

# Hiding in Plain Sight: Victim Participation in the Search for Disappeared Persons, a Contribution to (Procedural) Justice

Briony Jones<sup>\*</sup>, Lisa Ott<sup>†</sup>, Mina Rauschenbach<sup>\*\*</sup> and Camilo Sanchez<sup>††</sup>

## ABSTRACT

Enforced disappearance is a human rights violation and crime widely used in repression and armed conflict contexts. The families of the forcibly disappeared are left in a state of ambiguous loss as they search for the disappeared to satisfy their right to truth and achieve healing and closure. However, there is limited knowledge of the obstacles that hinder the search in practice and of how families can best be supported when mobilizing in search processes. Taking a multi-disciplinary approach, using insights from procedural justice research and qualitative interviews undertaken with families and other actors involved in supporting search processes in Colombia and El Salvador, we enhance and expand the scholarship that acknowledges the importance of victim participation and victims as key justice stakeholders.

**KEYWORDS:** Colombia, El Salvador, enforced disappearance, transitional justice, victim participation

## INTRODUCTION

Enforced disappearance (ED) is a human rights violation and crime widely used in repression and armed conflict contexts.<sup>1</sup> Thus, the attention paid by legal, socio-legal and psycho-legal

<sup>\*</sup> Department of Politics and International Studies, University of Warwick, Social Sciences Building, Coventry, CV47AL, UK. Email: [B.Jones.S@warwick.ac.uk](mailto:B.Jones.S@warwick.ac.uk)

<sup>†</sup> Dealing with the Past Programme, Swisspeace, Kasernehof 8, Basel 4058, Switzerland. Email: [lisa.ott@swiss-peace.ch](mailto:lisa.ott@swiss-peace.ch)

<sup>\*\*</sup> Leuven Institute of Criminology, University of Leuven, Herbert Hooverplein 9, box 3418, 3000 Leuven, Belgium. Email: [mina.rauschenbach@kuleuven.be](mailto:mina.rauschenbach@kuleuven.be)

<sup>††</sup> University of Virginia School of Law, University of Virginia, 580 Massie Road, Charlottesville, VA 22903, USA. Email: [csanchez@law.virginia.edu](mailto:csanchez@law.virginia.edu)

<sup>1</sup> The act of enforced disappearance is forbidden as a violation of human rights. It is proscribed in all circumstances, whether during times of peace or armed conflict, and is considered a criminal offence according to the Rome Statute of the International Criminal Court. The International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED) defines it as 'a deprivation of liberty by state agents or by persons acting with the authorization, support or acquiescence of the state, followed by a refusal to acknowledge the deprivation of the liberty or a concealment of the fate of the whereabouts of the person' (ICPPED, art. 2). For a comprehensive examination of enforced disappearance from the perspective of international human rights

studies to both the practice of ED and its individual, familial and social impacts comes as no surprise. A relentless legal activism by victims in Latin America and beyond has led contemporary international law to recognize the imperative of addressing the distinctive characteristics of ED as a human rights violation.<sup>2</sup> Its status as a continuing violation, which cannot be subject to statutes of limitation, for example, highlights its pervasive harmful reach.<sup>3</sup> Indeed, international law considers family members to be direct victims of the violation<sup>4</sup> as the pain, anguish and stress of not knowing what happened is considered to amount to inhumane treatment. The families<sup>5</sup> are left in a state of 'ambiguous loss'<sup>6</sup> as they search for their loved ones to satisfy their right to truth<sup>7</sup> and achieve healing and closure.<sup>8</sup> Building on the UN Guiding Principles for the Search of Disappeared Persons,<sup>9</sup> which ratifies the right to participation,<sup>10</sup> this article asks what victim participation means in such a context of ambiguous loss, and how family members navigate such participation as justice stakeholders.

Experience shows that these search processes tend to be long and cumbersome and often do not lead to finding the disappeared person alive. While the international legal issues related to the search for victims of ED have received considerable attention,<sup>11</sup> there has been limited research on the various stages that victims face in the search process, the effects of the search on their lives and what types of institutional and social responses are needed to guarantee effective and victim-oriented search processes.<sup>12</sup> Responding to this gap with our research questions outlined above, we bring together scholars from law, political science and psycho-social studies to explore further the obstacles that hinder the search in practice, and how families can best be supported

law, including the essential early case law, international humanitarian law and international criminal law, refer to Lisa Ott, *Enforced Disappearance in International Law* (Cambridge/Antwerp/Portland: Intersentia, 2011).

<sup>2</sup> Under current international law, states are required to establish legal provisions that impose suitable penalties for the crime of enforced disappearance, taking into account its grave nature. International law also recognizes that enforced disappearances can be categorized as a crime against humanity if they occur in a widespread or systematic manner. International human rights bodies have emphasized the vital importance of conducting effective criminal investigations, not only to uphold the right to justice but also to fulfil the obligation to locate the disappeared individual and ensure the right to truth and reparation. These rights are interconnected and interdependent, and a thorough investigation plays a central role in their realization. United Nations Human Rights Council, 'Report of the Working Group on Enforced or Involuntary Disappearances on Standards and Public Policies for an Effective Investigation of Enforced Disappearances (No. A/HRC/45/13/Add.3); 45th session, 14 September – 2 October 2020.

<sup>3</sup> The ED is considered continuous until the fate or the whereabouts of the victim is known. Art. 8 (1)(b) ICPPED.

<sup>4</sup> Art. 24(1) ICPPED. Much of the international standards in this area, including the broad recognition of victims, is rooted in the jurisprudence of the Inter-American Court of Human Rights. Sandra Serrano, 'Forced Disappearances in the Inter-American Human Rights System', in *Disappearances in the Post-Transition Era in Latin America*, ed. Karina Ansolabehere, Barbara A. Frey and Leigh A. Payne (London: British Academy Scholarship Online, 2021), 251–261.

<sup>5</sup> For word economy, we will use the concept of families, understanding that it includes persons related by blood ties and persons close to the victims without such a relationship (next of kin).

<sup>6</sup> Simon Robins, *Families of the Missing: A Test for Contemporary Approaches to Transitional Justice* (Oxon and New York: Routledge, 2013).

<sup>7</sup> Art. 24(2) ICPPED. The historical development and status of the right to the truth is described e.g., in Marloes Van Noorloos, 'A Critical Reflection on the Right to the Truth about Gross Human Rights Violations,' *Human Rights Law Review* 21(4) (2021): 874–898.

<sup>8</sup> Pauline Boss, 'Ambiguous Loss Research, Theory, and Practice: Reflections after 9/11,' *Journal of Marriage and Family* 66(3) (2004): 551–566, 551; Simon Robins, *Families of the Missing: A Test for Contemporary Approaches to Transitional Justice* (Oxon and New York: Routledge, 2013); Melanie Klinkner and Ellie Smith, 'The Right to Truth, Appropriate Forum and the International Criminal Court,' in *Current Issues in Transitional Justice* Ed. Natalia Szablewska and Sascha-Dominik Bachmann (Bournemouth: Springer, 2015), 3–29; Yasmin Naqvi, 'The Right to the Truth in International Law: Fact or Fiction?' *International Review of the Red Cross* (862) (2006): 245–273, 245, 260.

<sup>9</sup> These principles identify mechanisms, procedures and methods for carrying out the legal duty to search for disappeared persons. UN Committee on Enforced Disappearances, 'UN Guiding Principles for the Search for Disappeared Persons. Adopted by the Committee at Its Sixteenth Session (8–18 April 2019),' <https://www.ohchr.org/en/documents/legal-standards-and-guidelines/guiding-principles-search-disappeared-persons> (accessed 13 June 2023).

<sup>10</sup> Principle No. 5.

<sup>11</sup> E.g., with further references: Ana Srovin Coralli, Heli Hernandez, Alejandro Jimenez Ospina and Lisa Ott, 'La búsqueda y la participación en los casos de desaparición forzada: Marco legal en Colombia y El Salvador,' *Dejusticia, Derecho en breve* (December 2021), [https://www.dejusticia.org/wp-content/uploads/2021/12/DB15\\_La-busqueda-y-la-participacion\\_web-1.pdf](https://www.dejusticia.org/wp-content/uploads/2021/12/DB15_La-busqueda-y-la-participacion_web-1.pdf) (accessed 13 June 2023).

