

SNIS Final Report, Part II “Executive Summary”

The Search for Victims of Enforced Disappearances: A multidisciplinary exploration of current practices

Period: 1 January 2019 – 31 March 2021

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Abstract:

The project “The Search for Victims of Enforced Disappearances: A Multidisciplinary Exploration of Current Practices” looking at the case studies of Colombia and El Salvador was implemented between January 2019 and March 2021. Whereas the activities in the first year focused on building the team, developing the analytical framework, mapping the actors involved in the search, understanding the legal and political contexts and undertaking the interviews, we focused on analyzing the data and writing publications in the second year. Although some meetings, the bilateral visits and outreach activities could not take place due to the COVID-19 pandemic which started in the second half of the project, the activities were mostly implemented as planned. The results of the research obtained tend to correspond to those that were expected. The findings evolve around three themes: Firstly the legal frameworks relevant for the search and the participation of family members therein; secondly mobilization of family members; and thirdly the interplay between experiences and legal notions around recognition and victimhood.

1 Problem statement and general objective

The search process for victims of enforced disappearance¹ (ED) is complicated and not well understood, which is at least partially due to the involvement of a series of actors. First, the state may engage in the search through its ordinary justice system or create specific search mechanisms. Second, the family members and other next of kin of the disappeared, who are considered victims,² can undertake search activities themselves or contribute with information to the search, while having specific needs, expectations and rights. Third, civil society (CS) and civil society organizations (CSOs) play a key role in working with victims by conducting search efforts or by undertaking advocacy towards the state. However, little is known about the interactions with victims within search processes in concrete cases and their implications for specific search outcomes. Despite some successful experiences in the search for disappeared who have long been dead (e.g. Argentina or Bosnia) and limited success in the search for victims who have been located alive (e.g. El Salvador, Morocco and in some instances presumably as a result of the international pressure manifested through the urgent action and appeals procedures of the UN Committee on Enforced Disappearances (CED) and the UN Working Group on Enforced and Involuntary Disappearances (WGEID)), little research exists on what makes the search successful and how victims can be engaged in a context-sensitive and meaningful manner.

This multidisciplinary research project aimed to explore the foundations and practical implementation of the search for victims of ED, from a legal, psychosocial and political perspective in the two case study countries of Colombia and El Salvador. Our project analyzed the ways in which the needs of the victims may be included in the search process and how this can help to promote the restoration of social ties and trust.

The research questions, hypotheses, research methods and schedule are described in the respective sections of the Working Paper of this project.

2 Results

The findings of the research are described in the respective section of the Working Paper submitted together with this executive summary. After each finding, it is indicated which hypothesis it supports. This shows that the results obtained largely support the hypotheses developed when designing the project.

3 Practical application of the research results

Contributing to the existing international standards and practice in the search for victims of ED, which fully take into account the needs of the victims, was at the forefront of our aims for the practical application of our research. Enhanced standards can improve currently existing

¹ Article 2 International Convention for the Protection of All Persons from Enforced Disappearance of 20 December 2006 (ICPPED), UN General Assembly Resolution A/61/177 (2006), (<http://www.ohchr.org/Documents/ProfessionalInterest/disappearance-convention.pdf>) (26.03.2021).

² Article 24 ICPPED.

domestic policies and frameworks not only in El Salvador and Colombia, but also in other parts of the world. The research results are useful for three types of stakeholders in the case study countries of Colombia and El Salvador, as well as in other countries where cases of ED have occurred or continue to occur:

- CSOs and family associations (incl. Pro-Búsqueda and Dejusticia),
- official search mechanisms,
- and international actors (CED, ICRC, WGEID).

The research has strengthened the internal capacities and legitimacy of Dejusticia by deepening their understanding on the subject matter of the search. For Pro-Búsqueda, being actively involved in searches on a regular basis, the project was a unique opportunity to systematically question, reflect and improve its own practice. The project has furthermore provided opportunities for both CSOs to share their perspectives and expertise between each other and with domestic and international partners.

