

Transitional Justice and Enforced
Disappearance: The Right to Truth and the
obligation to search for disappeared persons.
The Colombian case.

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List of abbreviations

AUC	<i>Autodefensas Unidas de Colombia.</i> The United Self-Defense Forces of Colombia
CAH	Crimes against Humanity
CHM	Centre of Historical Memory
CUVI	<i>Centro único virtual de identificación</i> Virtual Identificación Center
ECHR	The European Court of Human Rights
ELN	<i>Ejército de Liberación Nacional</i> The National Liberation Army
FARC	<i>Fuerzas Armadas Revolucionarias de Colombia</i> The Armed Revolutionary Forces of Colombia
HIJOS	<i>Hijos por la Identidad y la Justicia contra el Olvido y el Silencio</i> Sons and Daughters for Identity and Justice Against Forgetting and Silence
HR	Human Rights
IACHR	Inter-American Court of Human Rights
ICED	International Convention for the Protection of all Persons from Enforced Disappearances
ICMP	International Commission on Missing Persons
ICRC	International Committee of the Red Cross
ICTJ	International Center for Transitional Justice
IHL	International Humanitarian Law
JPU	<i>Unidad nacional de Fiscalías para la Justicia y la paz.</i> National Unit for Justice and Peace of the State Prosecutor's Office
NIAC	Non-international armed conflict
NSP	National Search Plan
OPPIC	Office of the Prosecutor of the International Criminal Court
SATRC	South Africa Truth and Reconciliation Commission
TJ	Transitional Justice
WC	War Crimes
WGEID	Working Group on Enforced and Involuntary Disappearances
UN	United Nations

Table of contents

1	INTRODUCTION	1
1.1	Justification and Research Question.....	1
1.2	Methodology.....	3
1.3	Clarification of terms.....	6
1.4	Structure.....	8
2	COLOMBIA: OUTSIDE OF THE STANDARD TRANSITIONAL JUSTICE CASE.....	9
2.1	The expansion of the Transitional justice field	10
2.2	Colombia as a pre-transition state	12
2.3	Transitional Justice and Enforced Disappearances a Shared History.....	15
2.4	Enforced Disappearances in Colombia.....	17
3	TRUTH AND TRANSITIONAL JUSTICE.....	20
3.1	Types of Truth in Transitional Justice.....	20
3.2	Truth Seeking Initiatives and Challenges	22
3.3	The Meaning of Truth.....	23
4	THE RIGHT TO TRUTH REGARDING ENFORCED DISAPPEARANCES	30
4.1	International Humanitarian Law.....	30
4.2	International Human Rights Law	33

4.2.1	Antecedents	33
4.2.2	The International Convention for the Protection of all Persons from Enforced Disappearances	34
4.2.3	The WGEID General Comment on the Right to Truth and the CED Guidelines	36
4.3	Regional Human Rights Systems.	37
4.3.1	Inter-American System	37
4.3.2	European System.....	39
5	ADDRESSING THE RIGHT TO TRUTH AND THE LOCATION OF THE DISAPPEARED.....	43
5.1	Institutions	43
5.1.1	Commission for the Search of Disappeared Persons	43
5.1.2	National Search Plan	45
5.1.3	Judicial Institutions	47
5.1.4	Virtual Identification Center	48
5.1.5	Law1408/2010: Paying Homage to Enforced Disappearance’ Victims	49
5.2	Transitional Justice Mechanisms and Right to Truth	50
5.2.1	Truth achieved through criminal investigation	52
5.2.2	Main obstacles to ensuring the right to truth in the investigation	53
5.2.3	The Search for the disappeared and obstacles.....	59
5.2.4	The Historical Truth.....	67
5.3	Transitional Justice Initiatives 2005-2013.....	69
6	CONCLUSION	71
	REFERENCES.....	74
	APPENDIXES	94

1.	Table 1: WGEID. State’s obligations toward the right to truth in relation to enforced disappearances.	94
2.	Table 2. CED Guidelines. State obligations toward ICED Article 24	95
3.	Interview Guide for relatives of enforced disappearances	96
4.	Interview Guide for associations of families/civil society members and State institutions.	99
5.	Informal meetings and Overview of Informants	102

1 Introduction

1.1 Justification and Research Question

Enforced disappearance has been a widespread practice that evolved into a systematic and large-scale occurrence during the 1970s in Latin America, particularly in Argentina and Chile. This practice is also common in such countries as Iraq, Sri Lanka, Nepal, Indonesia, Colombia and the former Yugoslavia, among others.¹ The enforced disappearance phenomenon and the subsequent victims' claims to establish the truth about the disappeared persons' fate and whereabouts and the circumstances surrounding the crime have a central role in societies emerging from conflict, political violence or authoritarianism.²

Studying how enforced disappearance legacies are addressed in post-authoritarian societies and the truth demands by relatives has contributed to the emergence and development of the Transitional Justice (TJ) academic field.³ Furthermore, clarifying the fate and locating the disappeared persons in post-authoritarian and post-conflict settings have become important elements in the "truth recovery" concept, one of the TJ aims.⁴ Hence, enforced disappearances and TJ share a common history; both constitute complementary topics for academic research.

Traditionally, the term "TJ" is understood as the range of processes designed and implemented after authoritarian rule, conflict or political violence, to address past human rights (HR) violations. Nevertheless, TJ scholarship has rapidly expanded according to new polit-

¹ Rehman (2009), Scovazzi, Citroni (2007), Novak (2002)

² Chile "National Commission on Truth and Reconciliation"(1993); Argentina CONADEP "the National Commission on the Disappeared"(1984); Peru's Truth and Reconciliation Commissions(2003) Vol. IX. Guatemala, the Historical Clarification Commission, Recommendations and Conclusions chapter III (1999); South African Truth and Reconciliation Commission Vol. V chapters 5,8 (1998)

³ Robins (2011:80), ICTJ <http://ictj.org/news/justice-disappeared-heart-transitional-justice>

⁴ McEvoy, Conway (2004), Hayner (2010), Robins (2011).

ical context requirements that cover situations that are not, strictly speaking, transitional.⁵ For instance, TJ mechanisms have been applied to deal with HR violations amidst armed conflicts in such countries as Afghanistan, Uganda and Colombia.

In Colombia, despite an ongoing internal armed conflict (NIAC) involving state forces, guerrillas, paramilitaries and drug lords, the government in 2005 adopted a set of TJ mechanisms to deal with crimes committed by one of the parties to the conflict, the paramilitaries, a pro-establishment group.⁶ Hence, TJ scholarship describes this as an “unusual case of TJ”⁷ but has decided to study it nevertheless to see how TJ mechanisms, such as conditioned amnesties, truth, justice and reparation, are used in the peace-building process before the conflict has ended.⁸

Among the many devastating consequences of Colombia’s NIAC has been thousands of enforced disappearances. The crime persists in the country⁹ and is still committed by all parties to the conflict following different patterns and purposes. According to official data, by September 30, 2012, 75,345 persons in the country were missing, of whom 18,527 were enforced disappearance victims.¹⁰

This study will examine the Colombian efforts to clarify the truth and to search for the disappeared while the conflict continues, focusing on how the TJ mechanisms created since 2005 respond to this particular group of victims, and emphasizing the victims’ experience and the state’s accountability. The implementation of the TJ mechanisms defined in Law 975/2005 exposed how enforced disappearances “were systematically committed by para-

⁵ Gomez(2010)

⁶ Garcia-Godos, O.Lid (2010).

⁷ *Ibid.*

⁸ Skaar *et.al*(2012).

⁹ E/CN.4/2006/56/Add.1, A/HRC/19/58/Add4/2012, OHCHR A/HRC/WG.6/16/COL/2/2013.

¹⁰ A/HRC/22/17/Add.3/2013.

military groups, and the widespread practice of enforced disappearance in Colombia in recent years.”¹¹ It also revealed the locations of thousands of clandestine burials.

Altogether, this research seeks to contribute to TJ theory and practice, noting the tensions that arise in a society that undergoes a TJ process, mainly between the state practice, the subjective meaning of truth given by TJ social actors, and State’ international human and humanitarian obligations regarding the right to the truth. This thesis also reflects the views of relatives of disappeared persons, civil society organizations, and authorities toward implementing TJ truth mechanisms in Colombia.

In this context, this study will answer the following question:

- To what extent do the Colombian TJ mechanisms ensure the right to truth about the fate and whereabouts of disappeared persons and the obligation to locate them?

1.2 Methodology

In this study, an interdisciplinary method¹² was applied to answer the different components of the research question. Doctrinal research was used to analyze the laws that establish the international legal framework that governs the right to truth and the obligation to locate the disappeared. I collected and analyzed a body of treaties and court decisions (legal primary sources), and considered account secondary sources such as journal articles, and legal doctrines.

¹¹ A/HRC/7/39/2008

¹² McConville, Hon (2007).

Qualitative methods were also used, which involved the study, through direct methods (interviews) and secondary sources (non-legal documents), from the institutions, mechanisms and actors involved (victims, civil society and authorities), to understand how TJ mechanisms operate and the effects that they have on the realization of the victims' right to truth.

I conducted semi-structured interviews with relatives of disappeared persons, one victim's organization delegate to the Search Commission, members of non-governmental organizations (NGOs), and authorities. Additionally, I collected and analyzed reports issued by international and national NGOs and Colombian public institutions.

In qualitative research, the credibility criterion can be obtained from source triangulation.¹³ Bottinelli explains that this criterion in qualitative research "is achieved by triangulation of sources and research techniques (...). Recapturing the senses and meanings that social actors themselves give to their experience (...)." ¹⁴ Therefore, considering the stakeholders' voices in this study facilitates building a comprehensive view of the problem and looking for relationships between different documents with the experiences of those who have lived close to the issue of enforced disappearances in Colombia. The use of background information and documents has improved the validity of the informants' statements.

I gathered the sample by contacting persons with qualities or qualifications that are strategic for the research question. Representatives of victims' organizations and members of NGOs working on enforced disappearance cases were eager to participate in the study. However, one limitation of this study is that, although I had an informant who provided me with the names of key state authorities to be interviewed, and I used this name reference when contacting state authorities, they were difficult to reach with one exception. The Ombudsman, the Colombian Forensic Institute, the Prosecutor Office of the Enforced Disappearance Unit, and the Inspector General Office did not answer my emails

¹³ Webley (2010)

¹⁴ Bottinelli (2003:154)

I also personally contacted prosecutors of the Justice and Peace Unit (JPU). However, some of them highlighted that all of the interviews should be authorized by the JPU General Director. I found this challenging, but after three weeks I finally got permission to conduct the interviews but with the further specific requirement that all interviews had to be conducted in his office (*jefatura*). Hence, the JPU Prosecutor and a member of the Virtual Identification Center (CUVI) and Exhumation Sub-Unit¹⁵ had to leave their offices to attend the interviews, one of which is located far from the place of the interview.

I worked with two interview guides, one for relatives of disappeared persons and the other for organizations and authorities. During the interviews, the questions were adjusted and followed up with further questions according to the answers given by the respondents. In presenting the answers of the informants, I refer to them according to the institution/organization they represent. (See Appendix 5)

Although I conducted only two interviews with relatives of enforced disappeared persons, these allow me to understand the route followed by them in their search for truth and for their loved ones, to learn how research participants understand the TJ mechanism and institution, and to gain an insight into their experiences.¹⁶ I will briefly explain the main facts of their cases.

In *Pueblo Bello*, in 1990, 43 men were taken by paramilitaries; the whereabouts of 37 of these victims remain unknown. The paramilitary group took “43 men who were tied up, gagged and obliged to get into the two trucks.”¹⁷ They took a road through a military operation zone heavily controlled by the State Army.¹⁸ In this case, the inter-American Court

¹⁵ The State Prosecutor’s Resolution 0-3891/2006 established the Exhumation Sub-Unit, later derogated by Resolution 0-2889/2007, and established the Sub-Unit of Search for the Disappeared. Nevertheless, it is still recognized among prosecutors and civil society as the Exhumation Unit.

¹⁶ Webley (2010).

¹⁷ IACHR, *Pueblo Bello v. Colombia*.(2006)para:95

¹⁸ *Ibid.*,

ordered the Colombian state to, among others issues, investigate the facts, search for and locate the disappeared.¹⁹ I interviewed the son of one of the 37 victims, who, with other relatives, is part of a national association of families of disappeared persons.

In *Vereda el Faro*²⁰, in 2001, 9 peasants, including 7 and 9 year-old children, were disappeared by paramilitaries. The families investigated the case and searched for their disappeared relatives. In 2007, without any institutional support, they located the clandestine burial and immediately reported this to the JPU. The authorities carried out the exhumation in 2010, and, in 2012, returned the remains to the families. I interviewed a victim, whose brother, sister-in-law and 7 and 9 year-old nephews were among the murdered victims. He is a young local leader and lives in the rural area.

1.3 Clarification of terms

The scope of this study is enforced disappearance. This category is narrower in scope than “missing persons,” who are “those whose families are without news of them, as well as those who are reported, on the basis of reliable information, as unaccounted for as a result of an international or non-international armed conflict.”²¹

This work, then, departs from enforced disappearance, which is defined in Article 2 of the International Convention for the Protection of all Persons from Enforced Disappearances (ICED), as “(...) the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which

¹⁹ *Ibid.*

²⁰ I changed the name of the village to protect the anonymity of the respondent.

