--00127502, current letter without response), several victims and human rights defenders organizations articulated that form part of the Colombian Network of Places of Memory. These communications contained a list of criteria that we recommend the national government, as representative of the State, should apply.

security forces, specifically exalting their courageous actions, their sacrifice and contribution to general welfare."

The MDTDF considers that this law is an affront to the right of the victims and their families to know what happened and to know which enforced security agents were responsible for the different events, given that attributing a space in the Museum of Memory to highlight the life stories of enforced security agents represents an apology for war, glorifies the image of one of the armed actors that perpetuate the conflict, legitimizes the enforced-sponsored terrorism policies and endorses the atrocious acts committed by the enforced security forces.

The promotion of these types of actions imposes a memory that distorts what happened. The victims of crimes committed by the State have the right to know the truth, and not as a mere formality. This means that the actions that promote ways of hiding this truth are unacceptable because they permit the continued justification to relatives of the victims and to humanity in general that the atrocious crimes perpetrated by the enforced security forces were committed in the framework of a war in which the communities were considered military targets.

We cannot fail to mention another of the actions carried out by the current director of the Historical Memory Center, who has deliberately tried to censor the project implemented by victims with the Museum of Memory. In an audio revealed by Noticias Uno, Mr. Acevedo stated that, "there are going to be changes in the script" and that the conceptual construction will no longer take into account the proposals of the victims, but will be in charge of a group of "experts" hired by him who will decide what versions of historical events will be published

In this same audio, Mr. Darío Acevedo mocks the ways of representing and relating through metaphors related to water, earth and fire, which are used to describe the memories of pain and resistance of the victims who participated in the construction of the script for the Museum of Memory. He had the audacity to say that "making a river talk" is the exclusive domain of literary works, ignoring the struggle of communities to demonstrate that rivers speak and are witnesses of the indelible crimes they have experienced.

Under his administration, it's not just the narratives of the victims that will be censored in the Museum of Memory, but also the investigations that details the strategies of the so-called "third parties", economic groups and political elites that financed private armies.

The MDTDF expresses our collective determination not to collaborate with this institution, as the evident lack of impartiality of Darío Acevedo to fulfill the mandate of exhibiting all of the victimizing events and those responsible for them is not consistent with the International Principles referred to the duty of a Memory State, the Right to the Truth and the fight against impunity that victims and society in general face.

Since the enactment of Law 1448 of 2011, the MDTDF has worked with victims and organizations to initiate trust-based agreements and declarations with the CNMH that had involved providing physical and digital files on violations of human rights and International Humanitarian Law during the armed conflict and political violence to the Centre. We have decided to withdraw all of the materials delivered due to a lack of real guarantees for their safeguarding and proper use in the reconstruction of memory aimed at achieving the truth that Colombia deserves.

The MDTDF highlights the need to safeguard the independence and autonomy of the institutions that, like the National Center of Historical Memory, have been created with the mandate to contribute to the achievement of truth and justice as a mechanism of reparations for victims and as a guarantee of non-repetition. This will only be possible if we start with recognizing the existence of the armed

conflict and ensure the inclusion of different voices, faces, languages and places without overlapping interests that promote the interests of governments in power.

The reconstruction of memory in Colombia must be an enforced policy and requires guarantees for the active and binding participation of victims and human rights organizations in all dimensions of the process, including the selection of those who are responsible for directing this important task that is based on criteria such as suitability, independence, academic competence, legitimacy and commitment to the causes of peace and human rights. We will continue to insist on this need in the relevant entities, especially those operated by the international community. We will invite these entities to contribute to oversight processes that require monitoring of the official memory of the State that will be constructed under the leadership of Mr. Acevedo.

b. Protection of children from enforced disappearance

It should be noted that the Colombian State has not passed legislation that incorporates the specific crimes and penalties recommended in its report and that refer to Article 25 of the Convention against Enforced Disappearance in relation to children subjected to enforced disappearance.

We also note that the lack of adoption of these legislative measures is a major problem, contributing to the high level of impunity in the investigation and prosecution of crimes related to the enforced disappearance of children and adolescents. This crime has a general impunity rate of 99.51%⁴⁹ and sometimes involve cases of enforced disappearance of children and adolescents from more than a decade ago in which investigations and efforts to find the victims has been minimal.