4 Questions that merit further exploration

Being a largely under researched area, there are many topics that merit further exploration in research and practice. These include:

- Interdisciplinarity is crucial to fully grasp all dimensions of this subject matter, but not enough work has been done on how interdisciplinary research is best conducted.
- The search process is non-linear and complex and should thus be further explored to identify the relevant entry points for the families of the disappeared.
- Knowledge is needed regarding how official search mechanisms should coordinate and exchange with CSOs and how CSOs can work more effectively with the official search mechanisms.
- Coordination within the search, including – but not limited to - the search and criminal investigation.
- Psychosocial support to victims is key. What kind of services are effective at what stage of the search process?
- How effective is and what are the limitations of the participation of CSOs and family members in the search?
- A deeper understanding of the differences between the categories of ED (political opposition, CSOs, human rights defenders, migrants etc.) and the implications for the different categories of victims (children, partners, friends, community etc.) is required.
- On the effectiveness of search mechanisms: what kind of mechanism is useful in what kind of context? This includes an exploration of whether and when a CSO/victim-based mechanism with the support of the state would be effective.
- What are the international legal responsibilities of the state as a result of breaching its obligation to search with due diligence?
- When does the obligation to search end (if at all)?

5 Practical and policy recommendations for Colombia, El Salvador and other countries where ED occurs

- Recognition is a first step towards reparation and attending to victims' needs. As such, at the domestic level, states should develop clear legal frameworks, policies and

practices to recognize the suffering of victims of ED, to search for the disappeared and to provide support and reparations. However, search activities also need to be undertaken in the absence of such a framework based on the general international legal obligations.

- Search and participation therein should be regarded as an inherent part of the right to truth. Given the international nature of the right, even in the absence of an explicit legal framework for the search and participation, the failure to undertake the search with the participation of the families of the disappeared is not justified.
- The signature and implementation of the international legal conventions on ED are key steps to advance the domestic legal framework and practice.
- Search processes and activities, as well as the participation of family members therein, need to be designed to account for the specific domestic legal and socio-political context. When deciding how to best guarantee the participation of family members, the desires of the individuals concerned need to be considered.
- In addition to tackling impunity as a significant obstacle to recognition in the legal realm, policies should aim to promote the social recognition of victims through measures of financial compensation and commemorations, which can serve as a meaningful mark of societal solidarity and help support community reintegration.
- In contexts of impunity, particularly when laws to address the rights of victims of ED are inexistent, supporting the victims' right to truth through humanitarian searches (which do not seek for accountability) is crucial in addressing the need to know the fate of the disappeared as a significant form of recognition.
- Taking into account victims' right to justice, the implementation of legal frameworks on the search and participation should be ensured e.g. by effectively investigating the individual responsibilities of state agents who do not adhere to their duties related to the search.
- Search mechanisms and processes need to have liaison persons to provide adequate information and treatment to family members from the beginning of the search process to the end.
- Search mechanisms and processes need to have liaison persons to exchange information with CSOs on specific cases and to bring the observations and recommendations of CSOs to the decision makers within the institutions.

6 Dissemination

The research team has started to disseminate the ongoing research activities as well as preliminary findings to different stakeholders within their national and international networks. At the international level, this includes the CED and their work related to the drafting and promotion of the GP, as well as exchanges with the ICRC, the WGEID, the ICMP and other international stakeholders interested in improving the search processes for victims. At the national levels, our partners are in contact with the Search Commissions in El Salvador and the Search Unit in Colombia, in view of identifying further opportunities to share the learnings from this research.

The following specific activities have been undertaken to disseminate our work:

- With the purpose of reaching a wider audience, team members from Pro-Búsqueda shared their experience of working on the topic of the ED of children at a public event in Bern (Switzerland) and were also interviewed by Radio Bern RaBe³ during their visit to Switzerland in February 2019 for the launch workshop.
- 16th session of the Committee on Enforced Disappearances, 12 April 2019 in Geneva (Dr. Lisa Ott, presentation of the work of the project).
- During the Latin American Studies Association Conference, which took place from 24 to 27 May 2019 in Boston, Alejandro Jiménez-Ospina presented a paper derived from the project regarding the participation of victims in the search process and the relationship with the participation in broader transitional justice processes.
- Team members shared preliminary findings at two International Expert Workshops which took place in Jordan (September 2019)⁴ and Switzerland (February 2020)⁵, in the framework of an EU-funded project aimed at preventing ED. That project is run by swisspeace (as part of a bigger consortium) since January 2019 and is in close connection with this research. In the meetings, team members from Pro-Búsqueda, Dejusticia and swisspeace were able to exchange about the initial activities of the project with interested stakeholders from many geographical regions, representing international organizations (e.g. the United Nations Office of the High Commissioner for Human Rights), official search mechanisms (e.g. the Office on Missing Persons in Sri Lanka), non-governmental search initiatives (e.g. the Colectivo Solecito from Mexico), independent experts and academia (e.g. Prof. Gabriella Citroni (who is also an associated member of the research team)), forensics (e.g. the Argentinian Forensic Anthropology Team), and other institutions involved in human rights documentation and advocacy (e.g. Act of Disappeared from Lebanon). The latter contacted the research team requesting more information about the research methodology and preliminary findings in view of the creation of a national commission on the missing and victims of ED in Lebanon.
- Video interviews with Dr. Lisa Ott and Pamela Favre in Amman that are now available on the ICRC community of practice online platform.⁶
- 17th session of the Committee on Enforced Disappearances, 10 October 2019 in Geneva (Dr. Lisa Ott and Ana Srovin Coralli, presentation of the project).
- Research workshop on International Humanitarian Law and Missing Persons at the ICRC, 25-26 February 2020 in Geneva (Dr. Mina Rauschenbach presentation of the project).
- Annual conference of the European Consortium of Political Research (ECPR), September 2020, Innsbruck (paper entitled “Search for the disappeared: mobilization, identity and in Colombia and El Salvador” presented by Dr. Mina Rauschenbach and Dr. Briony Jones online)