<sup>12</sup> Although the general interpretation of binding international obligations indicates that the state should guarantee the search as a right, the search is not expressly mentioned by international treaties. The UN Committee on Enforced Disappearances has referred to the search on the basis of a systematic interpretation of the state obligations of investigation contained in Article 18 ICPPED, in line with the provisions of Articles 15, 19(1), 24 (2, 3) and 25 (2, 3) of the same treaty.

when mobilizing in search processes. We apply the concept of procedural justice<sup>13</sup> to help us understand the experiences of families in the search for their loved ones, and to answer how these families navigate their participation in the search as justice stakeholders.

We present in this article our findings from an exploratory study, aiming to expand scholarship that acknowledges the importance of victims as key justice stakeholders<sup>14</sup> and of victim participation in transitional justice<sup>15</sup> (also referred to as dealing with the past) processes.<sup>16</sup> Participation is believed to make programmes, policies and procedures more effective and appropriate, instil local ownership and spawn a healing effect. It nonetheless imposes burdens on victims and survivors.<sup>17</sup> While victims' participation has received substantial attention regarding truth commissions, reparation programmes and trials, much less attention has been devoted to the context of the search for the disappeared, despite the importance and potential of victim participation and agency in such processes.<sup>18</sup> We draw on findings from procedural justice research we have undertaken in Colombia and El Salvador in a multi-disciplinary manner, combining legal and political science insights with social psychology to investigate how ED victims make sense of their participation in search processes as justice stakeholders. Following a first theoretical part focused on victim participation in transitional justice mechanisms; participation and procedural justice; and the search as a journey and the promise of participation, we introduce our methodology before moving into our analysis. Concentrating on the experiences of families in the search for their loved ones, we discuss obstacles, resources and opportunities, highlighting the complex and often cumbersome constraints around participation while reinforcing the importance of seeing families as justice stakeholders.

## THEORETICAL FRAMEWORK: PARTICIPATION AND AGENCY AS A CONTRIBUTION TO PROCEDURAL JUSTICE

### Victim Participation in Transitional Justice Mechanisms

It is now well acknowledged that victims are key justice stakeholders in transitional justice processes.<sup>19</sup> In line with this perspective, there is a discursive turn towards victim-centred approaches legitimized by the growing recognition that victims' needs are not often considered or fulfilled.<sup>20</sup> Calls for increased participation and consultation of those primarily affected by the conflict have also been part of this victim-centred turn in transitional justice.<sup>21</sup> They recommend placing victims at the centre of the process, from the planning, decision-making and implementation to the evaluation and follow-up phases.<sup>22</sup> These perspectives advocate for

<sup>13</sup> This article focuses on procedural justice as a social psychological theoretical perspective and will not address the legal concept of procedural justice which concerns the analysis of legal concepts, rules and practices in terms of their procedural fairness.

<sup>14</sup> Kieran McEvoy and Kirsten McConnachie, 'Victims and Transitional Justice: Voice, Agency and Blame,' *Social and Legal Studies* 22(4) (2013): 489–513.

<sup>15</sup> OHCHR, 'Transitional justice covers the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past conflict, repression, violations and abuses, in order to ensure accountability, serve justice and achieve reconciliation,' *Office of the High Commissioner for Human Rights*, <https://www.ohchr.org/en/transitional-justice> (accessed 13 June 2023).

<sup>16</sup> Mijke De Waardt and Sanne Weber, 'Beyond Victims' Mere Presence: An Empirical Analysis of Victim Participation in Transitional Justice in Colombia,' *Journal of Human Rights Practice* 11(1) (2019): 209–228, 212.

<sup>17</sup> Impunity Watch, "'Restricted access': Promises and pitfalls of victim participation in transitional justice mechanisms. A comparative perspective,' 2017, <https://www.impunitywatch.org/post/restricted-access-promises-and-pitfalls-of-victim-participation-in-transitional-justice-mechanisms> (accessed 10 January 2023).

<sup>18</sup> Simon Robins, *supra* n 6; Iosif Kovras, *Grassroots Activism and the Evolution of Transitional Justice*, (Cambridge: Cambridge University Press, 2017).

<sup>19</sup> Vincent Druliolle and Roddy Brett, *The Politics of Victimhood in Post-conflict Societies: Comparative and Analytical Perspectives*, ed. Kieran McEvoy and Kirsten McConnachie, (St. Andrews: Palgrave Macmillan, 2018).

<sup>20</sup> Jemima Garcia-Godos, 'Victims in Focus,' *International Journal of Transitional Justice* 10(2) (2016): 350–358; Tsepo Madlingozi, 'On Transitional Justice Entrepreneurs and the Production of Victims,' *Journal of Human Rights Practice* 2(2) (2010): 208–228.

<sup>21</sup> Mijke De Waardt and Sanne Weber, *supra* n 16.

<sup>22</sup> Patricia Lundy and Mark McGovern, 'The Role of Community in Participatory Transitional Justice,' in *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Oxford: Hart Publishing, 2008), 99–120.

a better understanding of and response to the specific needs of victims, including the needs of the families of disappeared persons, when devising and implementing transitional justice processes.<sup>23</sup>

One of the underlying assumptions of this victim-centred turn in transitional justice research, policy and practice is that providing victims with more opportunities for participation will lead to a greater sense of ownership over these processes<sup>24</sup> and indeed more effective outcomes. Yet this depends on whether victim participation is conceived in a maximalist view, meaning going beyond victims being simply present, to also including the capacity of victims to shape, to have a control over, to decide and to have a voice in the processes. Most often it is observed that 'victims are at best consultees and witnesses, not decision-makers, and therefore their ownership over these processes remains limited.'<sup>25</sup>

This burgeoning scholarship has also highlighted that for victim participation to generate a sense of ownership and agency, it should be meaningful, inclusive and effective.<sup>26</sup> However, victims' vulnerability factors related to gender or socio-economic disenfranchisement can render conditions of meaningfulness, inclusiveness and effectiveness more difficult to achieve, or pose an additional burden for participation.<sup>27</sup> We need a better, context-specific understanding of what is experienced as meaningful and beneficial participation<sup>28</sup> in order to ensure that the promises of ownership and agency are fulfilled.

### Procedural Justice and Participation

Starting from the idea that processes matter to people, procedural justice constitutes a field of social psychology which is concerned with how people judge their social experiences and whether the processes they experience in their interactions can be perceived as fair and just. Whilst analysed in many other contexts of social life,<sup>29</sup> the procedural justice approach<sup>30</sup> has been extensively applied to the legal context to study how various actors, including victims<sup>31</sup> and offenders,<sup>32</sup> experience interactions and justice outcomes. A large body of this scholarly work has addressed interactions between victims and other judicial actors and how these are experienced in conventional criminal justice systems.<sup>33</sup> Recently, there has been an application of this framework in postconflict situations, particularly within international mechanisms for criminal accountability.<sup>34</sup> This study aims to contribute to the existing literature in two distinct manners. Firstly, it explores the perceptions and interpretations of procedural justice by victims within the

<sup>23</sup> Simon Robins, *supra* n 6.

<sup>24</sup> Patrick Vinck and Phuong Pham, 'Ownership and Participation in Transitional Justice Mechanisms: A Sustainable Human Development Perspective from Eastern DRC,' *International Journal of Transitional Justice* 2(3) (2008): 398–411.

<sup>25</sup> Mijke De Waardt and Sanne Weber, *supra* n 16 at 212.

<sup>26</sup> Mijke De Waardt and Sanne Weber, *supra* n 16; Impunity Watch, *supra* n 17.

<sup>27</sup> Mijke De Waardt and Sanne Weber, *supra* n 16.