It is also necessary to adopt a public policy and complementary measures for the protection of cemeteries and identified sites that contain the remains of unidentified persons, possibly missing persons and including children and adolescents. Investigations have shown that this crime was part of the modus operandi of different armed actors, transferring victims to sites where they could not be located or identified by their loved ones as an act to deny or hide their whereabouts from their relatives and the authorities or making it difficult to find them after they were deprived of their freedom and killed. The protection of cemeteries is essential due to the situation of abandonment for many of these sites are found where sometimes remains are unearthed and disappeared again.

In addition, based on the principles of Legislative Act 01 of 2017 through which measures are adopted "*for the termination of the armed conflict and the construction of a stable and lasting peace*", which requires the application of "*a territorial, differential and gender approach that corresponds to the specific victimization characteristics in each territory, population and especially the protection and prioritized assistance for women and children*", there is an urgent need to incorporate an age differential approach in the search strategies used by the UBPD and the Attorney General's Office in the context of the armed conflict. This is because the use of age-based differential methodologies its application is not perceived in their practice, nor in the prioritization that the search for missing children should have, especially in this context.

In addition, there is a deficit in the articulation between these entities that hinders the search and location of children and adolescents who disappeared in the context of the armed conflict, as well as affecting the search and possible delivery of the remains of their relatives in order to end the suffering of their loved ones when they learn the fate of the disappeared.

The reduced scope of the humanitarian functions by the UBPD is due, among other things, to budget reductions and delays in budget allocations. For this reason it is recommended to the Colombian

⁴⁹ Observatory of Memory and Conflict (CNMH), 2018 – Procedural status of criminal cases SPOA, Nov. 2018.

government strengthen this entity in order to comply with the recommendations made by this Committee.

5. Dissemination and follow-up

In October 2019, the Colombian State submitted the document entitled Supplementary Information submitted by Colombia under Article 29, Paragraph 4 of the Convention, to the Committee on Enforced Disappearance.

The participation of civil society was not taken into account in the drafting of this document, which is also evident in the drafting of the report that the Colombian State must present in October of this year. The human rights and victims of enforced disappearance organizations represented by the have requested that the Colombian State allow them participate in the drafting and socialization of these documents. The MDTDF has received the following response:

By virtue of the commitments undertaken when signing the Convention, the Colombian State has foreseen the delivery of the conventional report within the term established by the Committee.

In this regard, and in relation to subparagraphs b and c, by virtue of Resolution 9709 of 2017 this Directorate, coordinates actions with the relevant entities to prepare the Report, as cited below:

"Coordinate inter-institutional processes for the preparation, presentation and support of Periodic Conventional Reports to be submitted by Colombia in compliance with International Instruments on Human Rights and International Humanitarian Law. [...]".

In this regard, the preparation and drafting of the aforementioned report within the parameters of our authority is underway with the relevant government entities and will later be presented to the Committee.

Finally, it is important to note that the text of the Report, once submitted by the Colombian State, may be consulted at the Committee's web page: <https://www.ohchr.org/SP/HRBodies/CED/Pages/CEDIndex.aspx>.

State Party Reports can be consulted at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=sp&TreatyID=2&DocTypeID=29, for which we suggest that you constantly check the page.⁵⁰

The response from the Colombian State makes a mockery of victims, their organizations and accompanying organizations that have been engaged in international advocacy actions for decades and before the arrival of international mechanisms of enforceability of rights. As a result, we know where the documents are located. This response is a way of not attending to the request made by civil society to participate in the preparation of these documents.

Conclusions and recommendations

Based on the analyses presented above, we submit the following conclusions and proposed recommendations to the CED:

1. The recommendations that the Committee on Enforced Disappearances made to Colombia in 2016 have not been satisfactorily implemented. As a result, thousands of people are still missing in the country and thousands of families are still waiting to know the whereabouts of their loved ones. In addition, the lack of an effective response from the State to this crime means that enforced disappearances continue to occur in Colombia at a concerning rate,

⁵⁰ Response the Right of Petition submitted by the Observatory of Human Rights and Humanitarian Law, Coordination Colombia - Europe - United States with file No. S-GAIID-19-033557, Internal Working Group for the Provision of Assistance to International Human Rights Entities, Ministry of Foreign Affairs of Colombia. 08/07/2019

including during the COVID-19 pandemic, when people were in lockdown for nearly six months.