³ <https://rabe.ch/2019/03/04/el-salvador-und-frauen-fantum/> (30.3.2021).

⁴ Report of the event: <https://shop.icrc.org/missing-persons-amman-report-pdf-en> (30.3.2021).

⁵ Report of the event:

https://www.swisspeace.ch/assets/publications/downloads/Reports/b966e003cc/Report_ExpertWorkingMeeting_CoordinatingSearchCriminalInvestigationsConcerningDisappearedPersons.pdf (30.3.2021).

⁶ <https://vimeo.com/359278658>; <https://vimeo.com/358739416> (30.4.2021).

- In September 2020, Dr. Mina Rauschenbach presented our initial findings at a webinar hosted by the CED and WGEID.⁷
- In September 2020, the team was present at the Geneva Peace Week - which had to take place virtually due to the COVID-19 Pandemic -, with a video presenting the basic information and findings from the project.⁸ This allowed to share our research activities with the international peace building community present in Geneva. The team members continue to share the video to promote sensitivity and interest in the subject matter.
- Colloquium with Dejusticia to present the project (online, 27 November 2020).
- In November 2020, Ana Srovin Coralli and Pamela Favre published a blogpost entitled “The vicious cycle of impunity” on Völkerrechtsblog.⁹
- In order to make the findings accessible to families, CSOs and official search actors in El Salvador and beyond, a virtual museum on the topic has been designed for the website of Pro-Búsqueda in April.¹⁰

Submitted articles (forthcoming):

- Srovin Coralli, Ana, Hernández Hernández, Jeremías Heli; Jiménez Ospina, Alejandro; Ott, Lisa: Search and participation in the search for victims of enforced disappearance in Colombia and El Salvador' (orig. title in Spanish: Búsqueda y participación en la búsqueda de las víctimas de desaparición forzada en Colombia y El Salvador.), envisaged to be published in Instituto Interamericano de Derechos Humanos
- Jones, Briony/Rauschenbach Mina/Sanchez Camilo/Ott Lisa: Searching for the Disappeared: Process, Encounters and Mobilization in Colombia and El Salvador (submitted to Social and Legal Studies in April 2021)
- Rauschenbach, Mina; Favre, Pamela; Jimenez, Alejandro; Ott, Lisa; Srovin Coralli Ana; Webster, Bronwen: “Victim-oriented search processes? Perceptions of victimhood in law and practice” (to be submitted to a Special Issue on Enforced Disappearances of the Torture Journal in May 2021)

In the future, the team members from Colombia and El Salvador plan to share the findings of the research with official search mechanisms, policy makers and CSOs engaged in the search in both countries. As the analysis of the data progressed, team members from Colombia and El Salvador have also started to take into account the findings in their interaction with victims and they will continue to use the knowledge obtained from the research for their advocacy work.

The team members based in Switzerland and the United Kingdom will continue to include the knowledge gained in their academic teaching, as well as in their policy level engagements with the international actors of this field.

⁷ <http://webtv.un.org/meetings-events/human-rights-treaty-bodies/watch/joint-event-with-the-wgeid-search-and-investigation-of-enforced-or-involuntary-disappearances-part-ii-2498th-meeting-19th-session-committee-on-enforced-disappearances/6194562832001> (30.04.2021).

⁸ https://www.youtube.com/watch?v=80_N4zM5d_8 (26.03.2021).

⁹ <https://voelkerrechtsblog.org/authors/ana-srovin-coralli/> (30.4.2021).

¹⁰ <http://www.probusqueda.org/sv/caminos-busqueda/> (30.4.2021).