

**SNIS Working Paper**

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

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## List of abbreviations

CED	United Nations Committee on Enforced Disappearances
CNB	National Commission for the Search for Children Disappeared during the Armed Conflict
CONABÚSQUEDA	National Commission for the Search for Adults Disappeared during the Armed Conflict
CSO	Civil Society Organization
ED	Enforced disappearances
ELN	Ejército de Liberación Nacional
EPL	Ejército Popular de Liberación
FARC-EP	Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo
IACtHR	Inter-American Court of Human Rights
IACHR	Inter-American Commission of Human Rights
ICPPED	International Convention for the Protection of all Persons from Enforced Disappearance
ICRC	International Committee of the Red Cross
M -19	Movimiento 19 de Abril
UN Guiding Principles	United Nations Guiding Principles for the Search for Disappeared Persons
WGEID	United Nations Working Group on Enforced or Involuntary Disappearances

## 1 [Introduction](#)

Even though enforced disappearances (ED) continue to occur in different contexts worldwide, the search for the victims of ED has received limited attention from both research and policy. This multidisciplinary research project, which started in January 2019 and ended in March 2021, explored the foundations and practical implementation of the search for victims of ED, from a legal, a psychosocial and a political perspective in the two case study countries of Colombia and El Salvador.

Taking into account that several actors are generally involved in search efforts, in addition to the official search mechanisms, the project focused particularly on the role of the next of kin, specifically families and civil society organizations (CSOs). Families have specific needs in the process as they are affected by ED on numerous levels. They suffer psychologically from not knowing the fate or whereabouts of their loved ones; economically they are marginalized as it is often the breadwinner who has been disappeared; and socially they suffer from marginalization. As it is difficult for families to make themselves heard by government authorities and official search mechanisms, they often rely on the support of CSOs. Besides other links with the search process, the next of kin and CSOs contribute important information to the search or even the act of ED itself in the absence of governmental action. Given that successful search efforts are assumed to contribute to the restoration of trust and social ties, taking into account the needs of families in the search process is crucial. The results of the research project prove invaluable both in terms of increasing our understanding of how search processes take place and of how they could be improved to respond to victims' needs.

## 2 [Definitions of enforced disappearances and victims](#)

We have worked with the definition of ED provided by the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED): ED constitutes a deprivation of liberty by state agents or by persons acting with the support, authorization or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty or a concealment of the fate or the whereabouts of the person.<sup>1</sup> In practice, the refusal to acknowledge or the concealment of the fate or whereabouts of a disappeared person means that the search process is obstructed i.e. through the concealment of evidence by the perpetrators. In recent years disappearances committed by armed non-state actors have increased, for example in the context of organized crime and violence conducted by extremist groups. However, given that such disappearances are of a different nature, they were not the focus of this research project. However, since the identity of the person committing disappearance often remains unknown, they were also not completely excluded from the analysis, particularly in the Colombian context, where both state and non-state actors were committing disappearances respectively at the same time.

We follow the definition of victims in the ICPPED and the UN Committee on Enforced Disappearances' (CED) guiding principles for the search for disappeared persons (UN Guiding Principles): "victim" refers not only to the disappeared person, but also to "any individual who has suffered harm as a direct result of an ED".<sup>2</sup> We thus refer to family members as victims in this research. In our research, we operationalized this definition and interviewed victims, representatives of CSOs and experts on official search mechanisms.

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<sup>1</sup> Art. 2 ICPPED.

<sup>2</sup> Art. 24(1) ICPPED.

### 3 Approximation to the “search”

Searching for the disappeared is an intrinsic element of the right to truth that can be considered as a form of transitional justice<sup>3</sup> and dealing with the past, as well as a key factor in helping victims to achieve some sense of emotional closure.<sup>4</sup> For our research, we have developed an analytical framework including a definition which recognizes that the search is a complex multi-actor and multi-activity process, which ideally only ends when the fate and whereabouts of the disappeared are determined. This includes, but is not limited to, family members receiving the mortal remains of the victims. The question of when the obligations concerning the search are concluded is difficult. Some consider that the violation is ongoing as long as the state refuses to collaborate in the establishment of the facts, even if the disappeared reappears or her/his mortal remains are returned to the family.

For our analytical framework, we identified a number of factors which make the search a complex process, depending on the specific case and context:

- The search often takes place in view of or in the framework of criminal investigations. However, the fact that ED is *per se* a state-perpetrated crime increases the risk of impunity and leads to the conflation of processes related to state and individual responsibility. State involvement in the crime makes criminal investigation and the search in some cases almost impossible.
- The involvement of a plurality of perpetrators in ED makes its investigation and therefore the search difficult.
- The intent of the perpetrators to conceal the fate and whereabouts of the person and the perpetrator’s activities to hinder the search, make the search difficult.
- The fact that ED is often committed in the context of internal armed conflict or by repressive regimes in the context of large-scale human rights violations, extrajudicial killings, arbitrary detention etc. complicates the search.
- The fact that actors who initiate a search do not know what happened to the victim at that point in time hampers the choice of pertinent search activities. For example, initiating actors do not know whether the disappeared individual left her/his family, was kidnapped, subjected to extrajudicial execution or fled. It is often only possible to clearly determine that an ED was committed once the search has terminated and the fate and whereabouts of the disappeared individual have been clarified.
- As EDs are committed in contexts of repression and with the intent to create fear in a certain community, cases are often not reported, and no official search activities are undertaken. In addition, there is a lack of transparency regarding investigation and search processes after the act of ED is reported to domestic authorities.
- For family members and CSOs to engage in a search, there are disempowering factors due to rigid/narrow definitions of victimhood, the socio-political context, economic constraints, psycho-social vulnerability and social stigmatization.
- ED and the search take place in different legal and policy frameworks, which family members and family associations engaged in the search do not always know about.
- Some legal frameworks force family members to make a formal declaration of death of the disappeared in order to achieve social support. This “legal presumption of death” is issued without any real proof of the disappeared individual’s death and creates emotional distress for relatives.

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<sup>3</sup> Sarkin, J. (2015). Dealing with enforced disappearances in South Africa (with a focus on the Nokuthula Simelane case) and around the World: The need to ensure progress on the rights to truth, justice and reparations in practice. *Speculum Juris*, 29 (1), 21-48.

<sup>4</sup> Beristain, C. (2008). Diálogos sobre la reparación. Experiencias en el sistema interamericano de derechos humanos, Instituto Interamericano de Derechos Humanos.

The actors involved in search processes are many and often include state and non-state actors:

- As state actors, we refer to official search mechanisms, such as the Unit for the Search of Disappeared Persons in Colombia and the two commissions to search for children and adults in the framework of the internal armed conflict in El Salvador. Other state actors involved in the search activities include agents of the ordinary justice system, such as police, prosecutors, judges, as well as official institutions in charge of forensic work.
- We use the term ‘non-state actors’ to refer to next of kin, especially family members, family associations, lawyers and CSOs that become involved in search processes through a wide range of activities, including advocacy to pressure official institutions to move forward with the search. There are also CSOs that investigate and search for victims themselves in the absence of sufficient state response. This category includes international organizations that develop international standards and in certain contexts play a pivotal role in the search.

