



Bogota D.C. March 12, 2021

**Albane Prophette**

Executive Secretary

Committee on Enforced Disappearances

Reference: Alternate report on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance in Colombia.

Respected Ms. Prophette,

The Colombian Interdisciplinary Team for Forensic Work and Psychosocial Assistance (EQUITAS) is writing to you, and through you to the Committee on Enforced Disappearances (CED), in order to submit information related to compliance with the recommendations made to the Colombian State under Article 29 of the International Convention for the Protection of All Persons from Enforced Disappearance.

In order to meet this objective, the following sections of the report are presented: I) Introduction; II) The need to address enforced disappearance from a comprehensive public policy; and III) Recommendations.

**I. INTRODUCTION**

Colombia is one of the countries in the world most affected by the existence of enforced disappearances. Despite the number of people who disappear every year in this country, the extensive legislation and the institutional system created to respond to this problem, the State does not have a comprehensive public policy to address the situation, find missing persons, investigate and adequately punish those responsible or ensure the non-repetition of disappearances.

In the National Registry of Disappeared Persons, 2,510 disappearances were reported in 2020, in addition to 593 so far in 2021. The continuity of the practice evidences the lack of measures to guarantee non-repetition and the risk that this conduct cannot be eliminated.

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This report is intended to serve as a technical input to the Committee on Enforced Disappearances to address the concerns presented to the Colombian State and to outline some recommendations to improve the institutional response to this phenomenon.

## II. THE NEED TO ADDRESS ENFORCED DISAPPEARANCE THROUGH A COMPREHENSIVE PUBLIC POLICY

Although the report from the Colombian State recognizes the importance of the dissemination and implementation of the Guiding Principles for the Search for Missing Persons following their approval by the Committee on Enforced Disappearances, their dissemination has been minimal, and their promulgation has been primarily in academic spaces or websites of entities such as the Search Unit for Missing Persons (hereinafter UBPD).

In relation to their implementation, some of the main areas of discussion will be covered in greater depth later, but on this occasion the report will focus on the fact that the search should be governed by a public policy, since it is the only mechanism that allows for articulation between government agencies, guarantees the allocation of resources and provides suitable follow-up.

During 2020, the UBPD established the National Search Plan, which establishes the priorities and strategies for addressing historical difficulties with the search for missing persons. This Plan contributes to the recognition of practices that hinder the finding of missing persons and the need to address this issue in a structural manner. However, it does not set measurable goals and benchmarks in terms of how it will carry out the searches, how long it would take, and the resources needed to do so. There is also no information of how many missing persons have been recovered using the new plan.

The number of people, families, institutions, norms, decisions and interpretations that exist for the area of enforced disappearance requires a change of strategy in order to respond to the expectations of victims. In our opinion, there are 5 elements that are closely related to the concerns raised by the Committee on Enforced Disappearances with the Colombian State, which function as areas of the comprehensive policy proposal: 1. The determination of the universe of disappeared persons; 2. Participation of families and civil society organizations in the investigation and search for missing persons; 3. Continuity of enforced disappearances and other associated events; 4. Investigation, prosecution and punishment of those responsible for enforced disappearances; 5. Definition of inter-institutional coordination mechanisms and prioritization of actions.

### 1. Determining the Missing Persons Universe

One of the greatest difficulties faced by Colombia in relation to the crime of enforced disappearance is the lack of knowledge of the magnitude of the phenomenon. To address this situation, the Committee made a statement recommending that the Colombian State expedite the process of purging and consolidating

existing data on missing persons with a view to generating accurate and reliable information that will enable more effective prevention, investigation and search measures to be adopted. It also recommended that the Colombian State should:

- "(a) Make increased efforts to ensure that all cases of missing persons are registered in the RND, without exception, uniformly, exhaustively and immediately after a disappearance becomes known, and that it is permanently updated;
- b) Take effective measures to advance in the classification of as many cases as possible;
- c) Adopt the necessary measures to generate statistical information that will make it possible to be aware of the magnitude of the phenomenon of disappearance in the strict sense, which is when there are State agents allegedly involved, directly or indirectly, in the commission of the crime. ”<sup>1</sup>

After several years it is still difficult to access uniform figures on the number of missing persons, whether or not this data is in the context of the armed conflict. Without this information, a comprehensive response cannot be given. This data is often confused with straight numbers, but it contains both quantitative and qualitative descriptive and analytical aspects, as indicated by the Committee. The consideration of the universe of missing persons based on the principle that "people are more than a number" indicates that its construction requires both the characterization of the people who form this universe as well as quantitative analysis and estimation of this universe.

Taking into account the above situation, it is not necessary to have an exact and invariable number, but it is essential to have information that provides a reliable understanding of the situation. Although the disparity in the data is justified by the specialized work of each entity, the estimated number of victims of enforced disappearance in Colombia varies significantly, ranging from reports of approximately 32,000 victims to almost 300,000.