²¹ UN A/HRC/16/70

places such a person outside the protection of the law.” Colombia has ratified this Convention.

Enforced disappearance constitutes a multiple HR violation,²² affecting the victim’s right to life, the prohibition of torture and cruel, inhuman and degrading treatment, the right to liberty and security of the person, and the right to a fair trial. This heinous practice affects the right of families of those who are taken to be free from torture.

Some family members spend decades searching for their loved ones despite uncertainty about the location and the fate of the disappeared, prolonging the family’s anguish, and depriving them of the opportunity to mourn,²³ which may lead to a complicated grief or ambiguous loss.²⁴

International law has partly assisted families of the disappeared to achieve some form of closure, first through the IHL and then the HR law. As McEvoy & Conway noted, international law has gone beyond the traditional retributive focus on prosecution and punishment of the victimizer and “instead centers on broader concerns of societal and personal healing.”²⁵

The article 93 of the Colombian Constitution states that international HR treaties and conventions ratified by the Congress prevail internally over Colombian domestic law.²⁶ Colombia has ratified the ten core international HR treaties, including ICED in 2012. However, Colombia has not accepted the competence of the Committee on Enforced Disappearances. The incorporation of international law, mainly HR, IHL and criminal law, into domestic law is part of a solid jurisprudence at least at the level of high courts. The Constitutional Court’ and the Supreme Court of Justice’ rulings have been followed international

²² IACHR, *Velasquez v. Honduras*.

²³ Rehman (2011) Novak (2009)

²⁴ Robins (2011), McEvoy, Conway (2004).

²⁵ McEvoy, Conway (2004:539).

²⁶ http://www.colombiaun.org/English/Model%20UN/human_rights.html.

HR principles and standards, such as international treaties, principles and decisions by international supervisory bodies.²⁷

1.4 Structure

Following this introduction, chapter 2 aims to discuss the expansion of TJ discourse to situations that are not strict sense transitional such as the Colombian case. Also, it will briefly explain the relationship between enforced disappearance and TJ, and the practice of enforced disappearance in Colombia.

Chapter 3 seeks to analyze the complexity of the meaning of “truth” in TJ contexts and the truth seeking mechanisms. This includes an overview of the respondents’ attitudes about the meaning of truth in enforced disappearances cases, and in a TJ context.

Chapter 4 briefly studies the historical and legal roots of the right to truth in enforced disappearances cases. Also, it aims at clarifying the normative content of this right in international law and the correlative State obligation to search for the disappeared.

Chapter 5 presents the TJ mechanisms created in Colombia for clarifying the truth and for tracing disappeared persons, considering the respondents’ views towards the implementation, providing an assessment of the Colombian response towards the right to truth and the searching process.

Finally, Chapter 6 presents the conclusions of the study.

²⁷ Rincon (2010)

2 Colombia: Outside of the Standard Transitional Justice Case

A traditional TJ context refers to mechanisms and institutions created to address past HR violations after periods of conflict, violence, or repression in a given society. TJ has become a growing field for academic research, including international relations, politics, law, philosophy and practice. The concept of TJ has rapidly expanded to situations that are not *sensu stricto* transitional, such as ongoing conflicts (Colombia, Afghanistan), and pre-transitional and non-transitional societies (Canada, Australia) among others. Consequently, TJ mechanisms have been used outside of the original TJ context.

The TJ field has received attention from international HR bodies that have created and promoted a set of standards to apply in transition contexts.²⁸ These standards have particularly required respect for the rights to justice, reparation, truth, guarantees of non-recurrence, and the rights and obligations enriched in international HR law, humanitarian law, criminal law.²⁹ There are numerous and varied studies on the contested issues among TJ mechanisms and its aims to seek peace, reconciliation and political stability at the cost of political, legal and moral accountability.

²⁸ UN documents HR and TJ: E/CN.4/RES/2005/70, A/HRC/RES/12/11, A/HRC/RES/21/15, Impunity: E/CN.4/RES/2005/81, Right to the Truth: E/CN.4/RES/2005/66, A/HRC/RES/12/12, Forensic Genetics and HR: A/HRC/RES/10/26, A/HRC/RES/15/5, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence: A/67/368, A/HRC/21/46, A/HRC/RES/18/7, A/HRC/18/L.22.

²⁹ UN TJ Guidelines (2010).

In this Chapter, I will discuss the TJ expansion covering situations that are not exactly transitional, and how the Colombian case might be seen as a TJ case study. Furthermore, the Chapter will briefly explain the relationship between enforced disappearance and TJ and the practice of enforced disappearance in Colombia, a crime still being committed.

2.1 The expansion of the Transitional justice field

There are multiple definitions of TJ. For instance, Ruti Teitel was among the first to use the term in 1991, defining it as "...the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes."³⁰ For Kritz, TJ is undertaken by emerging democracies and states that have experienced a changed regime.³¹ For Olsen, *et.al*, it is the "array of processes designed to address past human right violations following periods of political turmoil, state repression, or armed conflict."³² In 2006, the UN provided an ample definition: "The full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation."³³ In 2009, the UN added to the definition the main judicial and non-judicial mechanisms, except amnesties, such as truth-seeking, prosecution initiatives, reparation programs, institutional reform, or an appropriate combination thereof.³⁴

According to the International Center for Transitional Justice (ICTJ), "TJ is a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy. TJ is not a special form of justice but justice adapted to societies transforming themselves after a period of perva-

³⁰ Cited by Skaar (2012:59). Arthur (2009) found also that the term TJ was used in 1989 by Milton Fisk and in 1992 by Juan Corradi.

³¹ Kritz (1995)

³² Olsen, *et.al* (2010:11)

³³ UN S/2004/616

³⁴ UN A/HRC/12/18

sive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over many decades.”³⁵

These are only a few examples of the manifold definitions of TJ, about which there is no consensus.³⁶ The discourse has evolved from the 1990s according to political and social actors’ demands and interest in achieving and maintaining peace or legal and political accountability.³⁷ Moreover, TJ has become an elastic term stretched to cover “societies that show little to no evidence of any transition whatsoever.”³⁸

For some scholars, the term “transition” has a pivotal role in defining TJ.³⁹ Transition refers to significant political transformation, rupture from the past, and regime change. Transition may also refer to situations of political violence, armed conflict, or peace.⁴⁰ These scholars consider it important for TJ academics and research to recognize the political transformation and state change regime as TJ examples or models. They also highlight the importance of being cautious toward the TJ discourse and its mechanisms in states where transformation has not occurred.

The TJ concept has been stretched so much that “transition” has disappeared from the very term, and TJ seems to apply to every situation that requires mechanisms of truth, justice and reparations, regardless of whether the mechanisms are used outside of a context of political transformation. Examples of the latter occur in Canada, the United States, New Zealand and Australia, in which well settled democratic societies are applying TJ mechanisms, such as truth commissions, to address past HR violations against indigenous people.⁴¹

³⁵ ICTJ Fact sheet (2009).

³⁶ Lecombe (2010), de Greiff (2010), Lyons(2010), Saffon and Uprinmy (2006), Gómez (2010), Quinn(2012).

³⁷ *Ibid*

³⁸ Quinn (2011:1)

³⁹ Saffon (2011), Lyons (2010), Quinn (2011), Lecombe (2010), Arthur (2009).

⁴⁰ Skaar, *et.al* (2012:28)

⁴¹ Quinn (2011), ICTJ <http://ictj.org/truth-commissions-and-indigenous-rights-what-stake>

Furthermore, initially academics considered that TJ mainly applies to post-conflict or post-authoritarian situations in societies seeking to move forward from the past by using the mechanisms of justice, truth, vetting and reparations for past HR and humanitarian wrongs. Nevertheless, some of them (Olsen and ICTJ) consider pre-transition situations, non-transitions societies and ongoing conflict as TJ cases, which produces ambiguities in the term and a lack of theoretical precision.

In this way, the TJ term's initial conceptual boundaries have been constantly pushed (transition, post-conflict, post authoritarian, addressing past HR wrongs). The TJ concept is now used by analogy beyond the initially intended domain in response to requirements of new political contexts and the international community. This expansion suggests that TJ is becoming the norm, although it was originally envisaged as an exception, and that we are facing a new sub-field of TJ or a “'fourth wave' of transitional justice scholarship,”⁴² in which non-transition states and pre-transitions states, in which TJ is seen as a “driver of transition rather than only an intervention that follows a transition,”⁴³ become TJ study cases.⁴⁴ Colombia may be included in this latest TJ sub-field.

2.2 Colombia as a pre-transition state

Colombia might be classified as a pre-transition state with no regime change; uncertain transformation from conflict to peace; and where, despite the 2002 peace process with some paramilitary groups, fighting continues among multiple armed actors, including paramilitaries, state forces, guerrillas groups (mainly FARC and ELN), and drug lords. There-

⁴² Quinn (2011:21).

⁴³ Skaar (2012:60)

⁴⁴ *Ibid*, Quinn (2011), PRIO project on “Strategic Justice during civil wars” including a global database covering TJ processes implemented during civil wars from 1946 to 2010.

fore, it is unlikely to foresee the sudden appearance of a post-conflict Colombia despite the adoption of TJ mechanisms in 2005.

The classic examples of TJ occurred when the state was the central focus of TJ initiatives and mechanisms.⁴⁵ However, the responsibility of the whole state apparatus in the Colombian conflict, and specially the support and complicity of the political, economic and military sectors with paramilitaries in committing HR violations, crimes against humanity (CAH) and war crimes (WC), was not considered in the design and implementation of TJ mechanisms in 2005. Hence, the occurrence in the short term of a purge of the state institutions and structures or any change regime seems doubtful.

For instance, the 2012 interim report of the Office of the Prosecutor of the International Criminal Court (OPICC) about Colombia emphasized that state actors, such as top rank authorities and politicians, have supported the crimes committed by paramilitaries. Among many examples of the involvement of state forces and politicians with death squads is the case of the former National Chief of Intelligence, who provided lists with the names of professors, HR workers, and trade unionists to be killed by paramilitaries.⁴⁶ Another example is the case of fifty Congressmen, who promoted and financed paramilitaries, and participated in the commission of murder, enforced disappearances, kidnapping, torture, and/or forced displacement, among other crimes.⁴⁷

Nevertheless, supporters of the Colombian example as a TJ case study argue that the 2005 TJ mechanisms created in Law 975/2005 and its normative developments can be seen as a change to address past HR atrocities and achieve peace.⁴⁸

⁴⁵ Lyons (2010)

⁴⁶ Colombia Supreme Court of Justice, Judgment 14 September 2011.

⁴⁷ OPICC (2012:54-57)

⁴⁸ Lopez, Forer (2012), Skaar *et.al* (2012)

Before Law 975/2005, peace processes with other armed groups, such as the guerrillas M-19, “*Quintín Lame*,” and “*Camilo Torres*,” ended in blanket amnesties and political participation by their members. The crimes committed by those groups were never investigated, and the victims were not repaired.⁴⁹

For some scholars, Colombia is a special case of TJ that must be studied. In Colombia, Afghanistan, Uganda, Congo and Sudan, TJ mechanisms are being implemented before the end of the conflict.⁵⁰ This provides an opportunity for TJ scholarship to study what happens when TJ mechanisms, such as conditioned amnesties, truth, justice and reparations, are used in the peace-building process before the conflict ends.⁵¹

The TJ mechanisms created in Colombia are also drivers for transition.⁵² However, the Colombian case as a model for TJ case study should be cautiously considered. For some, attributing to TJ the task of generating the transition in Colombia from conflict to peace is an inappropriate and unrealistic extension of the virtues of the field.⁵³ For the government and others academics, Colombian TJ mechanisms are a plausible environment to attain a certain degree of transformation and to end violence.⁵⁴

Therefore, the country has been put in the international TJ domain with the demobilization of paramilitaries of the Colombian Self-defense forces (AUC) during 2002-2006,⁵⁵ and the corollary mechanisms created to deal with their crimes. From 2003 to 2006, 35.308 paramilitaries demobilized,⁵⁶ from which by February 2013, 4.237⁵⁷ are nominated by the government to the law 975/2005 corresponding to leaders who allegedly committed CAH and

⁴⁹ Lopez, Forer (2012).

⁵⁰ Skaar, *et.al* (2012:6)

⁵¹ *Ibid*, p33.

⁵² Skaar (2012).

⁵³ Saffon (2011), Lyons (2010).

⁵⁴ Lyons (2010) citing the Colombian Ministry of Foreign Affairs and Kimberly Teitton.

⁵⁵ For a recount of the negotiations process and the legislative measures to deal with the paramilitaries crimes see López, Forer (2012).

⁵⁶ http://wsp.presidencia.gov.co/Prensa/2011/Diciembre/Paginas/20111229_03.aspx

⁵⁷ Fiscalía (2013) <http://www.fiscalia.gov.co/colombia/gestion/informes-de-gestion/>

WC, and by December 2011, 26.444⁵⁸ demobilized paramilitaries since 2003, only accuse of conspiracy to commit crimes follow the procedure of the law 1424/2010.