From the moment when an ED is being committed, until the fate and whereabouts of the person are clarified, a number of activities may take place, including:

- Family members officially inform institutions (e.g. the police) about the case.
- Police or other institutions register the case.
- Authorities initiate search and criminal investigations (or not).
- Due to a lack of adequate efforts by the authorities, victims and family associations start to mobilize to increase the pressure for authorities to act.
- Lawyers represent the victims in judicial proceedings (depending on the available proceeding to find the victim, to identify and punish perpetrators, on the falsification of documents, state responsibility of human rights violations and/or in order to receive reparations).
- Psychosocial support given by professional psychologists and the social network of the family members.
- Forensic work to identify remains and other potential evidence.
- Community based processes and cultural activities to give recognition to the disappeared and their next of kin.
- Return of the remains to the family.
- Reunification of the alive victim with the family.

#### 4 [Research questions](#)

Our research was guided by the following research questions:

- How and within what legal frameworks do victims, CSOs, family associations and official search mechanisms search for disappeared persons? How do these processes interact, if at all?
- How do victims and CSOs mobilize for the search as active agents, as providers of information and as receivers of information? What are the socio-political factors that hinder or facilitate this engagement?
- How can the engagement of and with the victims contribute to the efforts of official search mechanisms and the promotion of trust and restoration of social ties within the different spheres of society?

## 5 [Hypotheses](#)

Our research was guided by the following hypotheses:

1. Victims are more likely to contribute to the search if they can do so in a safe environment, trust the actors involved, and have the capacity and the opportunities to mobilize as a collective.
2. Search processes are more likely to engage victims if they resonate with their truth and justice priorities, if they are sensitive to localized and cultural meanings, and take a participatory approach to policy making.
3. Support by and interplay with CSOs is significant in empowering victims in their struggle, as well as in responding to their various needs in relation to the search.
4. Socio-political opportunities and how legal frameworks define victims determines whether CSOs can have a facilitating and supportive role for victims.
5. Individual psychological support helps decrease relatives' distress, fear and anger.
6. Economic measures of reparation help alleviate victims' financial burden and support their community reintegration.
7. Community-level support measures such as support groups, forums and commemorative practices help to reduce social stigma and achieve acknowledgement of ED, thereby restoring broken ties and social cohesion within communities.

## 6 [Cases and methodology](#)

The act of ED is observed in two case study countries: Colombia and El Salvador. In both contexts the right to truth is well embedded in discourses around ED, transitional justice and dealing with the past. Similarities between the two contexts allow for a fruitful exchange between the cases of ED and beyond. The cases were selected according to the following criteria: (1) ED was used during the internal armed conflict and cases are still ongoing; (2) official search mechanisms were created by the state; (3) CSOs are active in either seeking to complement or contest the official search; and (4) the results of the research have the potential to contribute to prevention of ED.

The research process included a combination of methods for data collection and quantitative analysis. Qualitative methods – text analysis, mapping, and semi-structured interviews – were chosen to allow for flexible, context-sensitive and in-depth analyses of the complex processes we aimed to research, as well as to ensure an ethical and open encounter with victims. Using these tools, we clustered our research activities into three main topics: i) analysis of legal frameworks relevant to the search within publicly available government and organizational information; ii) mapping of the different search activities and actors: victims' groups and family associations, actors within the ordinary justice system, official search mechanisms and international actors; and iii) conducting semi-structured interviews with the families of the disappeared, CSO representatives, and representatives or former staff members of official search mechanisms.

## 7 Timeline of activities

The research activities were divided into the following work packages and took place in accordance with the following timeline:

**Table 1 Timeline of activities**

WP	Activities	Y1				Y2				Y3
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1
<b>1 Inception</b>	Constituted team and set agenda for project									
	Reviewed literature and refined analytical framework									
	Prepared joint work approach									
<b>2 Legal Analysis</b>	Identified, read and interpreted legal frameworks relevant for the search of disappeared									
<b>3 Data Collection</b>	Prepared joint methodology									
	Mapped activities and actors involved in the search of disappeared									
	Conducted 15 interviews									
	Conducted 2 interviews with experts on domestic search mechanisms									
<b>4 Analysis &amp; Validation</b>	Analysed interview data									
	Validated data analysis with stakeholders in Colombia and El Salvador									
	Recorded video interviews to showcase the project and findings									
	Presentation of findings in bilateral discussions with victims and broader audience in El Salvador and Colombia (pending)									
<b>5 Dissemination</b>	Submitted contribution on draft CED Search Principles									
	Participated in International Expert Working Meetings in Amman (Sept 19) and Basel (Feb 20)									
	Presented a draft paper at the European Consortium for Political Research conference									





responsible for at least 48% of the cases in the country, guerrilla forces of 21.5% and State agents of 4.8%, while in 19% of the cases, the perpetrators are not identified.<sup>11</sup>

## 9.2 Definitions: ‘victim of the armed conflict’ and ‘victim of enforced disappearances’

The concept of “the victim” (of mass atrocities/of the armed conflict) emerged as a relevant actor in the political context with the demobilization process of paramilitary groups in 2002.<sup>12</sup> Dávila (2018) proposes that the global shift towards transitional justice and the reactions against the concessions made during that demobilization process allowed ‘victimhood’ or ‘being a victim’ to “reorganize and dissolve [...] many of the previous political divides separating the survivors of Colombia’s [...] war”<sup>13</sup>. Since the enactment of Law 975/2005 (known as the Justice and Peace Law), part of the legal framework for an accountability process of mainly -but not exclusively- paramilitary forces, the concept of the ‘victim’ “gained a different social significance, legitimacy and meaning”<sup>14</sup> subject to contestation. For some, the category of ‘victim’ fails to acknowledge the heroic role of social groups in the struggle for democratization; for others, it is a vindication of those who were affected by subversive groups; and for others, the concept contains the possibility to mobilize for recognition of specific forms of victimization<sup>15</sup>, including ED.

A chronological explanation of this process, at least in the latest stages of the war, can be traced back to the explosion of forced displacement in the middle of the 1980s, which led to the circulation of the notion itself (‘desplazamiento forzado’) among human rights defenders, leftist militants, the Catholic Church and social scientists.<sup>16</sup> In the early 1990s the category acquired a legal meaning, as international and national law turned forcibly displaced persons (‘desplazados’) into “a distinct kind of subject of rights in need of special protection and support from state institutions and the international community”.<sup>17</sup> Even though criminal law already used the term ‘victim’<sup>18</sup>, its relevance in legal terms was marginal. Events such as the Constitutional Court judgments on forced displacement would be crucial for this shift, with the T-025/2004 ruling being a particular tipping point. This change in the socio-political and legal meaning of ‘being a victim’ ignited a process of institutional change, with the emergence of an apparatus in the State in charge of what Aparicio (2012), cited by Dávila (2018, p. 152), described as “their management” similar to other bureaucratic procedures.

In parallel to this, families of persons who were disappeared mobilized around the typification of this form of violence as a crime, the closure of the impunity gap and the adoption of protection measures by the State.<sup>19</sup> In 1991, their incidence work made the National Constitutional Assembly establish a fundamental right to not be forcibly disappeared. Later, their lobby in the Congress led to the approval of Law 589/2000, that typified ED as a crime and established measures for the search and protection.<sup>20</sup> They also pressured for the ratification of the Inter-American Convention on Forced Disappearance of Persons, achieved in 2005. The concept of ‘victim’ has a specific weight in Law 589/2000, which provides a sample of what was coming in terms of legal recognition in Colombia. The language used by Congress relied heavily on a specific conception of ‘victim’ that not only required protection but had rights and could enforce them. A similar shift can be seen in the new Procedural Criminal Code (Law 600/2000), that included more provisions for victims than the previous Codes, even though it did not establish as many guarantees as needed.