Some inconsistencies in the data are found even in reports from the same public institution, which means that doubts and inaccuracies should be clarified so that the standards used for recording the information can be more clearly understood and the data can be “cleaned up”. Below are some elements that have an impact on the differences in the data reported by the public entities despite the fact that most of them use Article 165 of the Colombian Criminal Code as a normative reference, as indicated by the Committee.

**Table No. 1.** Jurisdiction and data on enforced disappearances for each responsible entity.

Entity	Disappearance-related function	Scope of work related to enforced disappearances	General data on missing persons
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<sup>1</sup> CED, "Concluding observations on the report submitted by Colombia under Article 29, Paragraph 1 of the Convention", CED/C/COL/CO/1, 27 October 2016.

<b>Attorney General's Office</b>	Advance the investigation, punish those responsible and search for the missing persons.	It has no time limits but is limited by only being able to work with recognized crimes.	277,341 persons registered as victims in legal proceedings for enforced disappearances. <sup>2</sup>
<b>Search Unit for Missing Persons</b>	Search for missing persons in the context of the armed conflict.	It has two elements impacting its work: It can only work on enforced disappearances only associated with the armed conflict and a time limit that only goes up until 2016.	9,482 search requests <sup>3</sup> , even though the data from the Observatory of Memory and Conflict is recognized as indicative of the universe
<b>National Commission for the Search for Disappeared Persons</b>	Promote the criminal investigation and search for forcibly disappeared persons.	Its work is limited to cases of enforced disappearance.	No autonomous records of cases or victims of disappearance.
<b>National Institute of Legal Medicine and Forensic Sciences</b>	Manage the National Registry of Missing Persons as an information system that has the objective of identifying corpses submitted to a medical-legal autopsy, guiding the search for missing persons, monitoring cases and activating the Urgent Search Mechanism.	Its work is mainly related to human identification.	161,477 of which 32,121 are classified as cases of alleged enforced disappearance <sup>4</sup> .
<b>National Center of Historical Memory - Observatory of Memory and Conflict</b>	Contributes to historical clarification and recognition of the plurality of memories.	Current information produced by this public institution reports data up until 2018	80,653 alleged enforced disappearances. <sup>5</sup>
<b>Victims Unit</b>	Measures for attention, assistance and integrated reparations to the victims	Can only work with events occurring after 1985 and only with	Included 134,537 persons in the Unified Registry of Victims as

<sup>2</sup> Attorney General's Office, File No. 20219460009811, February 22, 2021. Annex 20216110017602. The data reported here does not include other crimes that may be enforced disappearances, nor does it include records that do not have a victim ID code associated with them. It should be clarified that some of the data mentioned here may include repeated records.

<sup>3</sup> UBPD, Memo issued by UBPD 1300-1-202100173 addressed to the Delegated Public Prosecutor for the Monitoring of the Peace Agreement, February 26, 2021, p. 43.

<sup>4</sup> National Institute of Legal Medicine and Forensic Sciences, National Register of Missing Persons, public consultation, March 9, 2021 available at: <https://siclico.medicinalegal.gov.co/consultasPublicas/>.

<sup>5</sup> National Center of Historical Memory, Observatory of Memory and Conflict, The Armed Conflict in Statistics, "VictimasDF-202102" database. Available at: <http://micrositios.centrodememoriahistorica.gov.co/observatorio/portal-de-datos/el-conflicto-en-cifras/#base-de-datos>

	of the internal armed conflict are implemented.	people considered victims under Law 1448 of 2010.	victims of enforced disappearance, of whom 50,333 were direct victims <sup>6</sup> .
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In addition, the conceptual difference in the way each entity understands enforced disappearance makes it difficult to unify data. For example, the National Registry of Disappeared Persons includes information on any person whose whereabouts are unknown, while the Single Registry of Victims reports those cases in which a disappeared person was found dead as homicides. The construction of a common conceptual framework is required for the purging and consolidation of the National Register of Missing Persons. There is also a need for a protocol that establishes guidelines for purging and complementing information obtained from different sources. This would not affect that each entity reports data directly related to its area of work.

This situation becomes more complex if other crimes are included that can lead to disappearances such as kidnappings, recruitment, coercion to commit crimes, homicides, human trafficking and deaths occurring in combat. There is a lack of data and exact statistics on some enforced disappearances such as those related to migration or human trafficking, as well as a lack of recognition of these crimes as being associated with the armed conflict.

Additionally, the construction of the universe of missing persons requires obtaining additional information to what is provided by the entities directly related to the search for victims of enforced disappearance. This action implies clearly defining the list of data sources that will be used and characterizing what type of information can contribute to the consolidation of the universe. This would include information from the Ministry of Education, the National Civil Registry, databases from the financial system, the national health system (contributory and subsidized regimes), the National Penitentiary and Prison Institute (INPEC), other public services, mobile telephone operators, the National Tax and Customs Directorate, and others.