2.3 Transitional Justice and Enforced Disappearances a Shared History

The enforced disappearance victims' claims for truth in post-authoritarian regimes developed the concept of "Truth Recovery" as one of TJ's aims.⁵⁹ The Chilean and Argentinian truth commissions are among the pioneers in establishing the term of "truth seeking."⁶⁰ This related mainly to establishing what happened to the disappeared, the surrounding circumstances, and the scale of this crime.

The South African, Guatemalan and Peruvian truth commissions disclosed, among other violations, the extension of enforced disappearance during apartheid regimes and during the Guatemalan and Peruvian internal conflicts. In their reports, they highlight the importance of searching for and exhuming the disappeared to give some "truth" and reparation to their families. Those truth commissions recommended the creation of mechanisms to search for and locate the disappeared and return their remains to relatives.⁶¹

Some scholars argued that the issue of missing and enforced disappearances should be addressed in societies in transition.⁶² Nevertheless, it is a difficult task; there are tensions between the family's need to locate the disappeared and their demands for justice. In some TJ settings, the location of the disappeared has been separated from legal and political accountability to respond to the families' need to recover and properly bury their loved ones.

⁵⁸ http://wsp.presidencia.gov.co/Prensa/2011/Diciembre/Paginas/20111229_03.aspx

⁵⁹ Hayner (2010), Robins (2011).

⁶⁰ *Ibid*

⁶¹ See foot note 4.

⁶² Aronson (2011), Robins (2011), Cretol (2006), *Navarro et.al* (2010).

Hence, there has been a trade-off between the need to know the fate of the disappeared and the need to prosecute the perpetrators.⁶³

For example, in Argentina, the location of the disappeared has caused controversies among victim organizations. For Mothers of the Plaza de Mayo, locating the disappeared would neutralize their struggle for justice; for “*HIJOS*,” the searching process and exhumation is part of their struggle for truth and justice.⁶⁴ In some rural communities in Peru, where the socio economic conditions are dire, the communities have determined that the money spent in locating and exhuming the disappeared should be invested to improve their economic conditions.⁶⁵

Nevertheless, there are reasons why, in the TJ context, the legacies of this violation should be addressed considering the socio, cultural and political aspects. Often, clarifying the fate and location of the disappeared becomes a driving force for relatives demanding truth and justice, which grants them some sort of closure,⁶⁶ ends the uncertainty,⁶⁷ and enables them to pray and restore their continuity with their ancestors.⁶⁸ Furthermore, addressing the disappeared issue in the TJ context according to McEvoy and Conway has a political and emotional significance for the whole society that should not be underestimated. They illustrate how, in the Northern Ireland post-conflict, the only action perpetrated by the IRA during the conflict that has been acknowledged by Republican leaders as an HR abuse is enforced disappearance. They also showed how searching for the disappeared and the exhumation process in Ireland, Cambodia, Rwanda, East Timor, and Yugoslavia was a “power-

⁶³ See: Kovras (2012) explaining the Cyprus’ situation, also McEvoy Conway (2004). In Colombia, imprisoned paramilitaries, who are not demobilized or nominated by the Government to the TJ mechanisms, have asked that their prison sentences be reduced in return for information on the fate of the disappeared. See the example of one paramilitary who has information about 800 disappeared persons. <http://www.semana.com/nacion/articulo/el-hombre-sabe-verdad-1000-asesinatos/338505-3>.

⁶⁴ Navarro *et.al.*, (2010).

⁶⁵ *Ibid.*

⁶⁶ McEvoy Conway (2004)

⁶⁷ Robins (2011).

⁶⁸ Navarro *et.al.*, (2010); Aronson(2011).

ful symbol of the attempts at a transition from a violent past and have become an important element of truth finding work.’’⁶⁹

2.4 Enforced Disappearances in Colombia.

Enforced disappearances have been committed by all of the parties to the conflict following different patterns and purposes. This HR violation has been and remains a persistent practice.⁷⁰ According to official figures, by September, 2012, 75,345 persons are missing, of whom 18,527 were victims of enforced disappearances.⁷¹ According to the UN by February 2013, the Colombian Prosecutor General’s Office reports 27,382 active criminal investigations of enforced disappearance.⁷² These figures show that Colombia has among the highest levels of forced disappearances in the world, or at least in Latin America, compared to 3,000 disappeared in Chile and 30,000 in Argentina.

In Colombia, the first reported victim was the left-wing activist, Omaira Montoya; the secret police services disappeared, tortured and murdered her.⁷³ Since 1980, the Colombian state has used this practice to eliminate the opposition and spread terror. The main targets during the 1980s and 1990s were left-wing activists and politicians, teachers, students, and trade unionists, who disappeared following detentions by the police or military.⁷⁴

In the late 1980s, this practice evolved with the expansion of the paramilitary phenomenon. Paramilitaries often committed enforced disappearances with the tolerance and connivance

⁶⁹ McEvoy, Conway (2004:557).

⁷⁰ UN WGEID E/CN.4/2006/56/Add.1, A/HRC/19/58/Add4/2012, OHCHR A/HRC/WG.6/16/COL/2 (2013).

⁷¹ UN A/HRC/22/17/Add.3

⁷² *Ibid.*

⁷³ CCJ-lawyer, Asfaddes-member (2013), IACHR Report No 33/11.

⁷⁴ CCJ-lawyer, Asfaddes-member (2013), “*Case-Colectivo 82*” in WGEID E/CN.4/1983/14. (1983).

of state forces.⁷⁵ Moreover, the range of enforced disappearance victims expanded. In addition to being selective against the opposition, it became a collective and indiscriminate means of territorial and political control over the civilian population.⁷⁶ For example, paramilitaries in the “*Magdalena Medio*” region, with the collaboration of the military disappeared 19 tradesmen in 1987. According to testimony by paramilitaries, the victims were dismembered and thrown into the Magdalena River.⁷⁷ Another case was the 1990 disappearance of 43 peasants from *Pueblo Bello*;⁷⁸ only 6 bodies were recovered and returned to their families in 2013.⁷⁹

Furthermore, paramilitaries used enforced disappearances as a form of social cleansing, in which sexual workers, LGBTI population, homeless and drug addicts were forcibly disappeared.⁸⁰ The case of a French-Colombian citizen, Simon Gonzalez,⁸¹ is an example of the latter. He was travelling in the North Coast in 2002 when, according to testimony by paramilitaries, he was executed and disappeared, because he looked different or was a “destabilizing element of the society.”⁸²

As was revealed during the mechanism created in Law 975/2005, paramilitaries often cut their victims into pieces, burned them in clandestine crematory ovens, threw them into rivers, debris dump or wild animals, and buried the bodies in clandestine graves in training camps, ranches, riverbanks and other places.⁸³ They totally disregarded the remains and dignity of the victims, trying instead to leave no trace.

⁷⁵ See IACHR cases of *19 tradesmen, Pueblo Bello, Mapiripan* vs Colombia. Scovazzi, Citroni (2007).

⁷⁶ CCJ-lawyer, Asfaddes-member (2013).

⁷⁷ IACHR *19-Tradesmen* vs Colombia

⁷⁸ IACHR *Pueblo Bello* vs Colombia

⁷⁹ *Pueblo Bello* relative (2013). The Colombian state returned the remains of 6 victims to their families on 6 April 2013.

⁸⁰ Asfaddes-member, CCJ-lawyer (2013), Scovazzi, Citroni (2007:21) Haugaard, Nichols (2010:5)

⁸¹ CCJ-lawyer(2013)

⁸² <http://www.vanguardia.com/santander/area-metropolitana/189577-10-anos-buscando-justicia-para-simon-gonzalez>

⁸³ Haugaard, Nichols (2010), JPU-Prosecutor, forensic-anthropologist, Asfaddes-member, *vereda el faro* relative (2013)

Likewise, as consequence of the TJ mechanisms adopted in Colombia, the JPU, with information provided by paramilitaries and victims' families, discovered thousands of clandestine burials, locating, by March 2013, 4,007 graves containing the remains of 5,162 people.⁸⁴ However, only 1,947 remains have been returned to their families.

Another pattern was identified during the 2000s. Supported by paramilitaries and particulars, state forces allegedly detained and disappeared thousands of peasants and young people from poor communities. They were later found dead dressed in guerrilla clothing. Although this practice started in the 1980s, the alarming increase of such cases during 2002-2009 raised concerns among the international community.⁸⁵ They were known as the "false positive" scandal and received the attention of OPICC, which claimed there are reasons to believe that the Colombian state committed murder and enforced disappearances amounting to CAH, murder, attacking civilians, and torture, constituting WC.⁸⁶ OPICC added that there is a sound basis to believe that these crimes were part of a state policy.⁸⁷

Families of the disappeared get different state responses according to who perpetrated the crime.⁸⁸ The TJ initiatives put in place since 2005 in Colombia's ongoing NIAC aimed to address the crimes committed by demobilized members of illegal armed groups nominated by the government. Hence, the TJ mechanisms adopted respond only to the enforced disappearances committed by this select group. Enforced disappearances committed by states forces and non-demobilized and non-nominated paramilitaries follow a different route. Despite these different treatment families of the disappeared and victim organizations continue to demand the truth and to search for the disappeared regardless of the perpetrators.

⁸⁴ Fiscalía (2013) <http://www.fiscalia.gov.co/colombia/gestion/informes-de-gestion/>

⁸⁵ See UN A/HRC/20/22/Add.2., A/HRC/14/24/Add.2, A/64/187.

⁸⁶ OPICC (2012).

⁸⁷ *Ibid.*

⁸⁸ ICMP (2008).

3 Truth and Transitional Justice

This chapter discusses how “truth” is a polysemous term in the TJ context. It can have different meanings and interpretations according to actors involved in the TJ process and the mechanisms adopted to recover the “truth.” The term will not be discussed from a philosophical perspective.⁸⁹ It will be shown in a particular TJ context related to enforced disappearances, including the informants’ views.

3.1 Types of Truth in Transitional Justice

In TJ discourse, the meaning of truth can vary from context to context and depends on interpretations given by the people involved and affected by TJ truth seeking initiatives (government, perpetrators, victims and civil society organizations). As Daly noted, truth is a relative concept, not monolithic, multi-various, or subjective, and, in some cases, truths might be mutually incompatible. In TJ scenarios, this poses challenges to truth seeking initiatives and suggests that a unified accounting of events might be an elusive aim.⁹⁰

The South African example is helpful in understanding the complexity of the definition in TJ scenarios. Scholars considered it one of the strongest truth commissions.⁹¹ The Report of the South Africa Truth and Reconciliation Commission (SATRC) acknowledged and defined four types of truth:⁹² narrative, forensic, historical, and social or dialogic.

The factual or forensic truth is determined through accurate information from reliable investigation and sources, establishing in each case what happened to whom, where, when

⁸⁹ For a brief overview of the philosophical and historical meaning of truth, see Naqvi (2006).

⁹⁰ Daly (2008)

⁹¹ Hayner (2010)

⁹² Skaar (2012), Daly (2008).

and how, and who was involved. It requires clarification of the broader context, patterns of violations, and the causes of such acts.⁹³

Personal and narrative truth comes from victims and perpetrators, who are given the chance to tell it as they see it. Since victims tell their own stories, this helps to uncover existing facts about past abuses.⁹⁴

The historical truth seeks to recover parts of the national memory that was officially ignored, revealing and preserving it for future generations.⁹⁵

Social or dialogic truth is the truth of experience established through interaction, discussion and debate, giving relevance to participation considering all of the parties. Therefore, the actual investigation outcome is not the only aspect that counts. The process whereby the truth is reached is itself important, because the process reflects the essential norms of social relations among people.⁹⁶

SATRC also underlined the importance of “acknowledgement,” requiring the truth to be placed on public records. “Acknowledgement is an affirmation that a person’s pain is real and worthy of attention. It is thus central to the restoration of the dignity of victims.”⁹⁷

The Guatemalan Historical Clarification Commission established as a mandate that “the people of Guatemala have the right to know the whole truth” of the HR violations committed in the country. This Commission highlighted the importance of clarifying internal and external factors and circumstances of violence and violations. Among its aims was to recommend “measures to preserve the memory of the victims.”⁹⁸

⁹³ SATRC(1998) vol.1, chpt 5, pp.110-114.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ Hayner (2010), UN Doc. A/48/954/S/1994/751/AnnexII.

Additionally, truth can be achieved through trials, which is called the “judicial truth.” Among the judicial system outcomes is the “truth” about the case circumstances. Truth is produced by assessing means of proofs, such as testimony, scientific and forensic means, and documents.⁹⁹

3.2 Truth Seeking Initiatives and Challenges

Producing and establishing the truth are among the main aims of TJ. In an individual dimension, families of disappeared persons might need to know the crimes’ circumstances and their loved one’s fate and remains. Tracing the disappeared and having their human remains can provide some closure. In a social dimension, establishing the truth about atrocious crimes, such as enforced disappearances, aids the whole society to reject these heinous crimes and ensure that they will not happen again.