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<sup>11</sup> Centro Nacional de Memoria Histórica (2021).

<sup>12</sup> Rettberg (2013); Tapia (2019).

<sup>13</sup> Dávila (2018), pp. 30-31.

<sup>14</sup> Vera (2016), p. 27.

<sup>15</sup> Vera (2016), p. 28.

<sup>16</sup> Dávila (2018), pp. 151-152.

<sup>17</sup> Dávila (2018), p. 152.

<sup>18</sup> Executive Order 50/1987 and Executive Order 2700/1991.

<sup>19</sup> Centro Nacional de Memoria Histórica (2016), p. 56; Rudling (2019), p. 471.

<sup>20</sup> Centro Nacional de Memoria Histórica (2014), pp. 59-82.

The moment when the category ‘victim’ encompassed other categories, such as ‘being a displaced person’ can be traced back to the Justice and Peace Law. Vera explains it as follows: “In Colombia, the articulation of the Peace and Justice Law ironically contributes to the legibility and emergence of narratives about transitional justice and victimhood among traditionally excluded social actors<sup>21</sup> who became aware of their own visibility as subjects of rights and citizenship”.<sup>22</sup> It is ironic because of the exclusion process embedded in the Justice and Peace Law regarding the category ‘victim’. In 2005 Congress decided that a victim is a person who suffered, individually or collectively, direct damages or harm because of a crime committed by illegal armed groups. Through the language of transitional justice and using concepts from international law, different groups and organizations contested this definition, because it excluded victims of violations committed by the State<sup>23</sup> and, as such, ED victims. Parallely, the Congress also approved a new Procedural Criminal Code (Law 906/2004), which amplified the role of victims in criminal law. According to article 132 of Law 906/2004, any person who suffered any harm because of a crime can be considered a victim in a criminal procedure. This definition applies to victims of ED.

Another provision that is important in the context of ED can be found in Law 971/2005. It explains that any person can activate a special and urgent search mechanism if they know that another person has potentially been disappeared. This piece of legislation is especially important as it includes a provision for the family member of the disappeared person, clarified by the Constitutional Court in the C-473/2005 judgment, which explains that the definition of the family member should be in accordance with civil law. This assigns family status through marriage or civil union relationships, four links up or down generations on a consanguinity level, two links up or down generations on affinity relationships and one link up or down on civil relationships.

In 2011, in response to pressure by CSOs<sup>24</sup>, the Congress enacted Law 1448/2011 Victims and Land Restitution Law (hereinafter Victims Law), establishing several programs for victims’ reparations, including victims of ED. According to article 3 of the Victims Law, a victim is a person who suffered any harm during events that occurred after January 1st 1985, because of breaches of International Humanitarian Law or serious human rights violations in the context of the armed conflict. This includes some of the family members of disappeared persons and the persons that suffered any harm because of actions of assistance or relief on behalf of the disappeared. In 2012, Colombia ratified the ICPPED.

The way in which ‘victimhood’ became a lone-standing concept in Colombia has impacted the meaning attached to it. The different meanings the respective victims and victims’ groups give to the category is a reflection not only of their political and ideological views but also of how they are perceived by other sectors of society. Being a ‘victim’, including being a victim of ED, in Colombia entails the possibility of suffering different forms of stigmatization. However, the legal recognition of their existence, especially since the enactment of the Justice and Peace Law, has impacted these meanings and the legitimacy and social significance of the ‘victim’ category.<sup>25</sup>

The transitional justice measures and pedagogy seem to have changed this, at least partially. According to a survey made in 2012 from a sample of 315 people affected by the war, 76% agreed with this statement: “generally speaking, (victims) were innocent people who were unjustly affected” and out of 1,528 non-affected people, 70% agreed with the same statement.<sup>26</sup> This does not mean that the stigma surrounding victims disappeared. ‘Being a victim’ in Colombia still has socio-political and socio-economic charges. Here, discourses that recall binary ideas of the political

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<sup>21</sup> Linke 2006: 211.

<sup>22</sup> Vera (2016), p. 36.

<sup>23</sup> Tapia (2019).

<sup>24</sup> Sánchez (2009).

<sup>25</sup> Vera (2016), p. 27.

<sup>26</sup> Rettberg (2013), p. 25.

landscape, like the ones that point to alternative political standings as communist (or ‘castrochavistas’), or those reflecting the logic of the war on terror, play a particularly stigmatising role.

### 9.3 [Rights to truth and reparations](#)

Even though the 1991 Constitution did not have a specific provision on the right to truth, in its T-275/1994 ruling, the Constitutional Court explained that victims had a right to approach truth in criminal procedures. Later, Law 589/2000 established that the State has an obligation to take all measures necessary to inform family members of the reasons behind a disappearance and the whereabouts of the disappeared.

While the concept of ‘victim’ was being developed in the socio-political landscape, victims’ rights appeared increasingly on the legislative and judicial agenda. During the discussion of the Justice and Peace Law (2004-2005), the right of victims to know the truth and receive justice and reparations with guarantees of non-recurrence was one of the central issues.<sup>27</sup> It was explicitly included in the text of Law 975/2005, even though there were concerns on the effectiveness of this statement.<sup>28</sup> Legal and constitutional developments occurred later, with the Constitutional Court upgrading its understanding of victims’ rights, enshrining them as ‘fundamental rights’ and later declaring victims’ rights to be a fundamental pillar of the Constitution.

Regarding the right to truth, the Justice and Peace Law ordered that the criminal process for the demobilized should ensure the clarification of truth about the facts established during the investigation and trial. The Law also imposed an obligation to preserve archives and facilitate access to them. In addition, the Group for Historic Memory was created. The Law also created a mechanism for reparations that was widely criticized for not being ambitious enough and impossible to accomplish.

In 2011, the Victims Law transformed the Group for Historic Memory into the National Center for Historic Memory and reinforced the understanding of the right to truth for all victims of the armed conflict (including victims of ED). The Center has published reports on nearly every topic related to the war in Colombia, including a collection on ED that has been cited throughout this text. This Law also created two administrative reparations programs, one for victims in a broad sense and another for victims of forced displacement. The programs introduced a broad concept of integral reparation that included compensation, symbolic reparation, restitution and rehabilitation measures.

In the prelude of the negotiations between the Colombian State and the FARC-EP guerrilla in Havana, Congress took another step towards reinforcing victims’ rights. It amended the Constitution through Legislative Act 01/2012 and, for the first time, truth, justice, reparation, and non-recurrence, were words written explicitly in the Constitution. Subsequently, the peace agreement included a section dedicated to victims’ rights. Regarding the right to truth, the agreement included the creation of a Truth Commission and a special judicial body to investigate, submit to trial and punish those most responsible for the gravest crimes. A special humanitarian search unit that would determine the whereabouts of the people who were disappeared in the context or because of the war was also established.

### 9.4 [Analysis](#)

Colombia has a long history of victims’ rights advocacy conducted both by the victims themselves and by CSOs. ED is a clear example of this. It also has a robust legal framework that recognizes victims as legal subjects. The main issues, nonetheless, are the implementation of these rights and the non-recurrence of the crime of ED. After several peace processes, the creation of different

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<sup>27</sup> Alviar y Engle (2016), pp. 228-231.