In this sense, the quantitative exercise refers to the consolidation, cross-referencing and purging of records from all available databases operated by state and civil society organizations and the estimation using mathematical and statistical methods to calculate or predict the missing records of cases that were not reported or not included in the system<sup>7</sup>. Calculating the level of underreporting provides a reference point to undertake additional actions that will contribute to documenting as many cases as possible, and for these

<sup>6</sup> Victims Unit, Single Victims Registry, National Information network, Cut-off date: Sunday, January 31, 2021. Accessed: March 2021. Available at: <https://www.unidadvictimas.gov.co/es/registro-unico-de-victimas-ruv/37394>

<sup>7</sup> Some studies allow us to go deeper into the estimation of the universe and the calculation of underreporting, such as:

1) Guzman, D., Guberek, T., Hoover, A., Ball, P. 2007. Missing People in Casanare. Available at <https://hrdag.org/wp-content/uploads/2013/02/casanare-missing-report.pdf>; 2) Ball, P. (2016). Computing Multiple Systems Estimation in Human Rights, Everybody Counts Data Analysis Group. Available at <https://hrdag.org/tech-notes/basic-mse.html#datasetup>.

actions to be taken into account in the formulation of the Regional Search Plans by the UBPD. To date there is no quantitative analysis being used for the Regional Search Plans.

In addition, a clear methodology is required for the systematization and analysis of the information collected to date. This would make it easier for families, individuals and organizations that document cases to identify what information is useful based on the data fields used in the Registry.

There is a need to be clear about what is recorded in the databases through a rigorous process of cross-checking information, as well as estimating underreporting. This would make it possible to design more efficient and effective regional search plans and methods, identify intervention needs and contribute to the recovery, identification and return of missing victims.

This occurred in the design of the "*Regional Integrated Search Plan in Norte de Santander, Lower and Middle Catatumbo and Metropolitan Area*". A total of 15 databases were requested for the estimation of the universe of missing persons in the region, and only eight of the eleven for which access was obtained were used (due to the poor quality of available information). Four typologies were considered to calculate the level of underreporting: disappearance, enforced disappearance, extrajudicial execution and kidnapping associated with the armed conflict. As a result of the modeling, the following values were obtained for the universe of persons reported missing in Norte de Santander: for disappearance, the estimate was 15,920 (+/- 3,093) victims, which corresponds to an underreporting of 74%; enforced disappearance and extrajudicial execution had the lowest levels of underreporting (2% and 8%, respectively) while kidnapping was 85% (1,993 +/- 1,368 victims). When an estimate is made with the consolidation of the four typologies, the result of the universe of victims reported missing was 18,380 victims +/- 748, with underreporting of 61%.<sup>8</sup>

"Characterization" is a process of documentation and analysis of information for the purpose of individualization and description of the profile of each missing person. This involves purging exercises, the verification of names and identity document numbers, and other activities, as well as accessing all of the information associated with each victim<sup>9</sup>. This action makes it possible to know which missing persons are fully individualized and what actions are required to complete the information for each of them. Not having a reliable registry of missing persons makes it impossible to determine which actions have been implemented and which activities are pending and involves using the same approach for all cases of disappearances regardless of the modality, the pattern of occurrence, the date or the actor linked to the disappearance.

<sup>8</sup> EQUITAS and dhColombia (2018). Comprehensive Regional Search Plan in Norte de Santander, Lower and Middle Catatumbo and Metropolitan Area. Available at: <http://equitas.org.co/pribnortedesantander/estimacion-del-universo-de-victimas-en-norte-de-santander/>

<sup>9</sup> This process includes both automated data review and verification of biological and social profile information on a case-by-case basis.

Having a reliable universe of missing persons facilitates:

- Concentrating investigative efforts, both at a general level (national or regional) and an individual level (each person). Information gaps and preliminary common elements in the cases are identified.
- Identify alleged perpetrators, as by determining a period of time it is possible to establish, even if only indicatively, who were the armed actors operating in the area.
- Establish patterns and modes of operation both in the detention, transfer and in some cases the way each death occurs, as well as method of disposal of the bodies.

## 2. Involvement of families and civil society organizations in the investigation and search for missing persons

Article 24.7 of the International Convention for the Protection of All Persons from Enforced Disappearance establishes the responsibility of States to ensure the participation of victims and relatives in order to contribute to establishing the circumstances of enforced disappearances and the fate of missing persons.

In Colombia there are no effective mechanisms for the participation of victims or their relatives. Participation is defined by the responsible institution. For example, in the case of the Attorney General's Office, in order to participate in the investigative process, the family must request to be part of the process and become an interested civil party, while participation in other entities such as the Search Unit involves a more flexible route and criteria.

In order to comply with this obligation, it should not be forgotten that "there are at least three objectives for the participation of family members, which have different requirements if it is considered a source of legitimacy for transitional justice measures: the expression of points of view, advocacy, and the transformation of power relations"<sup>10</sup>. In most of the existing spaces (not all), the first objective is fulfilled as people can express their needs; however, the impact on decisions or the active possibility of making some of these decisions is not clearly reflected in the procedures.