Clarifying the “truth” in TJ societies, according to some scholars, may promote social healing and reconciliation. It can help to establish an authoritative record, promote or replace justice, help victims to restore their dignity, foster institutional reform and democracy, and prevent HR abuses from happening again.¹⁰⁰

Nevertheless, innumerable articles have been written about the contribution of “truth” to TJ societies in achieving peace, justice and reconciliation,¹⁰¹ which are also polysemous and elusive terms in TJ.¹⁰²

⁹⁹ Saffon, Uprinmy (2006),

¹⁰⁰ Daly (2008), Skaar, *et.al* (2012:8)

¹⁰¹ For an overview of the extensive literature on this topic, see <http://www.gsdr.org/go/topic-guides/justice/transitional-justice>.

¹⁰² For instance, Skaar (2012) provides an overview of the many meanings and definitions of TJ, reconciliation and justice.

Some scholars argue that establishing the “truth” should consider the goals being pursued -- victim healing, accountability, and institutional reform -- because these are competing and mutually frustrating goals.¹⁰³ For instance, authoritative records about HR violations can prevent other atrocities but not without massive and sustained public education about a nation’s history.¹⁰⁴ Clarifying the truth can heal and restore the victims’ dignity, but such TJ initiatives as prosecutions and reparation programs might also be needed.¹⁰⁵

Another truth-seeking mechanism regarding enforced disappearances is decoupling humanitarian exhumations from judicial processes and legal and political accountability in politically sensitive situations.¹⁰⁶ However, this initiative might conflict with other HR obligations.

Altogether, these measures might work better through complementary application, considering that TJ truth seeking mechanisms should be created and implemented based on particular sociopolitical contexts, considering potential implications for maintaining peace, avoiding conflict escalation, considering political, fiscal and psychosocial costs that each TJ truth-seeking mechanism entails,¹⁰⁷ considering international HR and humanitarian obligations, and considering that society and victims need to understand what happened.

3.3 The Meaning of Truth.

The complexity of the manifold types of truth also depends on the meaning given by actors involved in the TJ process. They might have different interests in telling the truth, and they

¹⁰³ Daly (2008)

¹⁰⁴ *Ibid.*

¹⁰⁵ Asfaddes-member, CCJ-lawyer, JPU-Prosecutor, state-delegate NSC (2013).

¹⁰⁶ Kovras (2012).

¹⁰⁷ Daly (2008).

decide what truth to tell.¹⁰⁸ The answer given by informants is illustrative of the different meanings of “truth” in the TJ Colombian case:

The truth depends on what you mean by it. Is it the voluntary “truth” given by the paramilitaries in the free accounts?” The other added: *“Whether they [paramilitaries] want to talk about the circumstances of the crime and the fate of the disappeared, or the “truth” that victims’ want and need”* The first said: *“All I say is that, through the Justice and Peace law [law975/2005], a collective truth has been shown, the Colombian society has realized all the atrocities committed by paramilitaries.”*¹⁰⁹

*Truth? There are subjective appreciations about it. There is one truth for victims, one for the authorities, one for perpetrators. The truth depends of how you interpreted this.*¹¹⁰

This subjectivity underlined by Daly leads to another issue: Which truth do victims want to hear, the forensic truth or the historical truth? For instance, in enforced disappearances, it might be that victims need all of the different types of truth, plus the truth in knowing the fate and location of the disappeared and the return of their remains.

A 2010 study about TJ in Colombia found that, for representatives from victims’ organizations, “truth means not only clarifying what happened or where their loved ones are buried, but also why in cooperation with whom these atrocities were carried out.”¹¹¹

The *Pueblo Bello* relative interviewed mentioned the family’s truth, the judicial truth, and the perpetrators’ truth. This truth includes knowing where their loved ones are and whether they are alive. If so, they want to see them and to know what happened. If they are dead,

¹⁰⁸ Daly (2008:27)

¹⁰⁹ Victims Unit (2013).

¹¹⁰ JPU-CUVI member (2013).

¹¹¹ Garcia-Godos, O.Lid (2010:505)

recovering and burying their remains according to family and community traditions “have a great importance in almost all cultures as a part of the mourning process.”¹¹²

Not knowing the truth about the circumstances of the crime, those responsible, and the fate of the disappeared can lead to a “permanent state of uncertainty,” an ambiguous loss. One of the relatives interviewed stated that “it is preferred to know the truth, although it can be very painful. I prefer the truth than to continue in this permanent state of uncertainty.”¹¹³

The truth also has the meaning of public acknowledgement of the state’s responsibility¹¹⁴ and restoring the dignity and good name of the disappeared.¹¹⁵ Some informants stressed that, no matter who the victims were, they did not deserve to be disappeared. However, such stigmatization and labels as “*guerrillero*,” “terrorist” and “undesirables” imposed on victims by perpetrators to justify their crimes, left a mark on families’ victims that caused them to demand that the name and dignity of their loved ones be restored.¹¹⁶ The relative of *Vereda el Faro* stressed during his entire interview his need to restore the dignity of his family as part of the truth:

Truth is to know what happened, why this happened, who are really responsible. Justice and truth go hand in hand. One is the truth of the families, one the perpetrators’ truth, we need both. But I have very little hope that they [perpetrators] clarified the truth (...) my family investigated the case, and we know they killed my family, because they were “guerrilleros.” Our 11 year fight is to reestablish the dignity and names of my family;(…). How can one explain that paramilitaries consider that a boy of 7 years old [his nephew] is a guerrilla member and for that reason they killed him?

As noted above, one component of the truth in enforced disappearance cases is to know the fate and location of the disappeared and, if they are dead, to return their remains to loved ones to bury them according to their traditions. However, in some cases, it will be difficult

¹¹² Beristain (2010:316), see also Robins (2011), Aronson (2011) social-psychologist (2013).

¹¹³ *Pueblo Bello* relative (2013).

¹¹⁴ *ibid*

¹¹⁵ *Vereda el Faro* relative (2013)

¹¹⁶ Asfaddes-member, social-psychologist, *Vereda el Faro* relative (2013).

to recover the remains. For example, paramilitaries have admitted to throwing victims into rivers, crematory ovens or debris dumps.

In such scenarios, the expectations of victims should be adjusted to the circumstances of each case,¹¹⁷ and the truth initiatives to mitigate the pain in the absence of the body should be adapted accordingly including the use of symbolic measures of reparation. In cases where it is difficult to recover the remains of the disappeared, the respondents' attitudes varied. They recognized the difficulty of the issue, but they stressed that, before considering symbolic substitutes, the government should undertake all necessary measures to locate the disappeared.

For respondents, among the measures that might contribute to repair the victims in cases where the disappeared cannot be found are establishing a narrative and historical truth about the scale of enforced disappearances in the country; psychosocial attention that alleviates their pain;¹¹⁸ ceremonies or rituals to restore the dignity of the disappeared and homage them;¹¹⁹ public acknowledgment of state responsibility;¹²⁰ perpetrator apologies;¹²¹ and establishing memorial sites.

Nevertheless, for the relatives of disappeared persons and victims' organizations interviewed,¹²² it is essential that the state use all available means, to search for their loved ones. According to one representative of victims' organizations:

¹¹⁷ Navarro et.al (2010).

¹¹⁸ Relatives of *Vereda el Faro* and *Pueblo Bello* (2013).

¹¹⁹ *Ibid.*

¹²⁰ *Pueblo Bello* relative (2013).

¹²¹ JPU-CUVI member, JPU-Prosecutor (2013) said that there are few examples of how paramilitaries are face to face with the families of disappeared persons. The aim is that paramilitaries apologize for their atrocious acts, tell families what happened, and explain why the remains of their relatives cannot be recovered.

¹²² The informants referred to cases in which the bodies were thrown into rivers, such as the 19-tradesmen, and the paramilitaries' version of the crematory ovens in the Catatumbo Region, and the debris dum "la Escombrera" in Medellin. These and other cases were widely reported by the magazines, *Cambio* and *Semana* and the newspapers, *El tiempo* and *Espectador*.

*If the paramilitaries said that they threw the bodies into the rivers, the state should carry out a serious search for the disappeared and use divers to verify this information... and if the state proves to families that it is impossible to find the bodies or remains, the state must provide for the construction of the historical memory and psychosocial attention for their families, but we cannot accept empty coffins.*¹²³

A representative of the government to the Search Commission argued that it is a state responsibility to verify this information during the investigation and then to report to the families all of the measures undertaken to search for their relatives. According to him, paramilitaries' testimony must be analyzed in the light of other evidentiary means, mainly forensic and scientific, but this testimony is not a judicial decision. Hence, judicial truth is identified with the judicial decision given by a judge.

Similarly, the forensic-anthropologist interviewed argued that the state must verify this information by scientific means. In difficult cases, such as debris dump, in which it is scientifically and technically extremely difficult to recover the remains, it is important to explain the difficulties to the families and to try not to raise their expectations.¹²⁴

As Daly noted, victims can be helped more by a "process of ascertaining the truth"¹²⁵ than by a formal report or a judicial decision. Participation by the families of the disappeared in the investigation and in the searching process can provide them with some symbolic reparation. One of the relatives interviewed said:

*Relatives' direct participation in the search process and the respect of institutions towards us can help to believe that the state is undertaking a serious search. By giving us information about the investigations and the steps undertaken to locate our relatives and taking into account our views. Sound knowledge about the steps taken by the state toward the search can itself be a reparatory measure, more than taking symbolic actions without consulting us.*¹²⁶

¹²³ Asfaddes-member (2013)

¹²⁴ Forensic-anthropologist, also JPU-CUVI member (2013).

¹²⁵ Daly (2008:32)

¹²⁶ Relative *Pueblo Bello* (2013).

Symbolic measures, such as memorial sites, are very important to relatives in the sense that they can have a place to mourn,¹²⁷ “to pray, to talk with their relatives”¹²⁸, even though the body is not present. This measure is more directed to the victims in their social context and should, therefore, be taken with their input as the first criterion.¹²⁹ Furthermore, memorial sites pose a broader social contribution to the preventive role of collective memory.¹³⁰

Nevertheless, memorial sites and the construction of memory are not without social contradictions and disputes.¹³¹ For example, in Colombia, the law 1408/2010 seeks to pay tribute to enforced disappearance victims by establishing the state obligation to create “Memory Sanctuaries” in areas where, according to the General Prosecutor Office, the remains of victims of enforced disappearance are believed to be located.¹³² For some, this law is an improvement in addressing the issue of the disappeared, the recognition of the petition, and the work of victims’ organizations.¹³³ Although some informants consider it an important measure, they are afraid that, by creating “Memory Sanctuaries,” the government might elude its responsibility to locate, identify and return the remains to the families.¹³⁴

Symbolic ceremonies have been conducted by the state in very few cases to alleviate the pain of victims, according to informants from the JPU. They highlighted that this is an exclusive family decision once prosecutors explain all of the measures undertaken by the state to locate and recover the disappeared and the difficulties of recovering their remains. However, authorities interviewed said that “the search for the disappeared continues.”¹³⁵ “The

¹²⁷ Barsalou, Baxter (2007).

¹²⁸ Social-psychologist,(2013), Aronson (2011).

¹²⁹ Beristain (2010).

¹³⁰ *Ibid.* McEvoy, Conway (2004).

¹³¹ Beristain, McEvoy and Conway offer numerous examples of how the location, design or existence of memorial sites are often contested issues.

¹³² Haugarrd, Nichols (2010), Article 12 Law 1408/2010.

¹³³ *Ibid.*

¹³⁴ Asfaddes-member, *Pueblo Bello* relative, social-psychologist (2013).

¹³⁵ JPU-CUVI member (2013).

compromise in clarifying the truth and the criminal investigation remain.”¹³⁶ When the family decides to carry out a symbolic ceremony, the family uses a symbolic item that represents the disappeared, such as clothes, flowers, and candles.

As discussed, “truth” has many different meanings. It can be interpreted in various ways by the actors involved in the TJ settings. However, the families’ need to know the truth about what happened with the disappeared, where they are, and if they are alive are persistent demands to end their uncertainty and to provide closure that cannot be disregarded in a TJ processes. In this regard, international law has gone beyond the traditional retributive justice of punishing the perpetrators to respond to the concerns of societal and personal healing.¹³⁷

¹³⁶ JPU-Prosecutor (2013).

¹³⁷ McEvoy, Conway (2004).

4 The Right to Truth Regarding Enforced Disappearances

The right to truth about victims of HR violations has received enormous attention from international HR bodies.¹³⁸ However, this chapter will focus on the right to truth in enforced disappearances cases. It will briefly explain the right to truth's roots in IHL and HR law, and study the content of this right which is necessary when considering the efforts undertaken by Colombia to meet the obligation to trace the disappeared and to realize the victims' right to truth in a TJ process.