<sup>28</sup> Comisión Colombiana de Juristas (2007).

judicial and extrajudicial mechanisms for the search, and guarantees of truth, justice, and reparations, Colombia is still at war, people are still victimized every day and many of those that go through the institutional system leave empty handed after revictimizing processes. This does not imply that none of the measures adopted by the State have or will work, but that the scale of the challenge posed by more than fifty years of war and more than nine million victims is a great obstacle, especially when it is combined with a lack of political will, openly antagonizing behaviour, and institutional incompetence and corruption.

## 9.5 [Actors mapping Colombia](#)

The following table gives an overview of the different actors involved in search processes of forcibly disappeared persons in Colombia.

**Table 3 Actors mapping Colombia**

Name	Type of actor	state/non-state actor	Search related activities	Cases focused on	Created in
Ríos Vivos Colombia	CSO	non-state	Advocacy	Armed conflict and other	n.i.
Asociación Familiares Colombia - Línea Fundadora	Family Association	non-state	Search Advocacy	Armed conflict and other	n.i.
Red de Defensores y Defensoras de Derechos Humanos	CSO	non-state	Register cases Advocacy	Armed conflict and other	n.i.
Procuraduría General de la Nación	Permanent state institution	state	Register cases Search Advocacy	Armed conflict and other	n.i.
Policía Nacional	Permanent state institution	state	Register cases Search	Armed conflict and other	1891
Comité de Solidaridad por los Presos Políticos	CSO	non-state	Register cases Advocacy	Armed conflict and other	1973
Comité Permanente por la Defensa de los Derechos Humanos	CSO	non-state	Advocacy	Armed conflict and other	1979
ASFADDES	Family Association	non-state	Search Advocacy	Armed conflict and other	1983
Comisión Colombiana de Juristas	CSO	non-state	Advocacy	Armed conflict and other	1988
Instituto Nacional de Medicina Legal y Ciencias Forenses	Permanent state institution	state	Forensic investigation Register cases	Armed conflict and other	1991

Corporación para la Defensa y Promoción de los Derechos Humanos Reiniciar	CSO	non-state	Register cases Advocacy	Armed conflict and other	1992
Defensoría del Pueblo	Permanent state institution	state	Register cases Search Advocacy	Armed conflict and other	1992
Fiscalía General de la Nación	Permanent state institution	state	Register cases Search Criminal investigation	Armed conflict and other	1992
Colectivo de Abogados José Alvear Restrepo	CSO	non-state	Advocacy	Armed conflict and other	1993
Corporación Jurídica Libertad	CSO	non-state	Advocacy	Armed conflict and other	1993
Corporación Jurídica Libertad	CSO	non-state	Register cases Advocacy	Armed conflict and other	1993
Fundación Nydia Erika Bautista	Family Association	non-state	Advocacy Litigation	Armed conflict and other	1997
Asociación Caminos de Esperanza Madres de la Candelaria	Family Association	non-state	Register cases Advocacy Search	Armed conflict and other	1999
Comisión de Búsqueda de Personas Desaparecidas	Permanent state institution based on Law 598	state	Register cases Coordination of actors	Armed conflict and other	2000
Corporación Yira Castro	CSO	non-state	Advocacy	Armed conflict and other	2001
Comisión Intereclesial de Justicia y Paz	CSO	non-state	Register cases Advocacy	Armed conflict and other	2002
Corporación Claretiana Norman Pérez Bello	CSO	non-state	Advocacy	Armed conflict and other	2003
Dejusticia	CSO	non-state	Advocacy	Armed conflict and other	2004
EQUITAS	CSO	non-state	Forensic investigation Advocacy	Armed conflict and other	2004
Movimiento de Víctimas de Crímenes de Estado	Family Association	non-state	Advocacy	Armed conflict and other	2005
Madres Falsos Positivos de Colombia	Family Association	non-state	Register cases Advocacy Search	Armed conflict and other	2008

Colectivo Sociojurídico Orlando Fals Borda	CSO	non-state	Advocacy	Armed conflict and other	2009
Unidad para las Víctimas	Temporary state institution based on Law 1448	state	Register cases	Armed conflict	2011
Ministerio del Interior	Permanent state institution	state	Coordination of the administration of cemeteries	Armed conflict and other	n.i.
Centro Nacional de Memoria Histórica	Temporary state institution based on Law 975	state	Register cases	Armed conflict and other	2011
Unidad de Búsqueda de Personas dadas por Desaparecidas	Permanent state institution based on 2016 Peace Agreement	state	Search Advocacy	Armed conflict	2018
Jurisdicción Especial para la Paz	Temporary state institution based on 2016 Peace Agreement	state	Register cases Criminal investigations Protection of sites	Armed conflict	2018
Comisión para el Esclarecimiento de la Verdad	Permanent state institution based on 2016 Peace Agreement	state	Register cases Advocacy	Armed conflict	2018

## 10 [Introduction to the case study context of El Salvador](#)

### 10.1 [Background](#)

In El Salvador, acts of ED were committed on a massive scale throughout the internal armed conflict (1980-1992).<sup>29</sup> The rampant impunity, modest progress in the search for those who were forcibly disappeared and lack of comprehensive and effective approaches to victims' reparation have persisted until today, and have adversely impacted the recognition of victims. El Salvador's failure to investigate and punish the crimes committed during the war,<sup>30</sup> and to provide reparations for victims, has been widely criticized by both the international and Salvadoran society.<sup>31</sup>

Despite of the long-standing claims for justice and truth regarding ED from the war, El Salvador has neither ratified the Inter-American Convention on Forced Disappearance of Persons nor the ICPPED. Among the first efforts to address the violations from that period was the report of the UN

<sup>29</sup> It is estimated that more than 8.000 persons were forcibly disappeared during the civil war. Granados de Fröhlich, Eugenia. 2014. *El Salvador, una deuda pendiente con sus niños y niñas*. NMRZ, p. 5.

<sup>30</sup> Whereas over 100 claims for investigations regarding civil war crimes have been filled with the Attorney General's Office since 2016 onward, little to no advances are known in respect of most of those claims until today. OHCHR. 2019. Preliminary Observations from the Official Visit to El Salvador by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Mr. Fabián Salvioli 23 April to 3 May 2019. May 3, 2019. Available online. For more detailed analysis of the persistent impunity in El Salvador, see Díaz Gómez, Alejandro Lening. 2016. El muro infranqueable de impunidad en El Salvador. *Pensamiento Propio* 41, 247-267.