<sup>28</sup> Elke Evrard, Gretel M. Bonifazi and Tine Destrooper, 'The Meaning of Participation in Transitional Justice: A Conceptual Proposal for Empirical Analysis,' *International Journal of Transitional Justice* 15(2) (2021): 428–447.

<sup>29</sup> See e.g., D. Ramona Bobocel and Leanne Gosse, 'Procedural Justice: A Historical Review and Critical Analysis,' in *Oxford Library of Psychology: The Oxford Handbook of Justice in the Workplace*, ed. and (Oxford: Oxford University Press, 2015), 51–87.

<sup>30</sup> Tom R. Tyler and E. Allan Lind, 'Procedural Justice,' in *Handbook of Justice Research in Law*, ed. Joseph Sanders and V. Lee Hamilton (New York: Kluwer Academic / Plenum Publishers, 2001), 65–92.

<sup>31</sup> Jo-Anne Wemmers, 'The Meaning of Justice for Victims,' in *International Handbook of Victimology*, ed. Shlomo Giora Shoham, Paul Knepper and Martin Kett (London: Routledge, 2010), 27–43.

<sup>32</sup> Mina Rauschenbach and Damien Scalia, 'Les accusés du Tribunal Pénal International pour l'Ex-Yougoslavie: Entre désenchantement et résistance,' *Déviance and Société* 42(3) (2018): 535–567.

<sup>33</sup> Patrick J. Carr, Kim A. Logio and Shana Maier, 'Keep Me Informed: What Matters for Victims as They Navigate the Juvenile Criminal Justice System in Philadelphia,' *International Review of Victimology* 10(2) (2003): 117–136; Uli Orth, 'Secondary Victimization of Crime Victims by Criminal Proceedings,' *Social Justice Research* 15(4) (2002): 313–325.

<sup>34</sup> Brienne McGonigle, *Procedural Justice? Victim Participation in International Criminal Proceedings* (Cambridge: Intersentia, 2011); Stephen Cody, 'Procedural Justice, Legitimacy, and Victim Participation in Uganda,' in *The Legitimacy of International Criminal Tribunals (Studies on International Courts and Tribunals)*, ed. Nubuo Hayashi and Cecilia Baillet (Cambridge: Cambridge University Press, 2017), 376–398; Jens M. Iverson, 'Procedural Justice, Jus Post Bellum, and Transitions from Armed Conflict: Beyond "Peace versus Justice" to Peace as the Foundation of Procedural Justice,' *ILJ Online* (2020): 1–21.

context of the search process, which extends beyond solely criminal investigation. Secondly, it specifically examines victims of ED as a distinct category within the broader spectrum of victims.

We see participation in the search for the disappeared as connected to procedural justice in two main ways. Firstly, victims' engagement in the search mobilization is a process which may take place over a shorter or longer period of time and include a series of encounters with varied actors. It needs to be analysed as a process. Secondly, because this participation in the search will not always, or even likely, end with the location of a person who is still alive, it is especially important that at least the process itself is experienced as just. Families searching for their loved ones are in a vulnerable situation of ambiguous loss and their experiences during the search are vitally important when protecting them from further harm and trauma. We thus draw on the framework of procedural justice both as a justification for our chosen focus on participation (*the search is a process*) and as a framework for guiding our analysis of our data (*the search process must be perceived as just*).

Research using this approach has demonstrated repeatedly that whether a justice mechanism is perceived as just depends on victims' evaluations of the fairness more of procedures than of outcomes. Moreover, procedures are more likely to be perceived as fair when victims feel that they have been informed, that they had a voice or that they were treated with dignity and respect.<sup>35</sup> This research speaks more generally to the widely observed need for victims engaged in justice processes to participate, to be heard and to be treated respectfully.<sup>36</sup> Such perceptions thus also offer an insight to victims' sense of agency in processes. Procedural perceptions are also key indicators of victims' satisfaction and trust in justice systems,<sup>37</sup> including international institutions of justice.<sup>38</sup> Procedural justice may be a particularly important concern for victims, due to the uncertainty they are confronted with in the aftermath of victimization<sup>39</sup> and because it constitutes a significant indicator of a person's value as a member of society.<sup>40</sup> Attention to dimensions of procedural justice echoes findings in transitional justice scholarship highlighting the necessity for a victim-focused approach and advocating for the significance of consultation, informed participation and respectful treatment.<sup>41</sup> Addressing procedural concerns may provide a meaningful 'opportunity for redress and healing' for victims.<sup>42</sup> Going beyond a sole focus on the outcome, the importance of accounting for procedural concerns in relation to the process of truth recovery has also been highlighted for the particular case of ED victims.<sup>43</sup>

Two dimensions of procedural justice are particularly relevant in shaping the experiences of victims of ED: informational justice and interactional justice.<sup>44</sup> Informational justice relates to whether victims are being notified about the progress of the process and the actions taken in it, as well as whether they are included in the process and have been given advice in such a way as to be able to make informed decisions. Interactional justice relates to the quality of interactions

<sup>35</sup> See Jo-Anne Wemmers, supra n 31, for an overview of this research.

<sup>36</sup> See e.g., Jo-Anne Wemmers and Katie Cyr (2004) 'Victims' Perspectives on Restorative Justice: How Much Involvement Are Victims Looking For?' *International Review of Victimology* 11(2–3): 259–274.

<sup>37</sup> Uli Orth, supra n 33; Jo-Anne Wemmers, supra n 31.

<sup>38</sup> Rachel Killean, 'Procedural Justice in International Criminal Courts: Assessing Civil Parties' Perceptions of Justice at the Extraordinary Chambers in the Courts of Cambodia,' *International Criminal Law Review* 16(1) (2016): 1–38; Brienne McGonigle, *Procedural Justice? Victim Participation in International Criminal Proceedings* (Cambridge: Intersentia, 2011); Jo-Anne Wemmers, 'Victims and the International Criminal Court (ICC): Evaluating the Success of the ICC with Respect to Victims,' *International Review of Victimology* 16(2) (2009): 123–126.

<sup>39</sup> Jo-Anne Wemmers, supra n 31.

<sup>40</sup> Tom Tyler and Steven Blader, 'The Group Engagement Model: Procedural Justice, Social Identity and Cooperative Behaviour,' *Personality and Social Psychology Review* 7(4) (2003): 349–361; Jo-Anne Wemmers, supra n 31.

<sup>41</sup> Simon Robins, supra n 6; Patrick Vinck and Phuong Pham, 'Transitioning to Peace: A Population-Based Survey on Attitudes About Social Reconstruction and Justice in Northern Uganda,' Dec 2010, Human Rights Centre, Berkeley.

<sup>42</sup> Yael Danieli, 'Massive Trauma and the Healing Role of Reparative Justice,' in *Reparations for Victims of Genocide, Crimes Against Humanity and War Crimes: Systems in Place and Systems in the Making*, ed. Carla Ferstman, Mariana Goetz and Alan Stephens (Leiden: Martinus Nijhoff, 2009), 38–85.

<sup>43</sup> Simon Robins, supra n 6.

<sup>44</sup> See Jo-Anne Wemmers, supra n 31.

with the different actors of the process and whether victims feel that they have been treated respectfully as valued members of society whose claims are recognized. Both these dimensions of justice are likely to affect participation experiences as they affect victims' agency and their status, as recognized rights' bearers, in justice processes.<sup>45</sup>

Research on victim participation in transitional justice has occasionally intersected with procedural justice perspectives.<sup>46</sup> Yet these studies have mostly concerned international criminal proceedings, highlighting that procedural justice perceptions may be improved through heightened participation such as having a voice and taking an active part in decisions in these processes. This gap is concerning, given the growing interest in the participation of families of disappeared persons and the understanding of such participation as a right.<sup>47</sup>

### The Search as a Journey and the Promise of Participation

Connecting these discussions to ED, families of the disappeared are potentially implicated as participants throughout the search process, seeking justice for their loved ones through truth, prosecution and closure. The act of *participating* in the search in the way that we use it here is intended to capture not only the decision to search for the loved one, but also an agency in using resources, looking for information, connecting with other actors or demanding justice. It is a journey which the families undertake but which may be full of challenges, be unpredictable and be both a specific moment or a sustained period of participation.