4.1 International Humanitarian Law

The right to truth can be traced in the law of armed conflict.¹³⁹ The fate and whereabouts of the combatants missing in action or held by the enemy, and the anguish of their families to know the fate of their loved ones, were concerns in the development of IHL.¹⁴⁰

The antecedents of the right to truth in IHL are namely: i) Articles 3 and 4 of the Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, 1906; ii) Article 14 of the 1907 Fourth Hague Convention, "Respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land"; iii) Articles 16 and 17 of the 1907 Tenth Hague Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention; iv) Articles 15 and 16 of the 1949 First Geneva Convention establishing that the parties to a conflict must search for,

¹³⁸ In 2010, the UN General Assembly proclaimed 24 March as the International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims. UN Resolution 18/7, UN Declaration on the protection of all persons from enforced disappearances 1992, Final report on the question of the impunity of perpetrators of human rights violations 1997, basic principles and guidelines on the right to remedy and reparation 2005, ICED 2006, UN A/HRC/15/33 2010, A/HRC/12/19 2009, A/HRC/5/7 2007, A/HRC/RES/12/12, E/CN.4/2006/91, WGEID General Comment on the right to truth in relation to enforced disappearances 2010.

¹³⁹ UN E/CN.4/2006/91, Naqvi (2006), Andreu (2012), Scovazzi and Citroni (2007).

¹⁴⁰ Andreu (2012:17)

care for, and identify the wounded, sick, or dead of the adverse party (identical obligations exist in the Second Geneva Convention, Articles 18 and 19); v) Article 26 of the 1949 Fourth Geneva Convention requiring parties to the conflict to facilitate enquires by persons looking for family members dispersed by the conflict.

Since the mid-1970s, the need for families to know the fate of their relatives missing in armed conflicts became a growing concern in the development of IHL. In 1973, an international conference of the Red Cross called on parties to armed conflicts to provide information about missing persons in actions, to help to locate and mark the graves of the dead, and to facilitate the exhumation and return of remains to relatives if they so requested.¹⁴¹

Similarly, UN Resolution 3220/1974 recognized that one of the results of armed conflict is the lack of information and considered that “the desire to know the fate of loved ones lost in armed conflicts is a basic human need which should be satisfied to the greatest extent possible.”¹⁴²

This latest statement had a crucial effect on the drafting of Article 32 of the 1977 First Additional Protocol to the 1949 Geneva Conventions (Additional Protocol I), which was the first international instrument to establish that families have the right to know the fate of their relatives missing in armed conflict.

During the negotiations of the Additional Protocol I, although the term “right” became controversial,¹⁴³ it “was adopted after careful reflection, and made in full consciousness”¹⁴⁴ relying on UN Resolution 3220/1974. In that resolution, the UN General Assembly considered that knowing the fate of loved ones lost in armed conflicts is a basic human need. Thus, the Assembly held that a fundamental humanitarian principle, to mitigate the suffer-

¹⁴¹ ICRC-Commentary.

¹⁴² UN GA Resolution-3220 (1974)

¹⁴³ ICRC-Commentary, para:1211-1212.

¹⁴⁴ *Ibid.*

ing of the relatives of those disappeared in conflict, is removing the uncertainty about the fate of missing persons.¹⁴⁵

The right to know imposes a duty on the parties to the conflict to take all possible steps to inform of the whereabouts, “but no one can be held to do the impossible,” which means an obligation of means, not of result.

This right first related to missing persons. However, Resolution II of the XXIV International Conference of the Red Cross in Manila, 1981, recognized the right to know to cases of enforced disappearances, noting that “families have a right to be informed of the whereabouts, health and welfare of their members, a right which is laid down in various resolutions of the United Nations General Assembly”.¹⁴⁶

The study by the International Committee of the Red Cross on Customary IHL, Rule 98, prohibited enforced disappearances in both international and NIACs. Rule 117 states that accounting for missing persons, including enforced disappeared persons, is applicable in both cases and is supported by the family’s right to know the fate of their relatives. Thus, parties to the conflict have the duty to search and to facilitate the search for missing persons.

The right to truth has its historical and legal roots in IHL, mainly with the provision established in Article 32 of the Additional Protocol I. It was first linked with the families’ right to know the fate and whereabouts of missing persons. Likewise, after 1978, the HR bodies started to apply this right to enforced disappearances cases, such as the UN *ad hoc* working group on the human rights situation in Chile.

¹⁴⁵ *Ibid.* para1196.

¹⁴⁶ ICRC XXIV International Conference of the Red Cross in Manila (1981:13)

4.2 International Human Rights Law

4.2.1 Antecedents

International and regional HR bodies began to talk about the right to truth in 1978 as a consequence of the emergence of enforced disappearances in the Southern Cone in 1970. Among the first antecedents is the 1978 Report of the *ad hoc* working group on HR in Chile,¹⁴⁷ and the 1981 Report of the Working Group on Enforced and Involuntary Disappearances (WGEID)¹⁴⁸. These two reports linked the right to know the truth in relation with this HR violation to Articles 32 and 33 of the Additional Protocol I, and noted that state authorities must adequately investigate the fate of disappeared persons.¹⁴⁹

After these antecedents, the international HR bodies started to develop this right more broadly, including the right to truth in cases of serious violations of HR. In and before 1997, the final report on the impunity of perpetrators of HR violations prepared by Louis Joinet recognized the right to know or the right to truth.¹⁵⁰ This set of guiding principles to combat impunity was updated by an independent expert, Diane Orentlicher, in 2005, who clarified aspects of their application in light of recent developments in international law, case-law and state practice.¹⁵¹

The UN Human Rights Council in various resolutions established the right to know or the right to truth, including, for instance, the 2006 UN Study on the right to the truth,¹⁵² reports of the High Commissioner for HR on the right to truth,¹⁵³ the 2009 HR resolution on the

¹⁴⁷ UN A/33/331

¹⁴⁸ UN E/CN.4/1435

¹⁴⁹ UN A/33/331 para. 418-423, and WGEID E/CN.4/1435 para. 187.

¹⁵⁰ UN E/CN.4/Sub.2/1997/20,

¹⁵¹ UN E/CN.4/2005/102.

¹⁵² UN E/CN.4/2006/91.

¹⁵³ UN A/HRC/15/33 2010, A/HRC/12/19 2009, A/HRC/5/7 2007.

right to truth,¹⁵⁴ or the General Assembly Resolution on basic principles and guidelines on the right to remedy and reparation for victims of gross violations of HR.¹⁵⁵ The WGEID also delineated the content of this right in its 2010 General Comment on the right to truth in relation to enforced disappearances. Although these documents serve as guiding principles for states the only legally binding HR treaty that explicitly acknowledged the existence of the right to truth is the ICED adopted by the UN General Assembly in 2006.

4.2.2 The International Convention for the Protection of all Persons from Enforced Disappearances

In 2006, the UN General Assembly adopted ICED, which was the first international HR treaty that explicitly recognized the right to truth.¹⁵⁶ Although the 1992 Declaration on the Protection of All Persons from Enforced Disappearances and the 1994 Inter-American Convention on forced disappearances were important developments for combating this hideous practice, these did not expressly recognize the right to truth.

The right to truth played a key role during the ICED *travaux préparatoires*. In 2004, Manfred Nowak emphasized the importance of having a provision in this regard and the corresponding State obligation to carry out exhumations, which are necessary to determine the fate of disappeared persons.¹⁵⁷

In 2005, during the discussions of ICED, some participants and many delegations underlined the importance of mentioning within the body of the treaty the victims' right to know

¹⁵⁴ UN A/HRC/RES/12/12.

¹⁵⁵ UN A/RES/60/147

¹⁵⁶ Nowak (2009:181-182), Scovazzi, Citroni(2007:38) and UN text of the Elaboration of ICED.

¹⁵⁷ UN E/CN.4/2004/59

the truth regarding the circumstances of the enforced disappearance and the fate of the disappeared, stressing that this right had already been contemplated in Article 32 of the Additional Protocol I. The United States raised doubts about the existence of a right to the truth, proposing that states be obliged only to provide information in accordance with the law. Some delegates suggested that states must take the steps necessary to discover what happened to the remains of deceased victims.¹⁵⁸

The resulting wording of ICED, Article 24 (2)(3), provides that victims, including both the direct victim and any individual who has suffered as a consequence of the violation, have the right to know the truth about i) the circumstances of the enforced disappearances; ii) the progress and outcomes of the investigation; and iii) the fate of the disappeared. Consequently, the states parties are obliged to take all appropriate measures to locate and release the disappeared, and, in the event of death, to respect and return their remains.

ICED also provided for cooperation and mutual assistance among state parties (Article 15), the protection of data collected within the framework of the search for the disappeared, which can be used only in the search process or in a criminal investigation related to the case (Article 19), and for the right to reparation.

Since, in TJ initiatives, state parties must comply with international HR treaty obligations, the provisions established in Articles 24(2)(3) of ICED obligates the Colombian state to honor the right to truth and the search for the disappeared. In this context, the question arises as to the efforts that a state should take to meet its obligation and therefore to satisfy the victim's right to truth. In response, it is important to clarify the content of this right to study the efforts undertaken by the Colombian state. Thus, the content can be elucidated starting with the ICED provisions noted above. It also are relevant for this aim the 2010 WGEID General Comment on the right to truth, the 2012 UN Committee on Enforced Disappear-

¹⁵⁸ *Ibid*

ances Guidelines on the form and content of report under the ICED (CED Guidelines), and the case-law from the Regional HR Systems.

4.2.3 The WGEID General Comment on the Right to Truth and the CED Guidelines

The 2010 WGEID General Comment on the Right to Truth was drafted based on Article 32 of the Additional Protocol I, ICED Article 24, the 1992 UN Declaration, the 2005 set of principles to combat impunity, and the 2006 study on the right to truth.¹⁵⁹

According to the General Comment, the right to truth is defined as autonomous, individual, and collective, including the families of the disappeared, and the entitlement for society as a whole to be told the truth to prevent repetition. The content of this right has been delineated as “the right to know about the progress and results of an investigation, the fate and the whereabouts of the disappeared persons, the circumstances of the disappearances, and the identity of the perpetrator(s).”¹⁶⁰

The WGEID held that due to possible negative effects on the process of reconciliation, the right to truth can be limited in the context of TJ mainly to releasing the names of the perpetrators in truth commissions. Truth commissions are not judicial prosecutorial authorities. Hence, naming perpetrators can disrespect guarantees of fair trial and due process. Nevertheless, since states keep their international obligation to investigate and prosecute perpetrators of the crime (ICED, Article 6), not naming the perpetrators in a truth process does not protect them from criminal prosecutions.

¹⁵⁹ WGEID (2010).

¹⁶⁰ *Ibid.*.

WGEID notes that the corresponding state's obligations under the right to truth are mainly procedural and are summarized in table 1 (See 1.Appendix). Also, the CED Guidelines¹⁶¹ contains some important indications of the state efforts needed to comply with the obligations regarding this right which are summarized in the Table 2 (See 2.Appendix)

4.3 Regional Human Rights Systems.

4.3.1 Inter-American System

In the Inter-American System on HR, the right to truth in enforced disappearance cases has been recognized in jurisprudence, since the American Convention on HR and the 1994 Inter-American Convention on Enforced Disappearance do not explicitly acknowledge the existence of the right to truth. The right was first considered by the Inter-American Court (IACHR) in *Velasquez Rodriguez v. Honduras*.¹⁶²

The IACHR linked the right to truth to a specific measure of reparation consisting of searching for and locating the disappeared, In *Neira v Peru* the Court ordering for the first time to a state to locate a disappeared person and to identify and return the remains to their relatives.¹⁶³

Since the case of *Bamaca v. Guatemala*,¹⁶⁴ the IACHR has recognized the right to truth and the correlative obligation to investigate properly the circumstances and the fate of the disappeared. The basis for this right, according to the Court, is derived from the American

¹⁶¹ UNCED/c/2(2012)

¹⁶² E/CN.4/2006/91, IACHR *Velásquez Rodríguez* (1988)

¹⁶³ IACHR, *Neira v. Peru* (1996)

¹⁶⁴ IACHR, *Bámaca v. Guatemala*, (2000)

Convention on HR provisions related to a fair trial (Article 8) and the right to judicial protection (Article 25).

Subsequent judgments related to enforced disappearance cases have kept the precedent considering that, as a form of reparation of the victim's right to truth,¹⁶⁵ the state must investigate and undertake all measures to search for, locate and return the remains to the victim's relatives.¹⁶⁶ Moreover, the location and identification process of disappeared persons must meet the international standards¹⁶⁷ (mainly the *Pueblo Bello* and *Gelman* cases), such as the UN Manual on Effective Prevention and Investigation of Extralegal Executions, UN Report of Forensic Science, and the ICRC "missing" project. When the mortal remains are found and genetically identified, the state must return them to their families and pay the burial expenses.¹⁶⁸

In some cases when the state was ordered as a measure of reparation to locate the disappeared, the IACHR thereafter found during the judgments supervision hearings that measures adopted by states to satisfy this obligation and the victims' right to truth are not enough.¹⁶⁹ In such cases, the procedure to monitor the obligation's compliance remains open.¹⁷⁰

However, the IACHR does not use clear criteria to measure the compliance of a state in this regard. The criteria are not clear on the standards or the steps to undertake even when it becomes almost impossible to find the disappeared. It appears that, from the IACHR's perspective, this obligation will continue until the remains are found and returned to the vic-

¹⁶⁵ IACHR, *Caracazo v. Venezuela* (2002), *Anzualdo v. Peru* (2009), *Radilla v. Mexico* (2009)

¹⁶⁶ IACHR, *Sanchez v. Honduras* (2003). Also, *Cárdenas v. Bolivia*, *Guerrilha do Araguaia v. Brazil*, *19 Tradesmen v. Colombia*, *Pueblo Bello v. Colombia*

¹⁶⁷ IACHR, *Pueblo Bello v. Colombia* (2006) *Gelman v. Uruguay* (2011), *La Cantuta v. Peru*; *Cárdenas v. Bolivia* (2010), *Guerrilha do Araguaia v. Brazil* (2010)

¹⁶⁸ *Ibid*

¹⁶⁹ Beristain (2010)

¹⁷⁰ See, IACHR Monitoring Compliance with Judgments. Cases: Neira(2009) Judgment from 1996, Caballero and Santana(2012) judgment from 1997, Radilla(2011) Judgment from 2009, 19 Tradesman(2012) Judgment from 2004, Pueblo Bello(2012) judgment from 2006.

tims' family, an obligation that might be impossible to meet. Hence, the measure to assess state compliance should balance in a proper manner the victims' expectations, the state's undertaken steps, and the impossibility of finding the disappeared.