<sup>31</sup> See, for example, Medrano, Celia. 2020. *Desaparición forzada y desaparecidos, impunidad de ayer, impunidad de ahora*. February 28, 2020. *Elsalvador.com*. Available online; DW. 2020. *ONGs: impunidad persiste en El Salvador pese a anulación de Ley de Amnistía*. 17 July, 2020. Available online; Cejil. 2020. *Cuatro años sin Ley de Amnistía en El Salvador: escasos avances en justicia, verdad y reparación para las víctimas del conflicto armado*. July 16, 2020. Available online.

sponsored Truth Commission issued in 1993, a year after the adoption of the Peace Agreement, which ended the Salvadoran civil war.<sup>32</sup> The value of the Truth Commission's report remains contested.<sup>33</sup> The usefulness of this report was negatively impacted by the manner in which it has been disseminated within the Salvadoran population, including through the education received at school, where the report has been introduced as a matter of polemics and its findings have been referred to as questionable.<sup>34</sup>

Only a few days after the adoption of the report of the Truth Commission in 1993, an Amnesty Law was passed in El Salvador.<sup>35</sup> Thus, despite the existence of the definition of ED as a crime against humanity in Article 364 of the Criminal Code of 1997<sup>36</sup>, the Amnesty Law blocked all possibilities for investigation and prosecution of crimes (including ED) committed during the war until 2016, when the Amnesty Law was declared unconstitutional.<sup>37</sup> Subsequently, after the Amnesty Law was repealed, a new de facto amnesty law called "National Reconciliation Law" was introduced in the parliament of El Salvador in 2019.<sup>38</sup> However, given the strong resistance by international and Salvadoran society,<sup>39</sup> this law was eventually vetoed by the current president of El Salvador, Nayib Bukele.<sup>40</sup>

Another key advancement regarding ED was the establishment of the National Commission for the Search for Children Disappeared during the Armed Conflict (CNB) in 2010 and the National Commission for the Search for Adults Disappeared during the Armed Conflict (CONABÚSQUEDA) in 2017.<sup>41</sup> Both commissions were established by presidential decrees, without any legislative backing, and the initiative for their creation came from the victims and international institutions.<sup>42</sup> While the existence of the CNB and the CONABÚSQUEDA has been regarded as positive,<sup>43</sup> their work has been limited by poor resources and operational instability, given that they are highly dependent on governmental authorities (i.e. the Ministry of Foreign Affairs).<sup>44</sup>

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<sup>32</sup> The English version of the report of the Truth Commission entitled "From Madness to Hope: the 12-year war in El Salvador: Report of the Commission on the Truth for El Salvador" is available at: <https://www.usip.org/sites/default/files/file/ElSalvador-Report.pdf>, last accessed 26 February 2021.

The English version of the Peace Agreement (UNSC, Letter dated 27 January 1992 from the Permanent Representative of El Salvador to the United Nations addressed to the Secretary-General (30 January 1992), UN Doc. A/64/864) is available at: [https://peacemaker.un.org/sites/peacemaker.un.org/files/SV\\_920116\\_ChapultepecAgreement.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/SV_920116_ChapultepecAgreement.pdf), last accessed 28 February 2021.

<sup>33</sup> The Inter-American Commission of Human Rights (IACHR) acknowledged that reports of truth commission contribute to certain matters, for example, to clarifying the past, but they cannot substitute States' obligation to provide justice and truth for the victims. La Fundación para el Debido Proceso. 2006. *Digesto de jurisprudencia latinoamericana sobre crímenes de derecho internacional*. Washington, DC, p. 257.

<sup>34</sup> Gutiérrez, Martha. 2019. *Negar el pasado: reparaciones en Guatemala y El Salvador*. Colombia Internacional 97, 200.

<sup>35</sup> Legislative Decree No. 486: General Amnesty Law for Peace Consolation (20 March 1993), published in the Official Journal No. 56 on 22 March 1993.

<sup>36</sup> Criminal Code of El Salvador, Decree No. 1030 (26 April 1997) published in the Official Journal No. 105, Vol. No. 335.

<sup>37</sup> HC 144-2013/145-2013, Judgment (Constitutional Chamber of the Supreme Court, 13 July 2016).

<sup>38</sup> The draft of the National Reconciliation Law is available at:

[http://www.dplf.org/sites/default/files/documento\\_dr\\_rodolfo\\_parker\\_comision\\_ad\\_hoc\\_ammistia\\_1902219\\_0.pdf](http://www.dplf.org/sites/default/files/documento_dr_rodolfo_parker_comision_ad_hoc_ammistia_1902219_0.pdf), last accessed 27 February 2021.

<sup>39</sup> See, for example, OHCHR. 2019. *El Salvador: Legislative Assembly must not pass "de facto amnesty" bill for rights violations, say UN experts*. May 16, 2019. Available online; Cejil. 2019. *El Salvador: propuesta de Ley de Reconciliación Nacional debe cumplir estándares internacionales y garantizar justicia a víctimas del Conflicto Armado*. May 14, 2019. Available online; DPFL. 2019. *Three years after the annulment of the Amnesty Law: Victims of the armed conflict defeat a renewed attempt at Codifying Impunity in El Salvador, but the fight is far from over*. July 8, 2019. Available online

<sup>40</sup> AP News. 2020. *El Salvador: presidente Bukele veta ley de reconciliación*. February 29, 2020. Available online.

<sup>41</sup> The CNB was established by the Executive Decree No. 5 (15 January 2010), published in the Official Journal No. 11, Vol. No. 386, and the CONBÚSQUEDA by the Executive Decree No. 33: (21 August 2017), published in the Official Journal No. 416, Vol. No. 153.

<sup>42</sup> The establishment of the CNB was ordered by the IACtHR in case *Hermanas Serrano Cruz vs. El Salvador*, Judgment, IACtHR Serie C No. 120 (1 March 2005), pars. 183-188, and the establishment of the CONABÚSQUEDA was at least partially due to the recommendations given by the WGEID after it issued a visit to El Salvador in 2017. WGEID, Report of the WGEID: mission to El Salvador (26 October 2007) UN Doc. A/HRC/7/2/Add.2, pars. 54 and 92.

<sup>43</sup> OAS Press Release No. 150/1. 2017. *IACHR Hails El Salvador for Creating the National Commission on the Search for Disappeared Persons*. September 29, 2017. Available online.

<sup>44</sup> See, for example, DPLF. 2020. *El Salvador: ONGs y víctimas de la guerra demandan al Presidente Bukele que apoye búsqueda desaparecidos*, August 18, 2020. Available online.



## 10.2 [Definition of “victim of enforced disappearances”](#)

Salvadoran legislation provides no definition of the “victim of ED”, neither is the term “victim of grave human rights violations” defined in the decrees that established the search commissions. The only existing definition of “victim” flows from article 105 of the Criminal Procedural Code, which defines the “victim” as (1) anyone who has been directly harmed by the crime; (2) “the spouse, life partner or cohabitant, child or adoptive parent, relatives within the fourth degree of consanguinity or second degree of affinity and to the heir to the estate, in crimes which result in the death of the offended party; 3) the partners, with respect to the crimes that affect a society, committed by those who direct, administer or control it, or its managers, or by those who direct or administer a controlled, controlling or linked society; and, 4) the associations, in those crimes that affect collective or diffuse interests, provided that the object of the association is directly linked to those interests”<sup>45</sup> may be considered as victims.<sup>46</sup> Another relevant definition for understanding who can be perceived as a relative of a forcibly disappeared person in El Salvador flows from the definition of “kinship” in the Family Code.<sup>47</sup> The Civil Code also refers to the “relative of the disappeared person” when regulating the declaration of death, but it fails to indicate who can be subsumed under this definition.<sup>48</sup>

Due to the lack of a definition for the “victim of ED, domestic courts have taken the following approach: they have referred to the victims in a broad sense, meaning “direct” and “indirect” victims. In the case of ED, the “direct” victim would be the disappeared person, while the family members of the disappeared have often been referred to as “indirect victims”.<sup>49</sup> In their work, the search commissions and CSOs (e.g. Pro-Búsqueda), use the definition from the ICPPED, stating that anyone who has suffered harm as a direct result of an ED is a ‘victim’.