Once relatives realize that their loved one has disappeared, the journey of searching for them begins and will take different shapes.<sup>48</sup> This journey can entail several stages,<sup>49</sup> and include the immediate search for a disappeared person as well as, later down the road, the search activities for those who were disappeared in the past.<sup>50</sup> Importantly, these different journeys which may characterize the search process are not teleological. Information can be uncovered which changes the direction of, or halts, the search. Families may be frustrated in their efforts to identify the whereabouts of their loved one, or indeed may decide to stop the search due to depletion as a result of the emotional and psychological labour which it entails,<sup>51</sup> the stigmatization which they may face within their communities,<sup>52</sup> threats by those allied with the perpetrators or a lack of resources.

The search is often initially prompted by the realization that something has happened either because the loved one did not come home or because they were visibly taken away. Information about what happened can be gleaned through informal questioning of those close to the victim as well as through collecting evidence from witnesses or recovering documentation. If the relevant information is found then the disappeared have to be located, and if they have been killed then their remains have to be identified. Depending on the legal framework, the case at hand, as

<sup>45</sup> Jo-Anne Wemmers, supra n 31. These procedural concerns are explicitly connected to the right to participation in the UN Guiding Principles for Disappeared Persons (Principle 5).

<sup>46</sup> Brianne McGonigle, supra n 34; Stephen Cody, supra n 34.

<sup>47</sup> International Commission on Missing Persons, 'The Participation of Families of Missing Persons as a Key to Progress: Recommendations to Strengthen the Efforts of Colombian Institutions', 2022, <https://www.icmp.int/?resources=the-participation-of-families-of-missing-persons-as-a-key-to-progress-recommendations-to-strengthen-the-efforts-of-colombian-institutions> (accessed 25 June 2023).

<sup>48</sup> Lisa Ott, Ana Julia Escalante, Pamela Favre, Heli Hernandez, Alejandro Jimenez, Briony Jones, Mina Rauschenbach, Camilo Sanchez, Ana Srovin Coralli and Bronwen Webster, 'The Search for Victims of Enforced Disappearance. An Interdisciplinary Exploration of Current Practices', Swisspeace Working Paper, 2022, <https://www.swisspeace.ch/assets/publications/Working-Papers/2022/Lisa-Ott-The-Search-for-Victims-of-Enforced-Disappearance.pdf> (accessed 19 January 2022).

<sup>49</sup> Iosif Kovras, supra n 18.

<sup>50</sup> J Patrice McSherry (2005) *Predatory States, Operation Condor and Covert War in Latin America*, Rowman and Littlefield, 109; Tullio Scovazzi and Gabriella Citroni (2007), 16; including the children of disappeared persons who were born during captivity.

<sup>51</sup> Ana Srovin Coralli and Pamela Favre, 'The Vicious Cycle of Impunity: Psychosocial Consequences of Disappearances in El Salvador', *International Law and Legal Thought*, 2020, <https://voelkerrechtsblog.org/psychosocial-consequences-of-impunity-for-disappearances-in-el-salvador/> (accessed 29 January 2021).

<sup>52</sup> Jacqueline Adams (2019) 'Enforced Disappearance: Family Members Experiences', *Human Rights Review* 20(3): 335–360.

well as institutional will, criminal investigations to bring those responsible to justice may be taking place in parallel. These different activities of the search for the disappeared are ridden with obstacles for victims. Firstly, powerful perpetrators, who may even be part of the state, actively conceal information about the disappearance. Secondly, economic concerns due to diminished incomes are a major challenge, as the disappeared persons (mostly men) are often breadwinners and relatives may have to temporarily set aside or reduce their professional activities to search for their loved ones. Thirdly, institutional barriers can inhibit their search, including resistance from the state which may discourage the participation of the families and delegitimize their claims.<sup>53</sup>

These obstacles, among others, mean that the families, especially if they come from disenfranchised collectives, are often hindered in mobilizing to claim their rights and demanding that the state fulfils its obligations in the search.<sup>54</sup> It is thus important to note that while the search sometimes advances within the ordinary justice system and official search mechanisms may be in place, it is often family members who engage within formal and informal collectives to raise awareness and advance the search. In fact, this participation has played a significant role in the development of global awareness in relation to the right to truth and ED.<sup>55</sup>

While participating in these formal and informal collectives for the search, families are often supported by civil society organizations (CSOs) that can bolster their capacity to participate by providing the political opportunities, as well as the participation structures, to empower them in their struggle for truth.<sup>56</sup> They can organize and coordinate information-seeking processes so as to effectively assist in the search, particularly in cases where witnesses may be afraid to come forward with information.<sup>57</sup> They can help victims in their attempts to keep the issue of ED on the agenda of domestic and international decision-makers and policy-makers.<sup>58</sup> They can facilitate victims' lobbying activities by providing them privileged access to local or international decision-makers and to influential allies (transnational or national), as well as helping them to devise powerful frames for their claims.<sup>59</sup> They can also contribute to victims' understanding of what happened and of what the existing remedies are, and thus allow victims to act themselves.<sup>60</sup> Yet, CSOs' facilitating role depends on whether they have the socio-political space to engage locally.<sup>61</sup> It also depends on the ways in which they seek to engage families and the position of a given CSO in the complicated politics and activities of the search process.

A series of encounters between victims, families and CSOs characterize most search processes, and will be shaped by complex questions of identity, resources, power and approach, all context specific.<sup>62</sup> What this means for participation in the search for the disappeared is that despite successful experiences with locating and identifying disappeared who have long

<sup>53</sup> Marthe Lot Vermeulen (2012) *Enforced Disappearance: Determining State Responsibility Under the International Convention for the Protection of All Persons from Enforced Disappearance*, (Cambridge and Antwerp: Intersentia, 2012); Mina Rauschenbach, Pamela Favre, Alejandro Jimenez, Lisa Ott, Ana Srovin Coralli and Bronwyn Webster, 'Who Are They to Say? Experiences and Recognition of Victimhood of Enforced Disappearance in Colombia and El Salvador,' *Torture Journal* 31(2) (2021): 50–67.

<sup>54</sup> Simon Robins, supra n 6.

<sup>55</sup> Iosif Kovras, supra n 18; S.

<sup>56</sup> Iosif Kovras, supra n 18; John Shute, (2016) 'Bereaved Family Activism in Contexts of Organised Mass Violence' in *Reconceptualising Critical Victimology: Interventions and Possibilities* ed. Dale Spencer and Sandra Walklate (New York: Lexington), 1–26.

<sup>57</sup> Iosif Kovras, supra n 18.

<sup>58</sup> Jay D. Aronson, 'The Strengths and Limitations of South Africa's Search for Apartheid-Era Missing Persons,' *International Journal for Transitional Justice* 5(2) (2011): 262–281.

<sup>59</sup> Alison Brysk, *Speaking Rights to Power: Constructing Political Will* (Oxford: Oxford University Press, 2013).

<sup>60</sup> Lisa Ott and Natacha Hertig, 'Family Associations of Disappeared and Missing Persons: Lessons from Latin America and Beyond,' *Swisspeace Essential*, [https://www.swisspeace.ch/assets/publications/downloads/392e982a5f/EN\\_Essentials\\_Family\\_Associations.pdf](https://www.swisspeace.ch/assets/publications/downloads/392e982a5f/EN_Essentials_Family_Associations.pdf), 8. (accessed 14 July 2023).

<sup>61</sup> Iosif Kovras, supra n 18.

<sup>62</sup> Elisabeth Anstett and Jean-Marc Dreyfus, eds., *Human Remains and Identification: Mass Violence, Genocide and the 'Forensic Turn'* (Manchester: Manchester University Press, 2010); Suana Navarro-García, Pau-Pérez-Sales and Alberto Fernández-Liria, 'Exhumations in Latin America: Current Status and Pending challenges: A Psycho-Social View,' *Peace & Conflict Review* 4(2) (2010): 1–18.

been dead (e.g., Argentina, Bosnia and Herzegovina and Chile) and also some success locating victims alive (e.g., Argentina and El Salvador), little research exists on what makes the search successful and how family members, particularly when they are from disenfranchised and rural communities, can be engaged in a culturally sensitive and meaningful manner<sup>63</sup> or their different experiences and strategies of participation. In the next section, we propose using a framework of procedural justice to help a deeper and context-specific analysis of the participation of the families in search processes.