4.3.2 European System

The European Court on HR (ECHR) did not directly address the issue of the right to truth; it was inferred from the rights to be free from torture, to an effective remedy, to an effective investigation, and to be informed of its outcomes. This was first acknowledged in *Kurt v. Turkey*, 1998. Thereafter, the ECHR followed the same reasoning in *Cyprus v. Turkey* and *Varnava and Others v. Turkey*.¹⁷¹ Since then, the ECHR has held that a failure to conduct effective investigations into the fate missing/disappeared persons violates the right to life (Article 2(1)).

Before the landmark decision in *El-Masri v Macedonia*, 2012,¹⁷² on “extraordinary rendition,” the right to truth was not explicitly recognized in the case law of the ECHR. Then, the ECHR underlined the right to know the truth and concluded that a victim's abduction and detention amounted to enforced disappearance as defined in international law. Although it referred to the UN documents and international instruments on the right to truth, the ECHR linked this right to the “Procedural aspect of Article 3: lack of an effective investigation.” Similarly, it dismissed the applicant's argument that the right to truth should be linked to Article 10 of the European Convention, the right to freedom of expression.¹⁷³

In *El-Masri v. Macedonia*, the ECHR noted that the right to truth has a dual dimension: a collective right and an individual right. The ECHR underlined the relevance of this case not

¹⁷¹ ECHR, Cases of *Kurt v. Turkey* (1998) *Tas v. Turkey* (2000), *Cyprus v. Turkey* (2001). *Varnava and Others v. Turkey* (2009),

¹⁷² ECHR, *El-Masri v. Macedonia* (2012)

¹⁷³ *Ibid.*

only for the direct victim (applicant) and his family, but also for victims of similar crimes and society, who have the right to know what happened.

Cyprus v. Turkey and *Varvana v. Turkey* shed light about compliance with the state's obligation to search for disappeared and to satisfy the families' right to truth. Since states must comply with final ECHR's judgments, they must adopt the necessary execution measures (action plan), which is supervised periodically by the Committee of Ministers of the Council of Europe.

In *Varvana*, regarding Greek-Cypriots missing since 1974, the ECHR noted that Article 2 of the Convention imposed a continuing obligation on the state to account for the missing persons' whereabouts and fate and underlined the important work done by the Cypriot Committee on Missing Persons (CMP) in performing exhumations and identifying remains. However, the ECHR determined that this is insufficient to meet the state's obligation to carry out effective investigations.¹⁷⁴ Therefore, even though the location of some of the bodies was established, the state failed to satisfy such other crucial components of the right to truth as how the victim met his fate, the investigation and the prosecution of those responsible.¹⁷⁵

In explaining how CMP addressed the missing problem, Kovras notes that, "in cases of disappeared/missing persons, official de-linkage could benefit from a concomitant decoupling of humanitarian exhumations from the quest for truth recovery."¹⁷⁶ For this author, humanitarian exhumations, as acknowledgement of the past, contribute to memory democratization and can pave the way for reconciliation. This analysis from the political point of view is valid. In politically sensitive contexts, it might be better to wait to establish punitive measures and more formal policies of truth seeking. However, this approach poses some tension to the states' HR obligations to investigate the circumstances and the fate of the

¹⁷⁴ ECHR *Varnava and Others v. Turkey* (2009)

¹⁷⁵ *Ibid.*

¹⁷⁶ Kovras (2012:98).

missing/disappeared persons effectively and to communicate to the families the outcome of the investigation.

Varnava addressed this tension giving weight to states' commitments under the European Convention. Hence, regardless of the politically sensitive situation between Cyprus and Turkey, the application on the Convention should prevail.¹⁷⁷ The Court concluded that there was a continuing failure to provide for an effective investigation to clarify the fate of the missing.

Further practical issues arise from Kovras' proposal on official de-linkage of humanitarian exhumations from truth recovery, legal, moral and political accountability. The author highlights the crucial development of science, e.g. DNA analysis and new technology, as a way of separating the process of identifying human remains from human testimony (truth recovery). Previously, testimony was the only means to locate and identify victims buried in common graves. Despite the new technology, the political will of parties to the conflict (past, frozen or ongoing conflict) is needed to undertake humanitarian exhumations. The outcome of the *Cyprius v. Turkey* supervision exemplifies this point.

In 2012, the Cypriot government submitted a memorandum to the supervision of the Cyprus-Turkey judgment execution regarding their missing persons and their relatives.¹⁷⁸ They explained the CMP difficulties to carry out their mandate, mainly in the following aspects: i) The CMP work is not possible without Turkey's full cooperation; it depends mainly on Turkish "political decisions" rather than any technical difficulties. This lack of political will hampers families' right to know the fate and whereabouts of their loved ones and to exercise their religious and social customs. ii) Turkey denied access to military zones under its control where the remains of missing are buried. iii) The Turkish army interfered with mass burial sites; therefore, the remains are kept in unknown and secret plac-

¹⁷⁷ ECHR *Varnava and Others v. Turkey* (2009).

¹⁷⁸ Cyprus' communication against Turkey (2012).

es. Although, some information is provided by ordinary Turkish–Cypriot citizens to the CMP, it is not enough to carry out their humanitarian mandate. iv) The CMP does not have access to battlefield reports contained in the Turkish army archives.

In that sense, the body in charge of the judgment’s supervision decided in June 2012 to call the Turkish authorities to give the CMP access to all relevant information and places, particular military zones and to invite the Turkish authorities to reply to all questions raised by the CMP, while also drawing on all relevant information contained in military archives and reports.¹⁷⁹

TJ cases with pre-transition, or non-transition, and ongoing conflict present multiple quandaries with respect to the right to truth and enforced disappearances, such as state compliance with its HR obligations (accountability), the volatile and sensitive political context (political stability), the victims’ needs and expectations, and resources availability. Therefore, considering these dilemmas, the next chapter will deal with the Colombian efforts to address the right to truth about the enforced disappearances and its compliance with its HR obligation to search for and locate the disappeared.

¹⁷⁹ Council of Europe Committee, (2012)

5 Addressing the Right to Truth and the Location of the Disappeared

This chapter presents some of the institutions and mechanisms that ensure the right to truth, searching, locating, identifying, and subsequently returning the remains of disappeared persons to relatives. Since these can include a myriad of judicial, non-judicial transitional and non-transitional initiatives, this is a highly complex institutional framework, in which procedures and institutions have overlapping competences and functions generating confusion among relatives and victim organizations and conflicts among institutions.

5.1 Institutions

5.1.1 Commission for the Search of Disappeared Persons

This Commission was created by Law 589/2000. It is comprised of members of the state, one victim's organization, and one civil society organization. The Commission is responsible for supporting and promoting the investigations of enforced disappearances regardless of the perpetrator; designing and supporting the implementation of search plans; supervising the mechanisms in charge to account for disappeared persons; making recommendations in enforced disappearances cases; promoting the coordination at the national and local levels for the effective implementation of laws regarding enforced disappearances; and promoting the assistance of families of disappeared persons.¹⁸⁰

The work done by the Commission has been highlighted in international reports for its contribution toward the clarification of the fate of missing/disappeared persons.¹⁸¹ Among the

¹⁸⁰ Law 589/2000, Decree 929/2007.

¹⁸¹ UN A/HRC/16/70(2011).

important initiatives taken by the Commission are the draft of the regulatory framework of the Urgent Tracing Mechanism (Law 971/2005); the design of the National Search Plan (2007), the National Registry of Missing/disappeared Persons and its regulatory framework (Decree 4218/2005); the protocol to return the remains of the disappeared to their families (2010); the investigation plan for enforced disappearance cases (2010), and the draft of the regulatory framework for the Law to Pay Homage to Victims of Enforced Disappearance, Law 1408/2010,¹⁸² although there is a delay in issuing the framework. Furthermore, the Commission promoted the adoption of ICED before the Congress and the government and currently provides juridical and psychosocial attention to families of disappeared persons.

The Commission has encountered difficulties in meeting its mandate, such as a lack of coordination among state institutions, which are part of the Commission; government representatives attending meetings without decision-making authority; and a lack of budgetary autonomy, since all of its financial resources depend on international cooperation and are administered by the National Ombudsman Office.¹⁸³

Another problem regards the coordination and communication between the Commission and the TJ mechanisms created by Law 975/2005. According to informants, coordination between them is difficult. Although a delegate from the Prosecutor Office attends the meeting,¹⁸⁴ there is no procedure to verify that the discussions and recommendations are communicated to JPU prosecutors, the Exhumation Subunit and the CUVI, who are in charge of the TJ mechanisms for clarifying the truth and locating the disappeared.¹⁸⁵

One individual stated that “the Search Commission has a debt in searching for disappeared persons and clarifying truth (...) we need a solidary institution for families of enforced dis-

¹⁸² UN WGEID A/HRC/19/58/Add.4,

¹⁸³ Asfaddes-member, CCJ-Lawyer (2013) Haugaard, Nichols (2010), ICMP (2008).

¹⁸⁴ Since 2010, the delegate has been the Director of the Enforced Disappeared and Forced Displacement Unit, before delegates from the JPU and the HR unit attended the meetings.

¹⁸⁵ CCJ-Lawyer, *Pueblo bello* relative, forensic-anthropologist (2013),

appearances.”¹⁸⁶ Others commented that the Commission does not respond to the victims’ needs in the current Colombian context.¹⁸⁷

Some of the respondents were very critical of the role of the Commission. They pointed out that it has not been able to inform families about investigations and exhumations, primarily due to a lack of communication among institutions,¹⁸⁸ and it has not interceded on behalf of the families before the prosecutors.¹⁸⁹ Similarly, it does not adequately supervise the implementation of the National Search Plan in the investigations carried out either by the JPU or those performed by other units.¹⁹⁰

5.1.2 National Search Plan

Among the most important mechanisms to clarify enforced disappearance cases is the National Search Plan (NSP). It is a useful tool to measure the extent to which Colombia has seriously undertaken tracing disappeared persons.¹⁹¹ This mechanism was designed as a response to the state’s needs¹⁹² for an instrument to guide institutional actions regarding localization, identification and return of remains in accordance with relatives’ expectations and to comply with international state obligations.

In 2007, the Commission, assisted by an independent forensic group called Equitas, designed the NSP after considering such international standards as the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Execution

¹⁸⁶ *Pueblo bello* relative (2013).

¹⁸⁴ CCJ-Lawyer, Asfaddes-member. Before answering any questions, these two informants starting explaining and rejecting the idea of TJ in Colombia

¹⁸⁸ *Pueblo bello* relative (2013) ICMP (2008)

¹⁸⁹ *Ibid*

¹⁹⁰ Forensic-anthropologist (2013)

¹⁹¹ JPU-CUVI member (2013).

¹⁹² State-delegate NSC (2013).

(Minnesota Protocol), the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), and The ICCR “Missing Project.”¹⁹³

This important tool aims to enable authorities to identify disappeared persons and to determine their whereabouts and what happened to them, mainly through four phases: i) information gathering; ii) analysis and verification of information; iii) recovery, scientific analysis and identification of mortal remains; and iv) final disposition of mortal remains. Consequently, it is expected that all authorities investigating enforced disappearances and tracing missing persons implement the NSP, including criminal investigations under Law 975/2005.

However, this tool is underutilized. Some informants expressed that the NSP should be used to locate disappeared persons as well as mortal remains, for which it is currently used by the JPU and the Exhumation Sub-Unit. Properly applied, it can help prosecutors to identify the scale of the enforced disappearances and the location of clandestine burials without relying solely on human accounts.¹⁹⁴

Respondents reported that the main problems with implementing the NSP were the lack of coordination among institutions;¹⁹⁵ the fact that “some prosecutors do not comprehend that part of a criminal investigation in enforced disappearances is locating the disappeared, alive or death, they are focused on identifying perpetrators;”¹⁹⁶ civil society organizations and victims do not know the NSP; and there are not enough technical, personal, and economic resources to implement the NSP.¹⁹⁷

¹⁹³ <http://www.comisiondebusqueda.com/Documentos/PLAN%20NACIONAL.pdf>

¹⁹⁴ Forensic-anthropologist (2013)

¹⁹⁵ Haggard, Nichols (2010), ICMP (2008), forensic-anthropologist (2013)

¹⁹⁶ Forensic-anthropologist (2013)

¹⁹⁷ JPU-Prosecutor and JPU-CUVI member, forensic-anthropologist (2013) UN WGEID A/HRC/19/58 (2012)

Aware of these difficulties, the Search Commission and the CUVI are training public servants¹⁹⁸ and conducting workshops with victims to explain the mechanisms.¹⁹⁹ Nevertheless, this cannot address the lack of financial, personal and technical support, nor the fact that the NSP is only a guideline without binding force. Accordingly, some UN HR bodies have recommended that the NSP should have the necessary legal force to ensure its implementation.²⁰⁰

5.1.3 Judicial Institutions

The mechanisms to address enforced disappearances and the search for the disappeared are primarily linked to the judiciary. Prosecutors lead and coordinate investigations to clarify the circumstances of the crime and the location and identification of disappeared persons.