2. Therefore we request that the to recognize the persistence of enforced disappearance in Colombia and the absence of effective preventive action by the State in its Concluding Observations.
3. In the same vein, we request that the Committee recognize the importance of the Comprehensive System for Truth, Justice, Reparations and Guarantees of Non-Repetition, and specifically the Unit for the Search for Persons Reported Missing as instruments to guarantee the rights of victims of enforced disappearance in Colombia and their relatives. We also request that the Committee recommend sufficient and sustained funding for these entities, as well as the prompt and effective collaboration of all State entities involved in the search for missing persons.
4. it is essential that the Committee reiterate what was recommended to Colombia in 2016, and in particular we suggest that specific recommendations be made to the State on the following issues:
 - a. Prevention:
 - i. That search requests submitted to the Immediate Response Units that are part of the Attorney General's Office are immediately received and processed without any impediments of any kind or the need to wait 72 hours to initiate the procedure.
 - ii. That the necessary corrective measures are immediately adopted to ensure that administrative transfers known as *protection transfers* do not exceed the time period for detained persons to be presented before the competent authorities to define their situation, as established by law; that detained persons are given information about the reasons for their transfer and that they are only taken to legally authorized places, and not to the Immediate Response Police Stations (CAI) or other police stations; that irregular or unmarked vehicles are not used to detain persons; that all guarantees are provided to be able to record operations and procedures carried out by the National Police; that they can effectively and promptly communicate with their lawyers, and that they are given proper custody of their property; that the complete and timely information is provided to relatives and/or those representing the detained persons, as well as the submission of complete reports at the end of the detentions; and that it complies with the obligation to make the detainees available to family members who are on site and can assume their protection.
 - b. Definition and criminal definition of forced disappearance:
 - i. That the process of data purging, consolidation and interoperability for the RND is completed so that the universe of missing persons can be determined, individualizing victims, identifying their type of disappearance and presumed perpetrator and possible whereabouts of the victim. This will make it possible to monitor the search, recovery, identification and surrender actions undertaken by the different entities responsible for the case, as well as the actions of victims and accompanying organizations.
 - ii. That the judicial authorities, and particularly the Attorney General's Office, make additional efforts to clearly establish the responsibility of the State,

either directly or indirectly, by action or omission, with the commission of the crime of forced disappearance, as well as to establish the responsibility of hierarchical superiors and not just the material perpetrators of this crime.

- iii. That a legislative reform is carried out to incorporate the grounds for responsibility contained in both the Rome Statute and the International Convention for the Protection of All Persons from Enforced Disappearance into the Colombian legal system.
- c. Criminal responsibility for forced disappearance:
- i. That the judicial authorities are urged to immediately activate the Urgent Search Mechanism (MBU) in all cases in which it is suspected that an enforced disappearance has occurred, even if there is no formal complaint, so that the investigation is timely and has the greatest chance of finding the victims alive. The Attorney General's Office should also prioritize (politically, technically and financially) the investigation of cases of forced disappearance as a mechanism to reduce high levels of impunity.
 - ii. That for all search work carried out by the UBPD, or any other institution that is responsible for this action, there should be clear protocols for the participation of victims that have been constructed with their participation.
 - iii. That a public policy is adopted to protect cemeteries and identified sites where the remains of persons are located who may be possible missing persons, whether they are identified or unidentified and with the participation of the UBPD and the JEP for the design of this policy.
 - iv. That the State adopts a comprehensive public policy of guarantees for the defense of human rights in accordance with international recommendations made to Colombia regarding human rights defenders, including specific measures to prevent, protect, investigate and avoid the recurrence of attacks against family members and human rights defenders and organizations searching for victims of enforced disappearance. Additionally, that the JEP and the UBPD adopt specific measures to guarantee the security of family members and human rights defenders and organizations searching for victims of enforced disappearance who participate in the proceedings and actions of these entities.
- d. Dissemination and follow-up:
- i. That Colombia present a plan for the implementation of the recommendations formulated by the Committee, clearly defining the responsible entities and a timeframe for progress regarding compliance with the recommendations. A public and transparent mechanism should be established that includes the participation of the international community and civil society and ensures periodic monitoring of the State's compliance with the recommendations made by this Committee.