## 10.3 [Right to truth](#)

The right to truth about what happened to forcibly disappeared persons is not included in domestic legislation.<sup>50</sup> As such, this right has evolved through domestic jurisprudence. The Supreme Court of El Salvador has recalled that States have the obligation to determine what happened to the disappeared victims by relying on international and regional standards and jurisprudence.<sup>51</sup> It referred to the right to truth as a multi-dimensional right<sup>52</sup> that is essential for combating impunity and to the obligation to conduct investigations and prosecutions in line with the existing jurisprudence of the Inter-American Court of Human Rights (IACtHR). When an investigation was not conducted in a serious, exhaustive and diligent manner, the IACtHR court found that the right to truth was violated. The IACtHR also specified that the right to truth includes, i.a., the possibility to request and obtain access to information regarding grave violations of human rights.<sup>53</sup>

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<sup>45</sup> Author’s translation.

<sup>46</sup> This provision has been criticized because of the requirement that the crime must result “in the death of the offended party” (i.e. victim), which implies that is inapplicable for the family members of the forcibly disappeared persons. International Committee of the Red Cross. 2020. Estudio de compatibilidad entre el marco jurídico de la república de el salvador y el marco jurídico internacional sobre personas desaparecidas y la protección de sus derechos y de los derechos de sus familiares. San Salvador: ICRC delegation in El Salvador, pp. 6-7.

For further information on who else can be considered as “victim”. See art. 105(3,4) of the Criminal Procedural Code.

<sup>47</sup> Article 127 of the Family Code.

<sup>48</sup> Articles 79ff of the Civil Code.

<sup>49</sup> HC 225-2017, Judgment (Constitutional Chamber of the Supreme Court of El Salvador, 3 December 2017) sec. 2, para. 2; HC 665-2010, Judgment (Constitutional Chamber of the Supreme Court of El Salvador, 5 February 2014), sec. IV, paras. 2(A-b; B).

<sup>50</sup> Despite the lack of domestic legislative provision on the right to truth, the Supreme Court of El Salvador relied on Articles 2(1) and 6(1) of the Salvadoran Constitution as a constitutional basis that supports the existence of the right to truth. HC 665-2010, Judgment (Constitutional Chamber of the Supreme Court of El Salvador, 5 February 2014), sec. IV, paras. 2(A-a).

<sup>51</sup> See, for example, HC 665-2010, Judgment (Constitutional Chamber of the Supreme Court of El Salvador, 5 February 2014), sec. 2(B-b), referring to the case *El Mozote vs. El Salvador*, Judgment, IACtHR Serie C No. 252 (25 October 2012), par. 298. As for the regional standards, a reference has been made to the American Convention on Human Rights, in particular articles 1, 8 and 25. *Ibid.*

<sup>52</sup> The right to truth is, on the one hand, an individual right for all “direct” and “indirect” victims, and on the other hand, it is a collective right that belongs to the whole society. HC 665-2010, Judgment (Constitutional Chamber of the Supreme Court of El Salvador, 5 February 2014), sec. IV, para. 2 (B).

<sup>53</sup> HC 665-2010, Judgment (Constitutional Chamber of the Supreme Court of El Salvador, 5 February 2014).

## 10.4 [Right to reparations](#)

The need to provide reparations and social benefits for victims was mentioned in the report issued by the Truth Commission.<sup>54</sup> However, it was not until 2013 when the first “Programme for Reparations for Victims of Severe Human Rights Violations Occurring in the Context of the Internal Armed Conflict” was established by a presidential decree.<sup>55</sup> Pursuant to this decree, victims of grave human rights violations (including ED) committed in the context of the armed conflict as well as their families are entitled to receive reparations.<sup>56</sup> There is no central authority responsible for implementing the measures foreseen in the decree. Given that the reparations programme is not based on a law, its existence and implementation is to a great extent dependent on the respective government in power. In 2016, when the Amnesty Law was declared unconstitutional, the Supreme Court instructed the adoption of a law on reparations for victims of the armed conflict. In line with this, a draft law was developed by the CSOs, but not adopted by the parliament.

The measures foreseen in the reparations programme aim at guaranteeing rehabilitation, compensation,<sup>57</sup> guarantees of non-recurrence and at restoring the dignity of the victims and their families.<sup>58</sup> In addition to “material” forms of reparation, the programme envisages “moral and symbolic” reparations.<sup>59</sup> The first basis for symbolic reparations was provided already by the report of the Truth Commission.<sup>60</sup> Until today, various measures have been implemented, including the declaration of 29 March as a day dedicated to the children disappeared during the armed conflict, building memorial sites, public apologies to victims in general (e.g., such an apology was made by former Presidents Funes in 2010 and Sánchez Cerén in 2016) as well as public apologies related to specific massacres, for example the cases of El Mozote and El Calabozo.<sup>61</sup> A further example of symbolic reparations are trials at the “tribunal” for the application of restorative justice.<sup>62</sup> This civil society led “tribunal” holds special ceremonies that aim at restoring the relationships between perpetrators, victims and broader society. Finally, one other notable measure aimed at the dissemination of the historical memory of the violations that occurred is the weekly TV Show “Memoria Viva”.<sup>63</sup>

## 10.5 [Analysis](#)

In addition to playing a key role in the development of domestic jurisprudence regarding the right to truth, the Inter-American system has largely shaped other measures of the Salvadoran state to address ED, including the measures of reparation (e.g. by instructing payment of compensation, building of memorial sites, public apologies, etc.).<sup>64</sup>

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<sup>54</sup> The report of the Truth Commission referred to the moral and material reparation and recommended some very specific measures to be taken. Part V Recomm., para 3., Sect. IV (A, B).

<sup>55</sup> Decree No. 204: Programa de reparaciones a las víctimas de graves violaciones a los derechos humanos ocurridas en el contexto del conflicto armado interno (23 October 2013), published in the Official Journal No. 197, Vol. No. 401.

<sup>56</sup> Article 2 of the Decree No. 204.

<sup>57</sup> The Decree 204 stipulates that the monthly sum to be paid to the families of the victims is 15-20 US dollars (per family), with the exception of family members who are more than 55 years old and are entitled to receive 50 US dollars monthly.

<sup>58</sup> Article 6 of the Decree 204.

<sup>59</sup> Articles 11-15 of the Decree 204. An example of moral obligation is Article 12, which provides the obligation of the President to strive for acknowledgements of responsibility for grave violation of human rights committed during the civil war and public apologies to victims.

<sup>60</sup> See fn. 32. When the report of the Truth Commission was published, the then existing government rejected its findings, which was unsurprising since it was directly involved in the perpetration of civil war atrocities. In the years after, the same government adopted some measures which honored those who were identified as perpetrators of grave violations in the report of the Truth Commission. Gutiérrez, Martha. 2019. *Negar el pasado: reparaciones en Guatemala y El Salvador*. Colombia Internacional 97, pp. 195-196.

<sup>61</sup> Arteaga, Leonor and Eisenhour, Amanda. 2019. *The Uncertain Future of Reparations in Post-Conflict El Salvador*. Blog de la Fundación para el Debido Proceso. July 23, 2019. Available online; Diario Co Latino. 2017. *Estado salvadoreño pide perdón por la masacre de El Calabozo*. August 23, 2017. Available online.

<sup>62</sup> Unfinished Sentences. Resolution of the 6th International Restorative Justice Tribunal in El Salvador. Available online.