To add complexity to the existing institutional framework, enforced disappeared investigations are under the jurisdiction of the manifold authorities of the ordinary jurisdiction and the exceptional TJ jurisdiction. Consequently, a case of enforced disappearance can be investigated either by the Prosecutor Unit of Displacement and Forced Disappearances,²⁰¹ the Prosecutor Unit of HR and IHL,²⁰² the Regional Prosecutor Directorate or the JPU. This multiplicity of authorities has produce parallel investigations of the same cases that hinder the process of locating and identifying mortal remains of disappeared persons.²⁰³ This has a negative effect on the victims' right to truth and the search for the disappeared in enforced

¹⁹⁸ State-delegate NSC, Asfaddes-member, CCJ-Lawyer (2013) Haugaard, Nichols (2010), UN WGEID A/HRC/19/58 (2012)

¹⁹⁹ Asfaddes-member, CCJ-Lawyer (2013)

²⁰⁰ UPR Colombia-2008 Recommendation 6, A/HRC/10/82, ODHAC (2013).

²⁰¹ By 2011, this Unit was investigating 14,350 enforced disappearance cases. See Fiscalía (2011) <http://www.fiscalia.gov.co/colombia/gestion/informes-de-gestion/>.

²⁰² Enforced disappearance cases brought to the Inter-American System and possible cases raised in front of the ICC are investigated by this Unit. As of February 2013, this Unit investigated 376 cases, corresponding to 894 disappeared persons. Fiscalía (2013) <http://www.fiscalia.gov.co/colombia/gestion/informes-de-gestion/>

²⁰³ ICMP (2008), *Pueblo Bello* relative, CCJ-lawyer and forensic-anthropologist (2013).

disappearances committed by State authorities or by members of illegal armed groups non-demobilized and non-nominated by the state to the TJ proceedings, because with the arrival of the TJ, the JPU has become the center for enforced disappearance cases and has gained strength while the ordinary jurisdiction has weakened.²⁰⁴

5.1.4 Virtual Identification Center

The CUVI, created in 2007, is a multidisciplinary and inter-agency institution that supports the JPU and the HR Prosecutor's Office. This institution represents a state effort adequately to address the disappearances issue, centralizing all information regarding the search process from the disappeared location to the inhumation by relatives. It has played a pivotal role in the search for the disappeared in the current TJ Colombian context. The CUVI processes information obtained during the TJ judicial mechanisms from demobilized and victims about clandestine burials.²⁰⁵ It supports the search for, identification and return of the disappeared to their families as a form of reparation and clarification of the truth. The CUVI collects, analyzes and stores useful data for identifying human remains obtained in exhumations done within the TJ framework of Law 975/2005,²⁰⁶ and it has designed search plans for criminal investigations, assisted prosecutors with exhumations, and extensively trained civil servants.

The CUVI has encountered the issue of the lack of communication and coordination among the institutions in charge of providing answers to families about the fate of their loved ones. The CUVI, the Search Commission, and the Exhumation Unit of the JPU should improve their coordination and communication to ensure that families are adequately informed about the search process progress and results.

²⁰⁴ Haggard, Nichols (2010)

²⁰⁵ Interagency Cooperation Agreement No. 0102/2007

²⁰⁶ *Ibid*, JPU-Prosecutor(2013) Art 48(2)Law 975/2005

Although the CUVI is doing noteworthy and extensive work assisting prosecutors in locating the disappeared and exhumations, some informants have observed that practical difficulties have arisen among prosecutors of the JPU and the HR Unit during field operations, such as logistic, economic cost, and leadership.²⁰⁷

In addition, although the CUVI has been working for five years, some respondents from NGOs and families of the disappeared do not properly understand how it works.²⁰⁸ Others have noted that the relationship between the CUVI and victims organizations, families and representatives are often difficult, because the CUVI is reluctant to consider the proposals by the families and independent experts in the design of search plans.²⁰⁹

5.1.5 Law 1408/2010: Paying Homage to Enforced Disappearance' Victims

In Colombia, considerable efforts have been made to ensure the right to truth and to locate the disappeared. Law 1408/2010 is a clear example of this effort. One essential feature of this Law is that it was drafted in a participatory process in consultation with associations of families of the disappeared and independent experts. Although the final text does not reflect all of the victims' organizations demands or the recommendations of independent experts, some of the informants were very pleased with the consultation process.²¹⁰ Additionally, a regulatory Decree for Law 1408/10 was drafted by the Search Commission, state

²⁰⁷ Forensic-anthropologist (2013).

²⁰⁸ *Ibid* and *Pueblo Bello* relative (2013).

²⁰⁹ Forensic-anthropologist (2013).

²¹⁰ State-delegate NCS, CCJ-lawyer, forensic-anthropologist (2013).

institutions, and victims' organizations. However, the law has not been implemented, and, according to informants, it is unclear why the government has not enacted the decree.²¹¹

This law addresses important aspects of the international state obligations toward the right to truth and the obligation to locate the disappeared established in ICED. This law strengthens the genetic identification process, establishes the National Genetic Database (Article 24(3) ICED), establishes measures to protect genetic information according to international standards (Article 19 ICED), includes the protection of unidentified remains in cemeteries and clandestine burial sites, and stipulates that the General Prosecutor's Office and the National Geographic Institute must elaborate maps to locate clandestine graves. Moreover, the law regulates the participation of relatives in exhumations, giving the prosecutor in charge faculties to restrict access for security reasons. It establishes the obligation to deliver mortal remains of disappeared persons to their families with dignity and in compliance with the protocol designed by the Search Commission and provides for psychosocial attention during the ceremony to receive the mortal remains. Finally, it provides for the creation of "Memory Sanctuaries" and monuments to pay homage to the disappeared.

Although, this law is extremely important to ensure the right to truth and meet international human rights obligations to the disappeared, without its practical implementation, it will not impact the realization of the victim's rights.

5.2 Transitional Justice Mechanisms and Right to Truth

Law 975/2005 regulates special and exceptional criminal procedures for alternative penalties (prison sentence up 8 years) to illegal armed groups to contribute effectively to peace. Access to benefits depends on demobilization, disarmament, nomination by the Govern-

²¹¹ Asfaddes-member, CCJ-lawyer, forensic-anthropologist (2013).

ment, meeting eligibility criteria, delivery of goods from illegal activities for victims' compensation, confession of all committed crimes, and commitment to no repetition. The law also established the victims' rights to truth, justice and reparation. Hence, the "destinies of the demobilized victimizers and victims are intertwined in complex ways."²¹²

The Colombian Constitutional Court in its ruling C-370/2006 interpreted Law 975/2005, weighting the pursuit of peace and victims' rights and clarifying that the peace achievement should be compatible with the Rule of Law, particularly regarding international standards for victims' rights. The Court ruled that Law 975/2005 does not provide for amnesty but for the investigation and punishment of crimes, replacing ordinary punishment with an alternative.²¹³

Right to truth was established in Law 975/2005, Article 7, with a dual dimension. Society and individuals victims have the inalienable right to know the truth about the crimes committed by armed actors and the whereabouts of the victims of enforced disappearances.

In the C-370/2006, the Court ruled that, to ensure right to truth, the demobilized must declare freely and voluntarily about the facts related to all crimes committed as a member of an illegal armed group; omissions or concealments of crimes will result in the inability to obtain alternative penalties, since such omissions clearly contradict the victims' rights and the reconstruction of historical truth and memory. The criminals are obliged to reveal the information on the whereabouts of disappeared persons to obtain penal benefits. Finally, the victims should have sufficient and appropriate legal remedies to participate in the legal proceedings, and these resources entail legal assistance from the state.²¹⁴

In the Colombian TJ context, truth may be archived through judicial mechanisms, such as criminal investigations established by Law 975/2005, and carried out by the Justice and

²¹² García-Godos, O.Lid (2010:488).

²¹³ Colombian Constitutional Court C-370/2006

²¹⁴ *Ibid.*

Peace Jurisdiction. There are also non-judicial paths in charge of the former National Commission of Reconciliation, replaced in part by the new Centre of Historical Memory (CHM).²¹⁵

5.2.1 Truth achieved through criminal investigation²¹⁶

Victims of enforced disappearance committed by illegal armed forces have to fill in a Registry of Acts attributed to illegal armed forces and the form for victims of enforced disappearances.²¹⁷ Additionally, they have to enclose proofs of the harm suffered.

Criminal investigations are carried out by the JPU Prosecutors, who provisionally recognize the victims' status as such, which allows victims to participate in the investigation. If victims have any information about grave sites, the case is also remitted to the Exhumation Sub-Unit.²¹⁸ Hence, the criminal investigation and the search for the disappeared run in parallel.

The demobilized should render a free account (*version libre*) that tells the truth about their crimes. Victims can have partial access to these hearings and can ask questions of the demobilized. Then, the prosecutor should verify the statements made by the demobilized and present formal charges during a hearing when accusations can be accepted or rejected. Finally, in a new hearing, the demobilized will be sentenced for the crimes committed and will receive a lesser sentence.

²¹⁵ Law 1448/2011.

²¹⁶ Law 975/2005 and regulatory decrees <http://www.fiscalia.gov.co:8080/Esquema975.htm>

²¹⁷ JPU-CUVI member (2013) <http://www.fiscalia.gov.co:8080/justiciapaz/Victimas.htm>.

²¹⁸ *Ibid.*

“Truth” clarification was explicitly established in Article 15 of the Law as the main purpose of criminal investigations, particularly the crimes’ circumstances, the damage to the victims, and guaranteeing the offenders’ rights. This article links the clarification of “truth” and the importance of searching for disappeared persons by state authorities to the demobilized contribution and to the duty to inform the relatives of the investigation outcomes.

Law 975/2005 was reformed last December by Law 1592/2012. Consequently, Article 15 of the former norm regarding “truth” clarification will henceforth establish macro-criminality patterns of organized armed groups. The General Prosecutor’s Office will be in charge of issuing guidelines on how to prioritize and select cases. Only those most responsible will be investigated and prosecuted. Furthermore, JPU prosecutors must scrutinize the structures that supported and financed the illegal groups. Additionally, the state’s must search for disappeared with the assistance of demobilized as part of the clarification of the “truth.”

Article 37 established victims’ right to access the criminal investigation carried out by the prosecutor in charge and to know the truth about the circumstances of the crimes committed.

5.2.2 Main obstacles to ensuring the right to truth in the investigation

Law 975/2005 recognizes the victims’ right to truth and their participation in the criminal proceedings. However, implementation of the law reveals the shortcomings of this mechanism to ensure this right. I will examine how the judiciary has safeguarded the right to truth, noting the main difficulties.

National survey about TJ mechanism

The 2012 National Survey conducted by the CHM asked in the framework of the judicial mechanism of Law 975/2005 about how much truth is currently known about the facts and HR rights violations that occurred in the NIAC. The results offered two different perspectives. 45% of the general population knows "something," and 35% knows "very little." In addition, the views expressed by the general population show different levels of belief or disbelief in the versions of the demobilized, which, according to the study, shows the complexity of clarifying the truth in terms of trust.²¹⁹

The 2012 survey also summarized the views of respondents on how to repair the harm caused by the NIAC and seek redress for victims. By an overwhelming majority, the general population agreed first "that those responsible collaborate in locating disappeared/missing and abducted persons;" secondly, that "responsible say all the truth;" thirdly, that "those responsible pay a prison sentence;" and fourth, that "the state promotes community development in the regions most affected."²²⁰

This National Surveys show the importance of addressing the issue of the disappeared in Colombia and how locating and returning their remains to their families and establishing the truth in those cases contributes to heal the victims.

Victims' participation in the criminal investigation

Participation of the families of the disappeared in the investigations and in the searching process have a pivotal role in guaranteeing victims' right to truth. As scholars have noted, in judicial proceedings the relatives of the disappeared are seen as passive victims and not

²¹⁹ CHM (2012).

²²⁰ Ibid.

as active agents, who sometimes want to engage in the criminal proceeding and in the searching process to make well-informed decisions.²²¹

Mechanisms created by Law 975/2005 in practice do not allow victims to participate effectively in realizing the right to truth.²²² The relatives interviewed believe that, during the free accounts, only the perpetrators' truth is heard. According to one victim interviewed, the judicial path is "mocking the victim's pain."²²³ Although paramilitaries have the truth about what happened to the disappeared, he believes that the victims' truth should be heard as well during the judicial proceeding.