It is clear that not all expectations will be met by the entities, but in any case, it is essential to clarify how the observations of victims were taken into account in decisions that have already been made. As stated by the authors of a research paper on the topic, "in these situations victims or members of civil society participants may not seek to propose the most appropriate solutions in advance, but rather to express their needs and preferences so that independent bodies can take them into account as input for the policies that will be adopted, or so that as members of the decision-making bodies, victims and members of civil society

<sup>10</sup> SAFFON S, María Paula and TACHA G, Viviana "Participation in transitional justice measures. A comparative study". Dejusticia. 2018. P. 17. Available at: <https://www.dejusticia.org/wp-content/uploads/2019/06/La-participación-en-las-medidas-de-justicia-transicional.pdf>



can ensure that these needs and preferences are taken into account but also weighed against other relevant objectives"<sup>11</sup>.

The Colombian State has made progress in the inclusion of a participatory approach, especially focused on the search for missing persons. The UBPD has made progress with the recognition of this right as a fundamental aspect to guarantee the legitimacy of the institutional actions based on its mandate. However, its actions are fundamentally oriented to providing guidance and participation is limited to the delivery of information.

According to the information provided by this entity, as of December 31, 2020, the UBPD had received 9,482 search requests. The same report indicated that just 2,752 people received "counseling and guidance", which represents 29% of the total number of requests.<sup>12</sup> In addition to the above situation, it is not known how the entity's decisions have been influenced by this participation.

The lack of clarity regarding the timeframes, modalities, channels and level of participation that families have increases the questions regarding this data, as the number of relatives is much higher than the number of missing persons. It is not possible to simultaneously guarantee the presence of all of the people in each of the activities carried out as part of the search for missing persons, as the lack of available staff and economic capacity limit this public institution and others.

In order to address these issues, with advocacy as the main form of participation in both the search and investigation of cases of missing persons, the following are indispensable conditions to guarantee participation:

- Report on progress, setbacks and difficulties in the investigative and search actions.
- Be clearly aware of the timeframes, modalities, channels and type of decisions in which families can participate.
- Clarify the scope of participation, i.e., state how family members' contributions to the search process will be incorporated, as well as decisions that can be made by the entity.
- Allocate resources to guarantee that this participation can be effective, avoiding generating unnecessary expectations among family members.
- Identify clear institutional responsibilities for the actions involving the investigation of the location of the missing person or those responsible. Progress with this process cannot depend on the actions of relatives. There is a differentiated responsibility of the State.

<sup>11</sup> SAFFON S, María Paula and TACHA G, Viviana "Participation in transitional justice measures. A comparative study". Djusticia. 2018. Pp. 19 and 20. Available at: <https://www.dejusticia.org/wp-content/uploads/2019/06/La-participación-en-las-medidas-de-justicia-transicional.pdf>

<sup>12</sup> UBPD, Memo. 1300-1-202100173 addressed to the Prosecutor delegated for the monitoring of the Peace Agreement, February 26, 2021, p. 43.

- In accordance with the provisions of the International Convention, differentiate in the collection of data between actions aimed at providing guidance and those related to the participation of family members and other persons involved in the search process.

### 3. Continuity of enforced disappearances and other associated events

The Committee has recognized the efforts made by the State party to address the scourge of enforced disappearances. However, it noted in its concluding observations that the State of Colombia still faces numerous challenges in the prevention, investigation and punishment of enforced disappearances, as well as with the search for disappeared persons, with numerous cases of enforced disappearances still reported in different parts of the country.

Taking into account these considerations, information has been requested from the State in relation to several questions that are related to the actions taken to guarantee the non-continuity of disappearances and prompt and timely actions derived from recent cases. In this section we hope to answer several of these questions, with the objective that the aspects discussed become part of comprehensive public policy.

The ratification of the International Convention for the Protection of All Persons from Enforced Disappearance represents a step forward in guaranteeing the rights of victims. However, it is overshadowed by the absence of the recognition of the authority of the Committee to receive and examine individual and inter-State communications under Articles 31 and 32 of the Convention (Arts. 31 and 32), and it is clear that this recognition will not occur in the short term.

Although the recognition of jurisdiction is a power associated with sovereignty, in our opinion this power is detrimental to the investigation, search and prosecution of disappearances, especially those that have occurred in recent years. This is because it reduces control over the actions taken by the State and, as will be described below, investigative progress in the case of enforced disappearances is minimal.

According to data from the National Institute of Legal Medicine and Forensic Sciences, in 2019 alone there were 6,833 reports of missing persons registered in the SIRDEC<sup>13</sup>. More than 9,300 people disappeared in the last 3 years according to data from the Attorney General's Office<sup>14</sup>. Following the ratification of the Convention, the Committee has received 24 Urgent Actions, 15 of which correspond to cases of enforced disappearance that occurred after December 1, 2016<sup>15</sup>, the cutoff date that the SIVJRNR has defined for its work, placing a time limit on the cases it can receive. Faced with this situation, the response from the State

<sup>13</sup> National Institute of Legal Medicine and Forensic Sciences, statistical figures -10. Disappeared persons in Colombia and disappeared nationals in other countries, 2019, available at: <https://www.medicinalegal.gov.co/cifras-estadisticas/forensis>

<sup>14</sup> Attorney General's Office, File No. 20219460009811, date: 22/02/2021. Annex 20216110017602. The data reported only refers to the SPOA and excludes those in which the victim does not have an associated ID code.