## CONTEXTS, CASES AND METHODOLOGY

We draw our findings from exploratory research conducted in Colombia and El Salvador between January 2019 and March 2021.<sup>64</sup> Both countries have carried out a series of transitional justice efforts to reckon with their past, including setting up special mechanisms to search for disappeared persons. Given the shared institutional and cultural characteristics and some similarities in armed conflict patterns and lingering violence experienced in both countries, Colombia and El Salvador have essential common elements relevant to this article: (1) ED was and is still being committed to some extent, (2) official search is being undertaken by the state and (3) CSOs, including family associations, are active in seeking to either complement or contest the official search.

The Truth Commission estimated that the Colombian armed conflict led to more than 200,000 victims of ED until 2016.<sup>65</sup> Although disappearances had been present since the beginning of the war, it was not until 2000 that the Colombian state recognized ED as an autonomous crime and began to establish institutional mechanisms to address the phenomenon.<sup>66</sup> In 2007, in response to the demands of relatives and victims' organizations, Congress passed a bill creating a commission to coordinate the efforts of different state institutions that should intervene in the search for missing persons. This normative framework was strengthened years later with the ratification of the International Convention for the Protection of all Persons from Enforced Disappearances (ICPED). In 2017, the peace agreement signed between the Colombian government and the former FARC-EP guerrilla mandated the creation of a new humanitarian search unit ('Unidad de Búsqueda') tasked with searching for persons reported missing as a result of the armed conflict. Despite these efforts, the institutional response to ED remains unsatisfactory in practice, with high levels of impunity and many victims never accounted for.

In El Salvador, approximately 8,000 persons disappeared during the armed conflict (1980–1992), 10 percent of whom are estimated to have been children given away to families affiliated to the military or abroad.<sup>67</sup> The crime of ED is not included in the domestic criminal code as an autonomous crime but as a crime against humanity. As a consequence, the threshold for judicial procedures and convictions is much higher. El Salvador has not ratified the ICPED and, until 2016, an amnesty law prevented criminal investigations regarding crimes (including

<sup>63</sup> Beristain Carlos Martin, Valencia Villa Alejandro, 'Buitrago Ruiz Angela and Cox Vial Angela,' *Metodologías de Investigación, Búsqueda y Atención a las Víctimas*, (Bogotá: Edotiral Temis, 2017). See also ICRC, *Accompanying the Families of Missing Persons: A Practical Handbook*, available at <https://www.icrc.org/en/publication/4110-accompanying-families-missing-persons-practical-handbook> (accessed 14 July 2023).

<sup>64</sup> This research project is funded by the Swiss Network for International Studies; for more information, see <https://www.swisspeace.ch/projects/research-project/connecting-legal-and-psychosocial-aspects-in-the-search-for-victims-of-enforced-disappearance-in-colombia-and-el-salvador> (accessed 14 March 2021).

<sup>65</sup> Hay futuro si hay verdad, Final report of the Truth Commission, June 2022; <https://www.comisiondelaverdad.co/violaciones-de-derechos-humanos-infracciones-al-derecho-internacional-humanitario-y/desaparicion> (accessed 11 January 2023).

<sup>66</sup> Ley 589 de 2000 Ley 589 de 2000 (julio 6) por medio de la cual se tipifica el genocidio, la desaparición forzada, el desplazamiento forzado y la tortura; y se dictan otras disposiciones; Centro Nacional de Memoria Histórica. (2016). *Hasta encontrarlos. El drama de la desaparición forzada en Colombia*. Bogotá: CNMH, pp-41.

<sup>67</sup> Comisión Nacional de Búsqueda de Personas Adultas Desaparecidas en el Contexto del Conflicto Armado (Conabúsqueda) *La Desaparición Forzada en el Contexto del Conflicto Armado del El Salvador. Una primera aproximación al fenómeno*. San Salvador. 2020.



ED) committed during the armed conflict from moving forward. While no major official search activities were undertaken for decades, upon request of the Inter-American Court of Human Rights, in 2006, the government created a Commission to Search for Disappeared Children. In 2017, the government created a complementary Commission to Search for Adult Victims.

### Methodology

In our research, qualitative methods were chosen to allow for flexible, context-sensitive and in-depth analyses of the complex processes<sup>68</sup> as well as a concern for an ethical and open encounter with victims. Using those tools, we clustered our research activities into three main topics: (1) analysis of legal frameworks relevant for the search within publicly available government and organizational information; (2) mapping of the different search activities and actors: victims' groups, family associations, CSOs, actors within the ordinary justice system, official search mechanisms and international actors; and (3) conducting semi-structured interviews with the families of the disappeared, CSO representatives and representatives or former staff members of official search mechanisms. It is the latter that we draw on in this article. In total we conducted nine interviews for the case of Colombia and seven for the case of El Salvador. In Colombia, we interviewed five family members of disappeared persons – two of whom also identified as activists – as well as two activists and two officials who had previously worked for different state institutions involved in the search. In El Salvador, we interviewed six family members of disappeared persons – two of whom also identified as activists – as well as an activist working for a state institution and a staff member of an official search mechanism. Each interview lasted between 1 and 2.5 hours and was transcribed, translated, anonymized and analysed by the bilingual team using a thematic coding method developed by the team. We acknowledge that this is a small number of participants, but we aimed at a diverse set of roles and experiences in line with the explorative character of this study. We do not take a comparative approach to the data, but rather draw on the diversity and richness across the interviews and country cases to begin to pull out important findings and themes for expanding the work on victims' participation and victims as justice stakeholders.

The work was based on a do-no-harm approach. The selection of the sample of interviewees was determined in great part by the existence of previously established relationships of trust with the local project partners DeJusticia (Colombia) and Pro-Búsqueda (El Salvador). Researchers also benefited from the help of gatekeepers to establish contact with persons willing to participate. Consideration for interviewees' vulnerability and safety, as well as ensuring that each interviewee was psychologically ready to share, or to continue sharing, his/her experience outweighed concerns for the representativeness and completeness of the data. Finally, we strived to ensure the absolute anonymity of participants during the whole process and ensured that all respondents filled in an informed consent at the onset of their interview.

### FAMILIES' EXPERIENCES OF INTERACTIONAL AND INFORMATIONAL (IN)JUSTICE

Once they come to the realization that a loved one has disappeared, families experience a 'rupture with their pre-disappearance lives'<sup>69</sup> which turns their lives upside down, transforming their daily routines. Often beginning the search with different levels of information about the context and details of the disappearance, families in both cases also relied on CSOs who may document evidence, helping to keep track of important dates and events. Regardless of their level of knowledge when initiating the search, for many of our interviewees the search itself, and the

<sup>68</sup> Jennifer Mason, *Qualitative Researching* (London, Thousand Oaks, New Delhi: SAGE, 2002), 3.

<sup>69</sup> Jacqueline Adams, *supra* n 52.

information which is uncovered, are fraught with difficulties and pain. This may relate to access to knowledge, systems of support, fear of notifying authorities or lack of resources.

From the outset, the hope of families is often to find the relatives alive. Thus, one victim-activist explains that, knowing who the perpetrators were, she and members of her community searched everywhere, except in the morgue, because they could not accept the possibility that their relative may be deceased. Their demands for information were met with denial and silence:

Those first searches were daily trips to the police station, to the F2 offices, to the DAS office ... Why there? We never went to amphitheatres [morgues] in those first years because the belief was that if we managed to persuade those who had taken them (we knew who had taken them!) they were going to return them alive (...) Every day we insisted and were met with total denial by, well, the State. (SCVA)

The hope to find relatives alive is what often may motivate victims to continue their struggle despite the many obstacles and lack of support they face in the search. In other cases, when they have the certainty that their loved ones are dead, they may still be left with the hope of finding the remains, a hope which keeps them going in this struggle: 'we are not going to stop until we find the remains. That is what encourages us to continue' (4EVA).