<sup>63</sup> Gutiérrez, Martha. 2019. *Negar el pasado: reparaciones en Guatemala y El Salvador*. Colombia Internacional 97, p. 197.

<sup>64</sup> For the IACtHR's order to issue public apology, see, for example, *Rochac Hernández and others vs. El Salvador*, Judgment, IACtHR Serie C No. 285 (14 October 2010), para. 225 and for the realization of this order by El Salvador, see ICTJ. 2014. *El Salvador pide perdón por desaparición de niños en conflicto armado*. March 31, 2014. Available online.

The absence of parliamentary legislation on the rights of the victims of ED has brought instability to the lives of those whose relatives were forcibly disappeared. The vagueness of the definition of “victim” allows for complete discretion of the responsible authorities in determining who can benefit from the reparations programme. In fact, the lack of objectivity and publicity in deciding who qualifies as a victim for the purpose of this programme has been acknowledged as a matter of considerable concern.<sup>65</sup> Furthermore, the dependence of the allocated resources on the executive branch and the latter’s power to maintain control over its implementation has resulted in economic insecurity for the victims. The lack of legislative backing has placed victims in a situation where they fear that the existing decrees could be repealed at any moment. Due to the lack of laws regulating the matter, the recognition of victims in El Salvador has thus primarily depended on the policy and development of international and domestic jurisprudence.

## 10.6 Actors mapping El Salvador

The following table gives an overview of the different actors involved in search processes of forcibly disappeared persons in El Salvador.

Table 4 Actors mapping El Salvador

Name	Type of actor	state/non-state actor	Search related activities	Cases focused on	Created in
Fiscalía General de la Republica	Permanent state institution	state	Criminal investigation	Armed conflict and other	1952
Comadres	Family Association	non-state	Advocacy	Armed conflict	1977
Comafac	Family Association	non-state	Advocacy	Armed conflict	1980/1981
CODEFAM	Family Association	non-state	Advocacy	Armed conflict and other	1981
Instituto de Derechos Humanos de la Universidad Centroamericana (IDHUCA)	Private University	non-state	Advocacy Litigation	Armed conflict and other	1985
Instituto de Medicina Legal	Permanent state institution	state	Forensic investigations to prove a crime	Armed conflict and other	1990
Policía	Permanent state institution	state	Register cases Search Forensic	Armed conflict and other	1992

For the IACtHR’s order to compensate victims for pecuniary and non-pecuniary damage, see, for example, *El Mozote vs. El Salvador*, paras. 382 and for partial realization of this order by El Salvador, see *La Prensa Gráfica*. 2018. *El Gobierno salvadoreño indemniza a 219 víctimas de masacre de El Mozote*. December 12, 2018. Available online.

<sup>65</sup> Gutiérrez, Martha. 2019. *Negar el pasado: reparaciones en Guatemala y El Salvador*. *Colombia Internacional* 97, pp. 190-191

			investigations to prove a crime		
Pro-Búsqueda	Family Association	non-state	Register cases Search Advocacy Litigation	Armed conflict	1994
Comisión Nacional de Búsqueda de Niños y Niñas desaparecidos durante el Conflicto Armado Interno	Permanent state institution	state	Register cases Search Advocacy	Armed conflict	2011
Asociación Salvadoreña para los Derechos Humanos (ASDEHU)	Family Association	non-state	Register cases Search Advocacy Litigation	Other	2015
Comisión Nacional de Búsqueda de adultos desaparecidos durante el Conflicto Armado Interno	Temporary state institution	state	Register cases Search Advocacy	Armed conflict	2017

## 11 Findings

The findings of the research project were developed in view of drafting three peer reviewed articles combining the different disciplines and languages.

The first paper is entitled “Search and Participation in the Search for Victims of Enforced Disappearance in Colombia and El Salvador” (orig. “La Búsqueda y Participación en la Búsqueda de Víctimas de Desaparición Forzada en Colombia y El Salvador”) and is written in Spanish. It was submitted to the Journal of the Inter-American Institute of Human Rights based in Costa Rica in December 2020. The paper analyses the legal framework and institutions for the search for forcibly disappeared persons in Colombia and El Salvador. It also looks at who is entitled to participate in the search process in both country contexts and how this participation is regulated (if at all). Furthermore, the article examines the extent to which the laws and institutions for the search and participation in Colombia and El Salvador are compatible with international law, in particular with the ICPPED and the UN Guiding Principles.<sup>66</sup>

The second paper is entitled “Searching for the Disappeared: Process, Encounters and Mobilization in Colombia and El Salvador” and is written in English. It was submitted to the Journal of Social and Legal Studies in April 2021. The article produces novel academic knowledge on the search for missing persons. Based on field research, the article draws on procedural justice to analyse how victims of enforced disappearance mobilise to confront search processes. The article describes the formal and informal spaces that victims encounter in the search and how this experience impacts their identities.

<sup>66</sup> ICPPED (adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3 and CED, “Guiding principles for the search for disappeared persons”, UN Doc, CED/C/7, 8 May 2019.

The third paper is entitled “Who are they to say? Experiences and legal recognition of victimhood of enforced disappearance in Colombia and El Salvador” and is written in English. It was submitted to the Torture Journal in April 2021. ED entails a complex experience of victimhood for the families who are searching for their loved ones. Their experience of victimhood stems from the suffering of not knowing - understood in psycho-social scholarship as amounting to ambiguous loss and also considered in law as a violation of the prohibition of torture-, as well as from the community-pervading fear instilled by the act of ED and the social stigmatization to which families are often subjected. The recognition of their victimhood, that is, the societal acknowledgment of the wrong that the victims have been subjected to, is especially important as ED is committed by perpetrators acting on behalf of the state. Legal discourse is a key instrument when operationalizing victims’ recognition. Exploring the notions of “victimhood” and “recognition” from both a social science and a legal perspective, this article addresses the gap remaining regarding the interactions of these two viewpoints in the context of ED. For this paper, a multi-disciplinary research team has analysed the iterative relationship between both perspectives, focusing on the experiences of interviewed victims and search actors against the backdrop of the historical development of the legal landscape in the cases of Colombia and El Salvador.

Following the three perspectives of those papers, our key findings are listed below and linked to their respective hypothesis.

### 11.1 Legal contexts relevant for the participation in the search

The main difference between the situation in Colombia and El Salvador is that the former is known for the excessive number of norms, and the latter for its lack of laws addressing ED. Despite this difference, both countries have rich experiences in terms of their search practices. However, various obstacles tend to arise in the conduct of the search, and many of them relate to the participation of the family members of the forcibly disappeared persons. One example of this challenge is the lack of clear standards and genuine will from the State to guarantee the participation of family members. Moreover, the institutions that are carrying out the search do not always have the knowledge and resources to assist the families and provide for the participation to which these families are entitled. (Hypotheses 1, 2)

The right to truth, which is explicitly stipulated in the ICPPED, is one of the key bases for claims related to the participation in the search.<sup>67</sup> (Hypothesis 2)

The UN Guiding Principles have made an important step forward in clarifying what the search and participation in the search should entail. These Principles are thus a useful reference to help Colombia and El Salvador improve their search practices. Nonetheless, this soft law document does not solve all doubts: e.g., the need to elaborate on the meaning of the term “participation” persists, as does the need to define who exactly is entitled to participate. In the current international legal framework, there is no absolute clarity on this matter. (Hypotheses 1, 2, 3, 4)

Differences in the manner in which the search and participation in the search are regulated and conducted are due to various historical and contextual circumstances in which EDs were perpetrated in Colombia and El Salvador. Diverging approaches adopted in the two analysed countries are also a result of different paths followed by domestic politics (e.g., Colombia has ratified the Inter-American Convention of Forced Disappeared Persons and the ICPPED, while El Salvador has not). (Hypothesis 4)

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<sup>67</sup> Article 24(2) of the ICPPED.