<sup>15</sup> Committee on Enforced Disappearances, "list of urgent actions registered", accessed: March 2021, available at: <https://www.ohchr.org/sp/hrbodies/ced/pages/cedindex.aspx>.



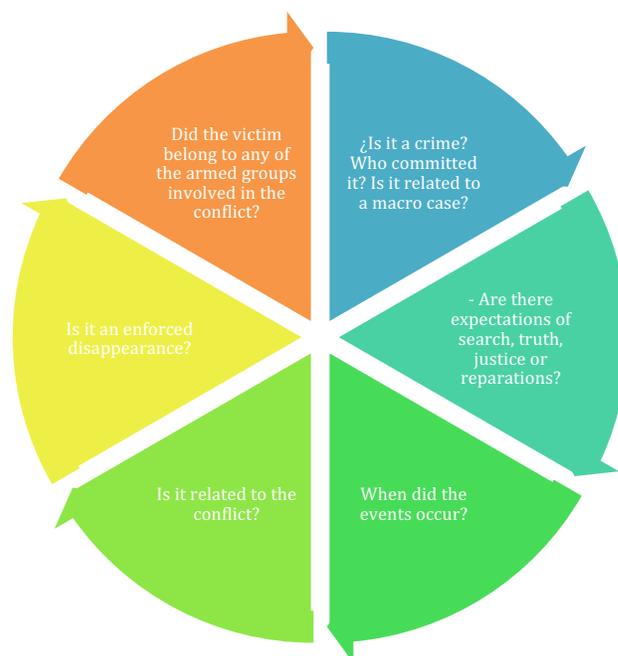
has been minimal. There is no investigative progress and in some cases that have occurred recently the lead entity has not even been determined.

In terms of responses to urgent situations, social and victims' organizations have positively valued the fact that the Colombian State has adopted Law 971 of 2005 and with it the implementation of the Urgent Search Mechanism, which is of utmost importance for the monitoring of urgent actions and other disappearances that have recently occurred in Colombia. Despite this recognition, monitoring actions are reduced to formal letters addressed to public entities and in very few cases involve practical search actions. When they do exist, search actions are focused on the first months and following this are reduced to formal monitoring actions, which diminishes interest in the case and reduced the importance of the urgency and the possibility of finding a person alive.

The existence of recent cases shows how situations that are essentially the same are dealt with differently by the State. The different dates of when cases occurred lead to different treatment, even when the circumstances in terms of the time and modality of the case are substantially the same. Despite the existence of mechanisms specifically designed for the search of missing persons, and because of problems with the eligible time periods, families can only access the Attorney General's Office, whose main function is to investigate the perpetrators of the crime, leaving the search for missing persons to have the same priority as investigations for other serious crimes.

This means that victims are confused about which entity is responsible for the case of their missing relative and the tasks that they should carry out. Some of the questions that must be resolved in order to present a case or situation include:





After answering these questions there might not be a State entity that has responsibility for the case. For example, the search for a person who dies in the context of a legitimate combat that occurred in 2018.

The final aspect, which in general highlights the need for a public policy to recognize disappearances that cannot be addressed by the SIVJRNR, is the practical impossibility of differentiating when a case occurred before 2016 due to the continuous nature of disappearances. Different courts and agencies, both national and international, have recognized that enforced disappearance and other forms of disappearance continuously occur. This doesn't just apply to the time it takes for a person to be found, but can also be applied to other types of situations such as the analysis of body disposal sites used by different actors in different time periods, for the same purpose or cases associated with the same pattern or practice.

An example of the continuing nature of enforced disappearance occurs in the context of the COVID pandemic. The existing perception of enforced disappearances as an event from the past and not as a current situation initially led to the belief that the pandemic was not related to enforced disappearances that occurred in previous years.

Specifically, the health emergency caused by the contagion produced the need to identify and create disposal sites for the bodies of people who die from this virus. Regarding the management of corpses, the Inspector General's Office warned municipal and district authorities to generate isolation measures for the disposal of corpses that were confirmed as having COVID or a suspected infection. However, it established that:

"Local authorities should, as a matter of urgency and as an isolation measure to ensure the correct approach to the COVID-19 pandemic in their territories, proceed to verify the presence of bodies currently in local morgues as 1. Unidentified, 2. Unclaimed identified, or 3. Any other form of "unidentified corpses " in order to proceed with their burial." <sup>16</sup>

This situation led to warnings from victims' organizations and some authorities that reacted with concern about the possibility of using body disposal sites where unidentified or unclaimed persons had previously been found, thus generating the risk of a new disappearance.

This example, in addition to illustrating some of the impacts of the pandemic on the search and investigation of missing persons, shows how the approach to some body disposal sites, including cemeteries, makes it practically impossible to classify a disappearance in a timeframe until a process of identification and return to the family has been carried out.

As well as cemeteries, other body disposal sites such as caves, ravines, lakes and others have been used by multiple actors on multiple dates as sites for depositing victims.