Working against such hope, fear may paralyse families and undermine possibilities of participation in the search. Some victims can be aware of the disappearance long before they actually initiate the search. These families may even know where to find their detained relatives but may not engage in searching due to fear of reprisals from those responsible for the crime. They may wait many years before feeling that they can start searching for their loved ones safely, as one activist who did not search for their disappeared told us: 'we felt fear, a lot of fear ... and we couldn't keep looking' (4EVA). Another victim (14EV) stopped searching for his disappeared daughter due to fear of violent reprisals, but was then able to resume the search once the socio-political context had shifted and state-led search measures were even put in place:

I couldn't go out looking for her because it was practically giving myself up to be killed. So I waited a long time, until the peace accords were signed. When the peace accords were signed, I began to look for human rights commissions outside the city, wherever they were formed, because at that time many commissions were formed to look for people.

As implied in this section, the experiences of hope and fear which shape the initiation and progress of the search are not only characteristics of each individual family and their search context analysed in this study. These experiences may also be heightened or reduced through interactions with other actors, both state and non-state, shaping perceptions of interactional justice for families of the disappeared.

We found that across the interviews in both cases, frustrations in encounters with state representatives, official search mechanisms or other government-led institutions were commonly expressed:

'The process re-victimizes people ... [it is] the official receiving complaints who is ... the most insensitive person ...' (3CVA);

I was summoned to the Prosecutor's Office and I was not treated well by the investigating person (...). They thought that I was searching in order to receive money, but it was not [because of that] ... no one knows the suffering. (1CV)

Experiences of lack of support and of empathy occurred not only at the point of initiating the search or trying to access information but also in the identification of remains, a particularly difficult process with a high potential for the retraumatization of victims.<sup>70</sup> As 1CV's experience illustrates, the very important need for victims to see their relatives' remains, to have them returned and to give them a proper burial, is often constrained by lack of resources and insensitive treatment:

I asked the prosecutor 'Are we being taken there [to the burial site]?' and he said 'What for?! Do you have money to go? That's not going to be paid by the government. You can go if you want to, but you'll be on your own.' (...) He said 'if you want to take a little trip, then pay your own trip.'

Another victim (2CV) explains the struggle to prove to prosecutorial authorities her family connection to the remains of her disappeared son:

So I said (...) 'This is my boy.' Then, they said, 'Well, what proof do you have of that?' I said, 'He was missing a little finger.' They had just missed that, that little detail ... And yes, he lacked the little finger, he was my son.

These quotes illustrate how victims may frequently experience a lack of consideration and sensitivity from the officials with whom they interact. Such dismissive and unsupportive treatment in the face of the overwhelming and bureaucratic procedures required from victims in the search processes in our study constitutes another source of suffering which adds to the distress and uncertainty caused by the ED itself.

This distress can be further exacerbated by difficulties related to the quality and provision of information. When our interviewees did receive information, this often led to more unanswered questions and increased ambiguity about what had happened and what the next steps in the search should be:

I have a lot of questions I want answers to ... [I was told] 22 December 2007 was the date. Was he killed on that date? ... Where did they find him? I mean, there's no one to answer those questions. Nobody to say, for instance, 'we found him in the river' or 'we found him in a park.' And why? Why did they do that to him? Well, I don't know why they don't know what happened. Yes, I have questions. And who answers those questions? Nobody? (2CV)

This quote suggests the limits to information and the frustrations of the search. More information can lead to more confusion; more data can illustrate the limits of what can ever be known. A question which may never be answered is the 'why?' and for our interviewees this led to a new sense of loss, of having to reconcile with the incompleteness of the search even after significant time, effort and resources have been mobilized. This emotional journey runs parallel to, and stands in tension with, the technical and fact-finding aspects of the search. Missing death certificates, the complex identification of remains and autopsy reports punctuated the narratives of the interviewees and rendered their descriptions of vulnerability, loss and confusion even more stark:

<sup>70</sup> Margriet Blaauw and Virpi Lähteenmäki, "Denial and Silence" or "Acknowledgment and Disclosure"; *IRRC* 84(848) (2002): 767–778.

it's really painful, not even the police, not even the prosecutor's office gave the family an answer (...) and so it's painful for us because at this moment we are still going on but we have no certainty. (4EVA)

Lack of information may often intersect with insensitive attitudes:

I was asking the investigator how his death happened. 'Don't ask! Don't ask!' It's just that I have a right to know, we're his children, his wife. 'Don't ask; we don't know!' Then why did they kill him? For the sake of killing him? Or is he dead because he wanted to be dead? 'We don't know, you have to wait.' (1CV)

Clearly the search process can be experienced as a source of distress which adds to the trauma of ED. In line with previous observations,<sup>71</sup> these findings substantiate the contention that process-related stressors constitute a significant dimension of psycho-social vulnerability and revictimization to account for when thinking of families' participation and needs in the search. Victims can suffer significant psychosocial impact during the search for information, while providing authorities with testimonies, or when giving evidence for identification purposes during investigations or exhumations. However, these impacts can be avoided or reduced through careful accompaniment measures. As highlighted by 16OC, many people working in search mechanisms are likely to be committed to a humane and successful search and are themselves often frustrated by the difficulties they are faced with and the lack of resources they have. Our interviewees nevertheless mostly described the search process in negative, retraumatizing and dehumanizing ways.

Moreover, we observe in our study that the uncertainty and distress is likely to be increased by the lack of coordination and resources in the organizational structure of the state institutions which victims have to turn to in the process. Information and treatment concerns may thus be coupled with challenges related to bureaucratic procedures and scarce human and structural resources allocated to search processes, often due to a lack of political will:

Because there is a lack of will and sensitivity. In other words, a civil servant is not hurting, he is not hurting by the drama experienced by a family. (...) They work from Monday to Friday, and by 5 pm there is no one in the office anymore, see? So it's ... The lack of ... For me, of sensitivity, right? One is responsibility, and the other is sensitivity, yes? So, on weekends there are always many cases (always, historically!) but there is no official on duty. So now, with modern technologies they are limited to: 'Send me a WhatsApp.' But if you go in and dig in then they say you're obstructing ... (SCVA)

The investigation process' bureaucratic functioning may also be another way of making the person disappear:

the disappeared get lost in a bureaucratized institutional structure. It's hard to understand how a case, an investigation where 14 people die, is closed and then the file gets lost inside an institution, lost on a desk. [It's also hard to understand] how if the X or the S or the accent is misplaced in a database entry, the case will not appear because it is badly indexed. You wouldn't believe also that in a place like Buenaventura, in our local unit, colleagues from the Technical Investigation Team or The Legal Medicine Institute ... have no access to the internet. (10CO)

<sup>71</sup> Maleeka Salih and Gameela Samarasinghe, 'Families of the Missing in Sri Lanka: Psychosocial Considerations in Transitional Justice Mechanisms,' *International Review of the Red Cross* 99(2) (2017): 497–517.

Resources and political will are important. They may be key to obtaining successful outcomes in terms of locating and exhuming remains, particularly because these entail lengthy and complicated procedures requiring the coordinated efforts of multiple professional search actors, as 3CVA explains:

For us to extract a body we need at least nine officers, right? So we have to schedule it. And even if the prosecutor wants to conduct the extraction, he can't do it. He has to wait until everything is perfectly aligned. Let's say we know where the body is. Then, we take it to a digitalized point with a geographer and wait. Wait for what? Wait for there to be gasoline, for there to be personnel, for there to be a geographer, for there to be a topographer, for there to be an anthropologist, for there to be a forensic expert, for there to be a [technical investigation expert], for there to be an investigator and for there to be a graphologist. It takes nine people plus the prosecutor.

If this process is carried out in an appropriate manner and with the necessary resources, an important sense of truth and acknowledgement may begin to emerge for victims:

'We need to dig up the dead! That is what we need! We don't need any more awareness campaigns, or documentaries or maricadas [stupid things] that are useless' (3CVA).