## 11.2 [Encounters and mobilization within the search process](#)

Understanding the search processes as a complicated non-linear journey is instrumental to designing and implementing effective search activities which are sensitive to the needs of victims of this crime. (Hypotheses 1, 2)

Analysing ED from the perspective of the search (rather than focusing on criminal investigations) is important from a theoretical and practical point of view. Although the search process is related to criminal investigations, understanding the victims' experiences concerning each of them makes both objectives more effective, focused on the victims' needs, and avoids generating revictimizing consequences. (Hypotheses 1, 2, 3)

Although the State is obliged to lead the search under international law, our examination of Colombia and El Salvador demonstrates that victims have played a fundamental role in initiating and conducting the searches. The social, political, legal and institutional contexts in which the search takes place have an impact on the victim's search experience (Hypothesis 4)

Several factors related to procedural justice are key to how victims experience the degree of fair and dignified treatment in their journey, which entails complex emotional experiences consisting of pain, distress, defeat, revictimization, hope, outrage, mourning, loss, and uncertainty.

- A first relevant element concerns how representatives of state institutions responsible for the search interact with victims. They do not only have to be prepared to deploy the technical tasks necessary to activate the search, but also the required training and sensitivity to generate confidence in the victims, provide the essential information to deal with the victims' fear, uncertainty, and frustration, and protect them from possible threats. This was not what we found in Colombia and El Salvador, but rather repeated expressions of a lack of compassion and support on the part of the authorities in charge.
- A second relevant element concerns access to and flow of information. Victims begin their journey with different levels of information about what could have happened. One of the search's main objectives is to receive timely and relevant information that ends the victims' state of not knowing the fate of the disappeared person. Finding out (about the circumstances of the ED, the whereabouts of the forcibly disappeared, the location and identity of mortal remains if the person is dead), as well as an acknowledgment, in the sense of having their suffering validated publicly, were more likely to be underlined as valuable forms of justice sought by victims in the search. This aspect of procedural justice is related to the previous one: the way that victims experienced their encounters with other actors had an impact on what information was shared with whom, how mobilisation took place and how successful the search was. Likewise, the form of information, the reliability of the information, and the information bearer shaped the way victims' treatment was experienced. This interplay needs to be borne in mind when analysing search processes or designing support for victims.
- A third relevant element concerns how authorities and other actors respond to the victims' need to be accompanied in their process. The managing of expectations about the assumed benefits and expected outcomes of procedures is key. The findings also signal the relevance of assessing victims' experiences of the process and avoiding decontextualized assumptions about victims' expectations of justice. (Hypotheses 1, 2, 3, 4, 5)

The way that victims mobilize in the search is directly related to how these encounters occur, whether or not victims receive access to information and how they interact with state institutions, other victims and CSOs. (Hypotheses 3, 4, 7)

The non-linear nature and experience of the search process are shaped by the many challenges faced by victims, by the opportunities and resources inherent or external to them, and the timing and situation of the search process's start. Whether victims engage in the search and sustain this mobilization may depend on what the search means for them and what they expect from it, on the solidarities, encounters and outcomes they experience, and whether they feel their search will lead to acknowledgment. (Hypotheses 2, 4, 5)

The victims we interviewed pointed out four elements that prevented them from taking the initial steps to search:

- the anxiety created by the presumed ED itself;
- the scarce information available on how to advance the search;
- the threats of physical violence suffered by some of them;
- and the institutional barriers to promote the processes (as was the case of the amnesty law in force in El Salvador). (Hypotheses 1, 2, 5)

However, once the initial steps in the search process were taken, many found support from other victims or came to support their peers. Transitioning from feeling alone to a collective action constitutes support and drives further mobilization. (Hypotheses 1, 3)

The encounters of the victims with other actors were not predictable and the discovery of information about their loved ones led to different responses. The process itself was connected to greater or lesser feelings of loss, vulnerability, and distress. Overall, a process accompanied by information management, transparency, and empathy could be more positive regardless of its outcome. (Hypotheses 1, 2)

### 11.3 Experiences and legal recognition of victimhood

Our findings highlight the complexity of the victimhood experience of families and relatives of disappeared persons, as well as the struggles they face to have their victimhood recognized in the face of denial and silence. Many different, ambivalent and contrasted meanings afforded to victimhood can be identified among the victims interviewed, ranging from feelings of powerlessness and despair, to striving to re-affirm their agency and rejecting a passive victim label. Having their victimhood recognized is very important for victims, because of its value in terms of validation (the recognition of their suffering) and vindication (the recognition that they have been wronged and that they have a legitimate right to redress). Both of these elements of recognition help victims to make sense of the pain they experience and seek redress for the injustice that they have suffered, as well as lessening victims' stigmatized status within their communities. (Hypotheses 2, 3)

Yet, the victims interviewed consistently describe experiencing a lack of recognition of their victimhood in societal responses to their distress. This is reflected in their experiences of denial, inaction, silence and delegitimization of their claims from state authorities, as well as from the stigmatization they suffer from their communities. This lack of recognition is experienced as re-victimizing and as adding salt to their wounds. (Hypotheses 3, 7)

A more fine-grained analysis of victims' experiences in relation to their recognition in the legal realm suggests a gap between legal responses to victimhood and their implementations with regard to victims' needs. This gap translates differently for the contexts of Colombia and El Salvador. In the case of El Salvador, victims face a legal system where impunity reigns and legal frameworks to address the issue of ED victims' rights are largely absent. Their victimhood is often not recognized, because their victimization experiences are for the most part unlikely to be legally constructed as a violation and a crime. In the case of Colombia, the victims interviewed tend to describe experiences which reflect a context where legal criteria and frameworks exist in theory, but are partially or not implemented in practice, thereby affecting victims' effective access to justice. (Hypotheses 4)

As a result of state-level inaction, some other important forms of recognition for victims have emerged. Some victims highlight the significant role of international and regional channels of legal and institutional recognition. Many participants also put forward the significance of meaningful forms of recognition beyond the legal realm, particularly the different layers of truth they may have found in their search for answers, the support they were offered by CSOs and those close to them (Hypothesis 3), as well as reparations such as compensation or commemoration as valuable ways to recognize their experiences (Hypotheses 6,7). These findings reveal that obtaining some form of recognition beyond the legal realm can be very meaningful for victims because it can help to restore their sense of dignity and it constitutes a message of solidarity and a caring attitude which can perhaps pave the way towards victims' reintegration into the social and political community. (Hypotheses 3,7)

Overall, these findings provide a valuable insight into victims' agency in the search, as well as how political and social constructions of victimhood may facilitate or hinder their struggles for truth and justice. The findings also suggest that a lack of recognition, due to the legal obstacles and psycho-social challenges it creates or exacerbates, may affect victims' opportunities and motives to mobilize and participate in the search process (Hypotheses 2 and 4).