#### **4. Investigation, prosecution and punishment of those responsible for enforced disappearances**

As with the aspects mentioned above, the investigation, prosecution and punishment of those responsible is crucial for guaranteeing the non-repetition of these crimes, as the absence of punishment becomes an incentive for perpetrators knowing that their crimes will not be punished.

The information obtained from some of the State entities provides an account of the actions undertaken in the area of investigation both by the ordinary justice system and by the Comprehensive System of Truth, Justice, Reparation and Non-Repetition. In order to answer the Committee's questions related to the criminalization of the conduct and investigation and search tasks, the information will be presented as follows: 1. Typification of the disappearance in accordance with the provisions of the Convention and results from the investigation of members of the security forces, and 2. Role of the comprehensive system in the investigation and search for missing persons.

##### *4.1. Codification of enforced disappearance in accordance with the provisions of the Convention and results from the investigation of members of the security forces*

In accordance with existing legislation, the Attorney General's Office conducts investigations of the crime of disappearance in accordance with the provisions of Article 165 of the Criminal Code and Article 1 of

<sup>16</sup> Inspector General's Office, PDTDS Memo 142 about the integrated management of corpses in municipalities during the COVID-19 pandemic, Bogotá, April 3, 2020. P. 2.

Law 589 of 2000. The first paragraph of Article 165 establishes punitive aggravating circumstances when the conduct is committed by a public official.

The information provided to EQUITAS by the Attorney General's Office refers to the existence of 612 investigations in which public officials are identified as allegedly responsible for the crime of enforced disappearance. Some of these investigations (due to procedural breakdowns) may be reported more than once. Of these 612 investigations, just 9.8% have received a judicial decision while 66% are in the preliminary investigation stage<sup>17</sup>. This is a notable situation as in order to determine the aggravating circumstance, it is at least known that the possible perpetrator is a public official. This means it is necessary to clarify why these investigations are still at such an early stage of the investigation.

**Table 2.** Procedural status of investigations for enforced disappearance against public officials.

Sentencing	57
Preliminary stage	17
Preliminary investigation stage	409
Inquiry	68
Investigation	33
Trial	25
Early termination	3
<b>Grand total</b>	<b>612</b>

EQUITAS, March 2021

Source: SPOA

In addition to demonstrating limited results in the procedural progress of the cases, this data also shows that there is no collective approach to the investigations based on patterns, modalities or territories. This need to jointly address cases of enforced disappearance has not been put into practice in the ordinary justice system, except in some cases related to the responsibility of paramilitary commanders.

In this regard, the Commission for the Search for Missing Persons responded to the formulation of Regional Search Plans by stating that "the National Plan for the Search for Missing Persons (PNB) is an inter-institutional standard designed by the CBPD in 2006 for the search for missing persons in Colombia. It contains the activities that should be carried out by different public entities. In accordance with the mandate of the CBPD, a body that must respect institutional responsibilities, it applies the PNB in all of the cases it promotes"<sup>18</sup>, evidencing work that prioritizes individual cases.

In addition, the information available does not evidence the application of differential approaches in the investigation of disappearances of children, missing women or engage in actions when those who carry out the search are older adults. In the case of women, enforced disappearance is usually associated with the

<sup>17</sup> Attorney General's Office, File No. 20219460009811 Date: February 22, 2021. Annex 20216110017602

<sup>18</sup> National Search Commission, CBPD Official Letter No. 2020-0081, February 21, 2021.

concept of human trafficking, when women who disappear have been lured with the offer of jobs such as modeling or similar. The Colombian conflict has had trafficking practices where the enforced disappearance occurs as a direct result of the conflict. Ordinary justice system investigations do not normally take into account additional behavior that are usually associated with enforced disappearance (kidnapping, homicide, etc.).

The incorporation of the criminal responsibility of superiors in the national legal framework, in accordance with Article 6 of the Convention (Article 6, paragraph 1, section b) is not sufficient, as it does not incorporate the assumptions established in the Convention regarding the knowledge, control and punishment of commanding officers, which the Convention does provide for. This argument is not factually sound since the investigations that have been carried out against high-ranking officials from the military forces have involved direct attribution and, in a few cases, (primarily extrajudicial executions) Articles 25 and 28 to 30 from the Criminal Code have been used.

In cases where there is a judicial decision or an ongoing investigation, a national institutional strategy is required to ensure accountability, both in criminal and administrative matters, and that the process is carried out without unnecessary interference.

In Colombia, the situations that have been most associated with accountability exercises in non-judicial scenarios have involved promotion actions that occur before the Senate of the Republic. In the last 6 years, victims and their companions have demanded that some officers from the Armed Forces are not promoted to the rank of General, citing the following reasons:

- i) The officers had knowledge that subordinates under their authority and control committed human rights violations, including disappearances,
- ii) The officers exercised effective responsibility and control over the activities that involved the crime of enforced disappearance; and
- iii) The officers failed to take all necessary and reasonable measures within their power to prevent or suppress the commission of an enforced disappearance, or to bring the facts to the attention of the competent authorities for the purpose of investigation and prosecution.