As this quote illustrates, the most frequently expressed concern by the interviewees in our study is a need to reduce the uncertainty in which they feel trapped.

In the face of a process which is often experienced as re-victimizing and traumatic, and where often the only realistic hope they have of justice is to (maybe) have their loved one's remains located and returned, victims in our study express the need for sustained support, psychological and legal (among others). The Colombian victim quoted above, who experienced insensitive treatment at the Prosecutor's Office, explains that:

There needs to be support, but support that is available from the beginning to the end [of the search process] and even after, if the process continues. Because the journey does not end just like that. The pain does not go away just like that. [ED] is something very frustrating and deeply painful. That much I can tell you. I do not know what else to say. I just want them to bring him back to me. That's it. I don't know what to do, I don't know where else to go. I just want to say 'Lord, please, bring him back to me.'

Echoing the point made above about uncertainty, she adds that such an empathetic accompaniment should include truth, even if it is painful: 'it hurts all of us to be told the truth to our face, but it's better to know what happened, how things happened' (1CV).

Thus, the initial, almost intuitive (mostly frustrated) attempts to know what happened as well as the obstacles they face in turning for help to state actors led many of our interviewees to seek the support and accompaniment of CSOs. As we discuss further, families' participation in the search can be transformative and sometimes fluid, taking on multifarious meanings and forms in the face of the many challenges, and also momentums, arising in this process. Families may benefit from different resources and opportunities to improve their participation possibilities, turning to CSOs, or organizing into collectives with other families engaged in the search for their loved ones, as also observed in other contexts.<sup>72</sup>

<sup>72</sup> García, Pérez-Sales and Fernández-Liria, *supra* n 62; John Shute, *supra* n 56.

## RESOURCES AND OPPORTUNITIES FOR FAMILIES' PARTICIPATION IN THE SEARCH PROCESS

During the course of initial attempts to find information, victims can become aware of the existence of CSOs, activists or specialized organizations which could help them in their pursuit. This assistance is generally described by participants in our study as a key support in victims' trajectories, in navigating the challenges, uncertainties and dilemmas they face from the beginning in their struggle for the search and throughout the different stages of its process. 15 EV, in her quest for information, explains having reached out for support from various sources, whether an association of relatives of disappeared persons (Comadres), the Red Cross or media channels:

I arrived at the Comadres Association, where [they do] human rights [work]. I then started looking for my girls at the Red Cross, in the newspaper, on television. People asked me 'why have you been looking for them for so long? They must be better off with another family, or maybe they have died. Why have you been looking for them for so long if you don't even need them?' That was what people said (...), but I will always look for my children.

In certain cases, the search process is dealt with mainly from the onset by an organization. Here the victim can constitute a key provider of information to initiate the search. Moreover, as in the case of 13 EV, years of inaction and denial from state authorities led them to engage alongside CSOs in their search:

I was in contact with Pro-Búsqueda and one of the founders of the association came to meet me. She came to look for me because they already had my contact information from the truth commission. We started to talk. I gave her all the information I had, and we started to get into the subject, and we started to work on the search.

Victims may rely heavily on these actors, as they find themselves helpless in the face of a deficient and uncooperative state in dealing with the many administrative hurdles which they encounter. Like 1CV, they may express feeling lost and in absolute uncertainty about everything in this process, needing help throughout various stages and the decision-making involved. 1CV explains this trajectory of uncertainty and unanswered questions in navigating the administrative maze:

[I am] alone and you don't even know where to go. Because the truth is, I wouldn't know where to go, I know what I'm telling you, that he's dead, but we don't know anything else, I don't know where to go, I don't know what paperwork I need to do.

14 EV, a victim from El Salvador, considering that the 'state has not given them [victims] a chance to be able to look for their family,' contrasts the state's failings with the valuable support of CSOs. Yet, he explains that not everyone has access to a CSO's help (here Pro-Búsqueda) and that they are left with no support:

they don't have a connection, guidance, something that leads them to the search so there are people, quite a few people, who have not reported because they don't have that opportunity.

As these findings from our study suggest, CSOs can be valuable resources for family participation in the search. They can steer victims in the right direction when they feel lost, provide them with the relevant information to know where to go and how to proceed in an often bureaucratic and complex process, as well as offering sympathy and emotional support.

Importantly, many of our interviewees described their experience of participation – whether planned, unplanned, the result of a trigger event or encounter or a long-term building of contacts and confidence – as a way of connecting their individual struggle to that of the collective:

I have this experience that I started by myself (...) I went from one place to the other, and I was never sure who would tell me the truth. It was up to the families. The families got together and took the initiative to start looking for them. (14 EV)

14 EV's search journey evolved into a collective one and even led to activism. By the time of the interview around 30 years later, 14 EV had become a member of the board of directors of the family association who helped search for her daughter.

As also shown in other ED contexts,<sup>73</sup> collective mobilizations are often born from women's struggles, a mobilization guided by a mix of emotions and a context of uncertainty, as this activist (9CA) reflects on:

those who are looking are mostly the women ...They are the mothers, they are the sisters, they are the cousins. What I have realized is that [the search] starts from deep love for the missing person ... It is the constant uncertainty of not knowing what happened that prompts you to despair and hope all in the same day. There is a hope that he will suddenly appear alive, but there is the knowing that it has been too long and that you will most likely find him dead. The urge of knowing is what drives people to mobilize.

9CA went on to highlight the fact that this collective struggle is a women's one and can constitute a valuable coping resource for validating their demands for truth, for maintaining their resolve in the mobilization and strengthening their social cohesion, despite the many challenges faced and their lack of experience as activists. This evolution from an individual to a collective struggle has been found in other contexts to be key to a sustained mobilization,<sup>74</sup> as SCVA's experience shows us in our study:

We were born as women seekers (...) in the face of an absence of response, in the face of loneliness. We had to emerge because we were alone. What was there before? (...) There were a handful of students, that was it. It was a solitary struggle. The relatives, each one in their own pain, came together and decided to search. Above all, we demanded they were returned to us alive. (SCVA)

This recounted experience is particularly telling in how this collective mobilization turned into a formally organized structure over time, and this collective struggle eventually led to the establishment of a national victims CSO in Colombia, the Association of Relatives of the Detained – Disappeared (ASFADDES).<sup>75</sup> As she recounts, the recognition of shared experiences of suffering, as victims of ED, and a sense of solidarity in wanting to know about the fate of their loved ones guided and bolstered their collective mobilization:

<sup>73</sup> Fernando Bosco, 'The Madres de Plaza de Mayo and Three Decades of Human Rights' Activism: Embeddedness, Emotions, and Social Movements', *Annals of the Association of American Geographers* 96(2) (2006): 342–365.

<sup>74</sup> Veena Das and Arthur Kleinman, 'Introduction,' in *Remaking a World: Violence, Social Suffering, and Recovery*, ed. Arthur Kleinman, Mamphela Ramphele, Veena Das, Margaret Lock and Pamela Reynolds (Berkeley: University of California Press, 2000), 30.

<sup>75</sup> The collective of relatives ASFADDES has taken on an important role in Colombia since the 1980s in seeking for and sharing information, documenting cases of ED and gathering testimonies of victims, investigating various sources, including the media, helping victims to identify their relatives' exhumed remains.

The street marches, the messages of the chants, of course, without being experts, right? I believe that the search for the disappeared was born out of passion, that is, we were neither technical nor professional, we were not lawyers, we were nothing ... What were we? Relatives, you see? What did we have? Passion. (SCVA)

This shared solidarity helped galvanize a strong identification as ED relatives and empowered them as a cohesive collective mobilized in the same struggle for the truth as justice stakeholders. This collective mobilization bolstered their struggle and brought a new sense of agency, and a new meaning to participation:<sup>76</sup> they did not wait passively for information from state institutions anymore, but began to search themselves and developed various strategies, which were refined through practice and experiences, to pursue the search and struggle for justice and truth:

We took our little notebook and went to the regions to gather information, to look for the relatives from unions, from community action boards, from civic movements, from political organizations. We wanted to gather information to contact the relatives and talk to them about the importance of filing complaints, but also about the importance of knowing what was happening and documenting the case. (SCVA)

Families also benefited from knowledge-sharing within transnational networks and alliances with various international and regional civil society actors, learning from the experience of the Latin American Federation of Associations for Relatives of the Detained-Disappeared (FEDEFAM), as well as specialized actors such as the Argentine Forensic Anthropology Team:

with the arrival of the Argentine team in 1991, we strengthened those capacities, and we did something that had not been done in Colombia either, which was to bring together academia for the first time, the officials and the family members. (SCVA)

Victims themselves can thus become, through their participation, activists, part of civil society with a determined focus on ensuring that information is passed to the relevant national and international CSOs. This kind of engagement can be more or less planned or organized. Interviewees told us about chance encounters, as well as persistent meetings and pushing at doors which would lay the groundwork for more coordinated participation. With very basic means at the onset of their activities, as a collective, families can achieve a lot and refine their participation strategies. Yet not all victims may participate in a sustained manner and become activists. Such participation is likely to depend on various factors, including its meaning for victims and its implications for their daily lives.

SCVA explains that, in contrast to her trajectory of activism (see above), not all victims may have the same agency or have the same awareness of the possibility to make claims as rights-bearing citizens:

I think that not all women decide ... yes? I think there are families that don't do that (...) They are afraid! They are afraid because, culturally, we are afraid of death, yes, and that makes ... The forced disappearance paralyses, it is an effect.

She explains further that feelings of guilt may also contribute to demobilizing some victims:

[ED] produces a sense of guilt in all members of the family unity. We always think we are to blame: 'Why didn't I prevent it? Why wasn't I there when they arrived?'

<sup>76</sup> See Simon Robins, *supra* n 6, for similar observations made in the context of Nepal.



The struggle for truth and justice may also take a toll on victims who take an active lead in the search process. Faced with no support from the state, they are often left with the burden of finding information and providing it to other search actors, as well as fighting for changes of the legal framework. These struggles are hard to sustain physically, which may lead to demobilizing some victims:

It's like a fight against a wall. Time and again you are hitting the same wall. It ends up wearing out anyone (...) It is the lack of an effective response from the state that generates this type of damage in the people who work in this field.

Echoing previous observations from other contexts,<sup>77</sup> others may take on the path of activism as a way of coping with their distress and mourning, as 4CVA explains her own trajectory:

all the exhumations I did, the testimonies I collected, also helped me to lift my spirits and to collaborate and help people as I do today (...) It has been a process of constant struggle, a process of pain that has given me strength.

Our interviewees expressed many frustrations in their experiences of participating in the search, leaving them oscillating between powerlessness and a sense that their mission is not accomplished, such as suggested by 3CVA:

frustration is always there ... 'Fuck! We found him, but he's dead.' (...) So a constant frustration of mine is that I don't have enough to give to that person, you know what I mean? (...) The most appropriate feeling is that of defeat. For me there has never been satisfaction in anything I do, no. All are defeats, defeat for having left my people alone, defeat for having allowed what happened to them to happen to them, defeat because nobody did anything to help others, because it happened. (3CVA)

The victims' participation trajectory is not a single moment in time from which the search stretches out unhindered. Many of our interviewees described beginning a search, halting a search or moments of progress frustrated by later moments of blockage. We also observe in our study that encounters with different actors may also be very important in determining how the search unfolds and is experienced, how challenges are experienced and understood, as well as which opportunities and resources are available.

## CONCLUSIONS

The right and usefulness of participation of families in the search process is not disputed, but the concrete aspects of what participation entails remain understudied. Despite the specificities of each country's context and of individual cases, the findings of our exploratory study in Colombia and El Salvador give insights on the current question of what meaningful participation of next of kin in the search for disappeared persons could look like. Our interviewees expressed that both informational and interactional justice concerns were not met in their respective search processes, meaning that their participation was perceived as attached to an experience of injustice.

Our research highlights the theoretical and practical importance of analysing ED from the perspective of the search – an issue generally overshadowed by dominant interest in criminal investigations. Although the two processes are related, understanding the victims' experiences

<sup>77</sup> John Shute, *supra* n 56.

concerning each of them is fundamental for both objectives to be more effective, to be focused on the victims' needs and not to generate re-victimizing consequences. Although international standards establish that the state should lead the search processes, our study shows that the victims as justice stakeholders, and often in collaboration with CSOs, have played a fundamental role in initiating and to a certain degree conducting the searches.

Regardless of the search outcome, we found several factors central to how victims perceive the degree of fairness they are treated with on their journey. The first of these factors of procedural justice is how search officials interact with victims. In principle, the burden of initiating and conducting the search should be on the state. Therefore, it would be expected that those working in investigative units and search mechanisms would be prepared to deploy the technical tasks necessary to activate the search. Simultaneously, they should have 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. However, this normative ideal was not what we found in our study. On the contrary, we found repeated testimonies of a lack of empathy and support on the part of the authorities in charge and in contact with the families.

Access to and flow of information is the second factor of procedural justice for those who embark on search processes. We found that victims begin their quest with different levels of information. For some, it was the knowledge that the person went missing, but with no idea in what context or why. Some are told by witnesses that their loved one was disappeared; others hear rumours and assumptions which cannot be verified out of fear of approaching a lawyer or state official. One of the search's main objectives is access to timely and quality information that contributes to ending victims' anguish and uncertainty. Finding the truth (about the circumstances of the disappearance, the whereabouts of the disappeared person, the location and identity of mortal remains whenever the person has died), as well as an acknowledgement, in the sense of having their suffering validated publicly, were more likely to be highlighted in our study as effective forms of justice sought by victims in the search process than judicial responses.

There are complex emotional experiences in this journey made of pain, distress, defeat, revictimization, hope, outrage, mourning, loss and uncertainty. Therefore, a third relevant element relates to how authorities and other actors respond to the victims' need to be accompanied in their process. Our findings support the importance of managing expectations about the assumed benefits and expected outcomes of procedures, as well as understanding the contextually informed justice expectations which victims have.

The way victims participate in the search is directly related to how these encounters with different actors take place, whether or not they access information and how they interact with other victims and CSOs. The search trajectories recounted in our study reflect most often a non-linear journey of rocky paths, made of beginnings and abrupt breaks, changes of direction or strategies, new resources and opportunities, events that bring expectations followed by disappointments or which led to more uncertainties. This nature and experience of the process is shaped by the many challenges faced by victims and the opportunities and resources inherent to victims or external to them which arise, and the timing of the search process's initiation. Whether they engage in the search and sustain this participation may depend on what the process means for them and what they expect from it, on the solidarities they experience and their encounters and on whether they feel their quest finds some space for acknowledgement.

We thus suggest that actors involved in the design of search mechanisms and search actors, including any authority in contact with the victims in the different stages, need to put 'themselves into the shoes'<sup>78</sup> of the families and elaborate a work approach which includes communication

<sup>78</sup> Elke Evrard, Gretel Bonifazi and Tine Destrooper, *supra* n 28, p. 429.

and liaison that respond from the outset to the potential that the participation of next of kin brings for the search, as well as to their emotional, legal and political needs. This calls for an interdisciplinary approach, the setting up of sufficient and well-trained liaison officers who can regularly and in a sensitive way update the families that wish this on the respective steps taken and the outcomes achieved in their case.

While our study was exploratory in nature, and draws on a relatively small database of interviews, we can identify important ways forward for transitional justice research in this area. Our study reinforces the importance of victim participation in transitional justice, expanding it to the under-studied area of ED and the participation of families of the disappeared. Importantly, we took a multidisciplinary approach, drawing on but going beyond a concern with legal frameworks and procedures to try and understand the procedural justice experienced by families as victims and justice stakeholders. Our study indicates that this is a fruitful avenue for future research, particularly multidisciplinary studies which can capture a more holistic and complex set of experiences of victim participation.