However, all requests in this regard have been dismissed by Congress on the grounds that there is no final judicial decision and as a result, no such political accountability exercise can take place<sup>19</sup>.

#### *4.3. Role of the integrated system in the investigation and search for missing persons*

The Integrated System of Truth, Justice, Reparation and Non-Repetition has the mandate to guarantee the rights of victims and provide an institutional and comprehensive response that ensures access to the rights

<sup>19</sup> Semana Magazine, "Cepeda, Sanguino and Valencia question promotions of soldiers in Congress ", November 2020. Available at: <https://www.semana.com/nacion/articulo/cepeda-sanguino-y-valencia-cuestionan-ascensos-de-militares-en-el-congreso/202015/>

to truth, justice, reparations and non-repetition. To fulfill this mandate, the SIVJRNR has made significant progress but at the same time has faced challenges that have an impact on the rights of families and others who are searching for missing persons.

In relation to progress, the creation and implementation of the UBPD has made it possible to design 16 Regional Search Plans that use a collective approach<sup>20</sup>. At the same time, joint work with INML facilitated the promotion of 224 cases for identification purposes, the design of a reception and forensic approach for exhumed corpses carried out in the framework of extrajudicial and humanitarian actions and inputting 2,392 cases of unidentified corpses from before 2006 into the SIRDEC information system<sup>21</sup>.

The Special Jurisdiction for Peace-SJP has also played an important role in the investigation of 6 of the 7 macro-cases involving enforced disappearance associated with the conflict and precautionary measures for the protection of sites requested by MOVICE. Within the framework of these measures, the JEP has achieved the recovery of bodies, specifically 32 bodies from the intervention in the cemetery of the municipality of Dabeiba (Antioquia) have been identified, of which 5 were fully identified and handed over to their families<sup>22</sup>. In addition to this work, the JEP issued Order 11 of 2020 from the Truth Recognition Chamber of January 30, 2020, Memo 070 of May 18, 2020 and a preliminary estimation of the universe of victims of enforced disappearance and the systematization of reports related to this serious violation of human rights.

Finally, no progress has been made by the Truth Commission with clarifying what happened to missing persons in Colombia.

Among the most important challenges facing the SIVJRNR is articulation to define objectives, priorities, strategies and responsibilities in the area of enforced disappearance, avoiding the duplication of actions and institutional rivalry and responding in a comprehensive manner to the needs of family members.

The study of precautionary measures requested by MOVICE from the Section of Absence of Recognition of the SJP, evidenced that the search, recovery, identification and return of persons reported missing may also be the responsibility of this institution. This could result in an ineffective duplication of actions with the UBPD if it is not established a clear, written technical cooperation protocol that defines the functions and responsibilities of each institution in the framework of the macro-case of enforced disappearance, the precautionary measures and the other prioritized cases that have within them cases of disappearances. It is the duty of the State and subsequently the SIVJRNR to search for victims of enforced disappearance. Given that the UBPD is the main government agency responsible for the search for people reported missing, the

<sup>20</sup> UBPD, Memo with No. 1300-1-202100173 addressed to the Delegated Public Prosecutor for the Monitoring of the Peace Agreement, February 26, 2021, p. 49 et seq.

<sup>21</sup> <https://www.medicinalegal.gov.co/documents/20143/39839/Informe+of+Management+2020+v2.pdf> p. 9

<sup>22</sup> <https://www.medicinalegal.gov.co/documents/20143/39839/Informe+of+Management+2020+v2.pdf> p. 9

actions, recovery, identification and delivery should be carried out by this institution when possible. In the event that the SJP must carry out search tasks, the UBPD must centralize the information.

Article 155 of Law 1957 of 2019 defines the creation of an Inter-institutional Coordination Committee that is part of the SIVJRNR and is responsible for defining cooperation protocols between entities. The concrete results of the articulation that has already occurred are not public knowledge but should be widely disseminated in order to provide greater clarity to victims on how to navigate the System. Some of the main aspects of this protocol should include:

- a. Information management: the extrajudicial nature of the UBPD and the judicial nature of the SJP allows the two institutions to have access to different types of information, even when the same case is being investigated. It is important that the SJP and the UBPD establish communication mechanisms that facilitate harmonious collaboration in terms of access to information identified in the work carried out by the SJP and that can be transferred to the UBPD. This would lead to the rationalization of efforts in the search process, avoiding the duplication of actions. This protocol focuses on the information that can be accessed by the SJP through a court order and which is difficult for the UBPD to access, despite the regulatory framework that should guarantee its staff broad access to information. In addition, while the Information Analysis Group-GRAI from the SJP conducts a contextual analysis of the cases under investigation, this information should be shared with the UBPD to enrich the investigation hypotheses included in the search plans.
- b. Victims' information: the approach used by the SJP to a prioritized situation of enforced disappearance requires the construction of a baseline to identify the universe of cases that will be included in the transitional criminal prosecution of the specific situation. This exercise can be supported by the UBPD's universe of people reported missing due to the armed conflict, which is a possible scenario for articulation.
- c. Technical forensic mechanism for the provision of assistance to cases: this mechanism must resolve crucial issues in relation to the correct methods used for the search and recovery of bodies, avoiding duplication, loss of information and lack of clarity regarding the entity responsible for the actions and for reporting on the victims. This mechanism should include:
  - i) technical investigation and recovery reports prepared using the same technical standards and that are shared in two-way communication. As contemplated in Decree 589 of 2017, the UBPD should transfer reports to the SJP when they contribute to investigations of the prioritized situations. In turn, the technical team from the Investigation and Accusation Unit-UIA should transfer the reports for all investigation and recovery actions as it is the UBPD's mandate to report on victims against the universe of people reported missing and to consolidate the registry of burial sites, graves and mass graves.
  - ii) Establish clear responsibilities regarding the handling of the evidentiary material associated with the bodies recovered by the UBPD and transferred to the SJP in the framework of the macro case of enforced disappearance or in any other prioritized situation. Decree Law 589 of 2017 establishes that along with the technical report, the evidentiary material associated with the recovered body must be transferred, this means that the JEP must have a mechanism for the



reception, handling and preservation of the material delivered, guaranteeing the chain of custody at all times.

iii) Coordination with the National Institute of Legal Medicine and Forensic Sciences or other accredited national or foreign forensic laboratories for the identification of recovered persons. Coordination should facilitate the flow of information from the Institute to the SJP and the UBPD, the transfer of evidence associated with the recovered body and monitoring of the identification process for the recovered victims.

d. Access to sites: given the judicial power of the SJP to access sites related to the investigation process, it is important to coordinate actions with the UBPD that allow staff from the Search Unit to access sites where search actions are required and there is no willingness to collaborate with the process. Some of these cases may be related to places where informal economic activities are in operation, military garrisons, and others.

5. Relationship with victims: roles and responsibilities should be established for reporting and establishing relations with victims when joint actions are carried out to avoid communicating wrong, incomplete or contradictory messages regarding technical actions in the search, recovery and identification process. Uncoordinated interventions re-victimize and generate doubts regarding technical procedures.

## 5. Definition of mechanisms for inter-institutional coordination and prioritization of actions

The final component an integrated approach to enforced disappearance through a public policy that contemplates a whole-State response and not just a response from the institution that has responsibility for the case.

As some entities have indicated in their report, there are initiatives that favor the exchange of information. Despite this, these are not necessarily articulated actions as there are no objectives and methodologies to achieve a common purpose. The information presented by the UBPD, as well as information published by other State institutions, has shown the existence of inter-institutional agreements to facilitate access to information, which undoubtedly contributes to the search for missing persons. However, this level of collaboration is currently insufficient.

The identification of a comprehensive policy requires rigorous planning that establishes priorities, responsibilities, resources, indicators and monitoring mechanisms. The information on the Universe of Missing Persons (although questionable) presents data that can lead one to believe that there are more than 200,000 missing persons in Colombia. In the areas of Search and Investigation, the State's response must address three aspects:

I. Human resources: Search and investigation of such a large number of people cannot be carried out simultaneously with a reduced work team or using an individual approach. This also applies to judicial

investigations, but this situation is aggravated by the fact that judicial officials must simultaneously deal with hundreds of cases related to different crimes. Once the institutional capacity to respond has been identified, a comprehensive approach can be used.

ii. Technical resources: Technical resources for the search for missing persons, and in general for the investigation of these behaviors, are scarce and costly. A joint institutional work policy could help to enhance the use of technical resources.

iii. Economic resources: The institutions responsible for the investigation and prosecution of perpetrators and the search for missing persons usually receive very limited resources to carry out this task. The allocated resources are transferred to the institution, however, a best practice that can be implemented is the design of a CONPES<sup>23</sup> document, ensuring specific resources to respond to the issue of enforced disappearance and also leading to an estimation of the real cost of these actions, which goes beyond the entity's own operating expenses.

### III. RECOMMENDATIONS

1. There is a need to design a common conceptual framework for the construction of the special chapter and “cleaning up” the data stored in the National Register of Missing Persons, as well as structuring a protocol for cleaning up data and complementing the information obtained from the different sources.
2. Identifying the timeframes, channels, modes and types of participation that families are engaged in increases existing expectations.
3. It is recommended that current cases of enforced disappearance are evaluated and included in the institutional mechanism so that they can be adequately addressed.
4. In terms of the investigation, prosecution and punishment of those responsible for enforced disappearances, it is essential to establish a strategy that identifies which cases are a priority and what actions will be taken in relation to cases that are not prioritized.
5. Establish an institutional mechanism that involves all State entities that are responsible for contributing to the search and investigation of missing persons. This will facilitate the provision of information to victims about the actions that will be taken and the responsible entities.
6. Formulate a comprehensive public policy to address the issue of enforced disappearance that includes budget, responsibilities, indicators, goals and institutional accountability.

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<sup>23</sup> CONPES it is an advisory entity to the government on issues of economic and social development and planning.