Victim participation is very limited during the free accounts. Victims are in a separate room. They must follow a very strict process for questioning paramilitaries. They are not permitted to ask follow-up questions, because they have to follow again a rigid procedure. Then, there is no oral interaction between victims and perpetrators. Consequently, few victims have participated in the free accounts, only 18.7% of all victims registered in Justice and Peace have participated in this step. According to the JPU, by February, ²²⁴ 2013, 409,589 victims registered in the judicial path, of which only 76,668 victims have participated in free accounts. Of those, only 28,790 asked questions during the free accounts. Hence, on average, each victim who participates in the free accounts has asked 1.24 questions.²²⁵

Among the reasons noted by scholars for the small number of victim participants in the free accounts are the socioeconomic conditions of the victims that impede their travel to towns and cities where the free account is conducted, the ongoing armed conflict, victims receiv-

²²¹ Aronson (2011), Robins (2011) and Navarro *et.al.*, (2010).

²²² OAS Reports on Colombia, implementation of the peace and justice law. García-Godos, O.Lid (2010), Lyons (2010)

²²³ Relative of *Vereda el Faro* (2013).

²²⁴ <http://www.fiscalia.gov.co:8080/justiciapaz/Index.htm>,

²²⁵ Lopez, Forer (2012:359)

ing threats against them after participating in free accounts, the victims' distrust of the state, and technical and administrative inadequacies during the free accounts.²²⁶

Victims' participation during the free accounts can adversely affect them. Some felt re-victimized by perpetrators and the state.²²⁷ In the paramilitary's logic, the idea is to blame victims' for their own tragedy²²⁸ by claiming that victims deserved their fate.²²⁹ According to some informants, paramilitaries have mistreated the victims during the free accounts; to justify their crimes, they label their families "guerilla members," terrorists, "drug addicts," and "undesirables."²³⁰ In this sense, the relative of "Vereda el Faro" explains:

I went with the mothers of (...) [other case] to the free accounts in 2007 and 2009. Once they finished, we felt very bad, very mistreated. This was a re-victimized truth, a half-truth, they [paramilitaries] only justified their acts.

In the same sense, the relative of *Pueblo Bello* considered the free accounts a re-victimized scenario. They expect that the prosecutor will demand respect for the families attending the hearings:²³¹

The free accounts have served to justify the paramilitary's crimes, with the approval of the prosecutors, because there is no procedure to call for respect of victims' memory and their family attending the hearing, and the paramilitaries' account is considered by prosecutors the judicial truth.

Although the JPU Prosecutor is aware of this, he believes that prosecutors cannot intervene. The demobilized should expose their truth, then victims can do the same, and the authorities verify the information to find the judicial truth.

²²⁶*Ibid.* pp:367-393.

²²⁷Asfaddes-member, social-psychologist, relatives of *Pueblo Bello* and *Vereda el Faro* (2013)

²²⁸CMH (2012:54), social-psychologist (2013).

²²⁹ICMP (2008:14)

²³⁰Asfaddes-member, social-psychologist, relatives of *Pueblo Bello* and *Vereda el Faro* (2013), CMH (2012).

²³¹In South Africa, during public hearings, victims and perpetrators have the chance to tell their truth in the presence of the commissioners and the public. It was expected that the testimony respected the dignity of victims, trying to avoid racist references toward the victims. See CHM (2012:48)

However, the criminal investigation focuses mainly on demobilized members, who decide what events to describe, which dictates how the prosecutor will organize the free accounts and will notify the recognized victims about the date of the free accounts to ensure their participation.

Communication on the progress and results of the investigation

The Colombian TJ mechanism partly informed victims on the progress and result of the investigations. Victims obtain valuable information if the demobilized during the free accounts reveal the truth about their cases. Also, by advertising on radio, newspaper and television, the JPU notifies the victims of a specific demobilized to go to the prosecutor to complete the forms to be recognized as victims and to participate in the judicial path.

According to the prosecutor interviewed, the JPU let any recognized victim know the progress of the investigation. A call center and a web page frequently informed the victims about free accounts and the demobilized. However, this is insufficient for some respondents, and there is no an easy and convenient communication channel between the JPU prosecutors and families.

For the *Vereda el Faro* relative, there has been a lack of information about the progress and result of the investigation on the part of the JPU Prosecutor and the Exhumation Sub-Unit. He argues that the families of his village are unaware of how the law 975/2005 works and the institutions that provide answers. The prosecutor in charge of the paramilitary section has not informed them about what happened, and no delegate of the prosecutor has gone to the villages to collect the community testimony. Furthermore, he has not received any legal assistance. The little truth clarified in his case has been the result of the family's initiative to search for their loved ones.

The criminal investigation in the case of *Pueblo Bello* has parallel proceedings. One is the JPU investigation, and the other is the ordinary HR investigation. In the JPU, the prosecutors are dealing with two demobilized paramilitaries that allegedly participated in the disappearance of the 43 men. In the HR proceeding, a prosecutor is in charge of the case, investigating the responsibility of paramilitaries and state forces. The main contact with the families has been the prosecutor of the HR Unit, which the families and representatives identified as the proper forum to achieve truth, justice and reparation. There is no permanent contact with the JPU prosecutor, although in some free accounts of demobilized, the legal representative has participated. Similarly, the HR Prosecutor is in charge of the search for, location, exhumation and the return of the remains, which, with the adoption of Law 975/2005, generated some tension among the CUVI, the Exhumation Sub-Unit and the HR Prosecutor Unit.

Clarifying the truth

Victim organization and NGOs interviewed stated that the “truth” about the HR violations committed by paramilitaries has not been clarified. One reason is that free accounts have served as a source of information for Prosecutors, but the JPU has failed to investigate and verify the information given by paramilitaries, which can be demonstrated by the few sentences issued by judges.²³² After eight years of implementation, by February 2013, only ten sentences have been issued²³³ to fourteen demobilized paramilitary members, while the total nominated by the state for benefits and alternative punishments to the law 975/2005, by February 2013, reached 4,237. Therefore, fewer than 0.33% demobilized nominated by the Government have been sentenced

²³² CCJ-Lawyer (2013).

²³³ Fiscalía (2013) <http://www.fiscalia.gov.co/colombia/gestion/informes-de-gestion/>

However, for the government's representatives interviewed, the truth has been clarified in a number of cases, revealing the patterns of enforced disappearances committed by some paramilitaries' sections. According to one informant, "without the paramilitaries' versions some crimes would have remained forgotten, without a trace of the responsible."²³⁴ For the JPU Prosecutor, this judicial truth about the atrocities committed should be fully accessible to the public, "with the aim that our children and grandchildren be aware of the acts committed by paramilitaries, ensuring that this never happen again in Colombia."

All of the informants noted that the TJ mechanism created by Law 975/2005 have contributed to the location, identification and return to their families of thousands of disappeared victims. In the words of the *Pueblo Bello* relative interviewed, "the Law 975/2005 has helped some families. These men revealed the location of disappeared persons allowing families to recover the bodies of their relatives and bury them"

For the government's respondents, the implementation of Law 975/2005 reveals the importance of understanding that, in criminal investigations of enforced disappearance cases, locating the disappeared is a priority, using forensic science and protocols in line with international standards, which seek to contribute to victims' right to truth.

5.2.3 The Search for the disappeared and obstacles

The CUVI and the Exhumation Sub-Unit of the JPU are in charge of the technical process of locating and delivering the remains of disappeared to their relatives. This section deals with this process but focuses on how the TJ mechanisms ensure the victims' right to be

²³⁴ State-delegate NSC (2013).

informed about the progress and results of investigations and to participate in the process. The discussion is not from the point of view of forensic science.

Locating clandestine burials

The information about possible clandestine graves has been provided by families of the disappeared, the demobilized, and witnesses. If the demobilized in the free accounts reveal the location, this information is sent by the JPU prosecutors to the CUVI for the Exhumation Sub-Unit to schedule the exhumation. However, before this step, verification is necessary with other sources, such as demobilized interviews, enforced disappearance cases in the area, maps, patterns of disposal of the illegal group, and geographic and terrain characteristics.²³⁵

Victims can denounce the facts whether in a local prosecutor's or ombudsman's office, which is remitted to the JPU. For the prosecutor interviewed, victims denounce more often and give information about clandestine burials, which demonstrates an increased trust by victims in the institutions.

Families of disappeared can also attend the sessions for the attention of enforced disappearance victims. This large-scale strategy designed in 2008 aims to fill in the two forms, one of them especially designed to collect ante-mortem data related to the disappeared. During this session, the CUVI takes biological samples of relatives and submits all of the information collected to the Network Information System on Disappeared Persons SIRDEC, the Information System of the JPU (SIYP) and the Information System of the ordinary justice

²³⁵ JPU-Prosecutor (2013), CUVI (2011).

for entry.²³⁶ 248 sessions have occurred attended by 42,973 persons, and 17,230 biologic samples have been taken.²³⁷

Some respondents noted that, during the sessions, not enough personal from the CUVI and the JPU attend to deal with the high number of people. Consequently, some forms are incomplete, and the ante-mortem data is not accurately collected.²³⁸

In other cases, such as *Vereda el Faro*, the search process has been the family and community initiative. For instance, in 2006, after a workshop given by an NGO in the village about the NSP, the families of the 9 disappeared peasants and many more families of disappeared persons in the area started to search for the victims and collect ante-mortem data for their own. They also formed a family commission to search for the clandestine burials. In 2007, they located the graves, excavated finding some remains, took photos of the place and drew a map with the location. They submitted all of this information to the JPU Prosecutor for a prompt exhumation of their relatives.

In the *Pueblo Bello* case, the state and families have searched for the disappeared since the 1990s. However, not until 2009 did the state design a search plan exclusively for the case, which is in charge of the HR Unit. This generated some tension among the CUVI, JPU and the HR Unit. The *Pueblo Bello* relatives and other informants thought that this was a good example of how the search plan can be adequately implemented taking into account the views of families and independent experts. They also stress that the HR prosecutors and forensic team willingness toward this case.²³⁹

²³⁶ *Ibid.*

²³⁷ <http://www.fiscalia.gov.co:8080/justiciapaz/Index.htm>.

²³⁸ Relative of *Pueblo Bello*, forensic-anthropologist (2013).

²³⁹ Relative of *Pueblo Bello* and forensic-anthropologist (2013). The international pressure toward this case can be one explanation of the measures taken by the State.

Exhumation process

This step is undertaken after an assessment of the security risks of the area, the weather, the cost of the exhumation and personnel among other factors. The participation of families is regulated by Law 1408/2010, and highly depends on the Prosecutor's criteria.

In practice, some welcome the victims' participation in exhumations as observers. But, if the family decides to participate, a psychosocial team should be there.²⁴⁰ Other authorities are very reluctant to permit family participation in this phase for security concerns, which was extensively explained by some informants. Summarizing, carrying out exhumations during an armed conflict is a continuing risk for the prosecutors and authorities. Therefore, they cannot risk the lives of the families, and it is a State obligation to protect them. It is "necessary to balance the family right to life against the family right to truth, given weight for the former."²⁴¹

The ongoing conflict is a problem with exhumations. Exhumation teams cannot access certain areas of the country, because fighting continues between states forces and other illegal armed groups or among them. Moreover, Colombia is one of the most landmine-affected countries.²⁴² Often, the exhumation team must be protected by armed forces and use military transport, such as helicopters, to enter to some areas.²⁴³ These security concerns can postpone the exhumation for months.

Another reason for limiting the participation of the families during exhumations, according to informants, is that, during an ongoing conflict, their transport can be seen as a military objective by illegal armed groups.²⁴⁴

²⁴⁰ JPU-Prosecutor (2013).

²⁴¹ State-delegate NSC (2013).

²⁴² <http://www.icrc.org/eng/war-and-law/weapons/anti-personnel-landmines/overview-anti-personnel-landmines.htm>.

²⁴³ JPU-CUVI member, JPU-Prosecutor (2013).

²⁴⁴ Forensic-anthropologist (2013).

The CUVI's guidelines for public servants in charge of enforced disappearance cases state that authorities should deliver timely and clear information to families about the exhumation dates and the security concerns. If the families decide participate, authorities should answer their questions.

Another issue is the lack of personnel to carry out exhumations. There are only 17 prosecutors in charge of the exhumation and 9 exhumation teams within the country. This is a small number of technical personal in comparison to the high number of disappeared persons in the country. However, there are no resources to overcome this issue, generating delays in the exhumation and identification of remains.²⁴⁵

The relative of "*Vereda el Faro*" interviewed noted that, from 2007 to 2010, the anguish and pain of his family increased due to the state's delay in exhuming his family. "We feel powerlessness. There were times when we wanted to go to the site, recover the remains and take them to the (...) village, because this was the pain of my family." He asserted that his family did not receive any communication about the exhumation; it was the community who informed his family about the exhumation. Hence, they rushed to the site and observed the exhumation.

In *Pueblo Bello*, there have been numerous field operations in a paramilitary's ranch and an exhumation in the cemetery. Since 2007, there have been continuing communications about the field work, in which families and independent experts have participated. In compliance with the international ruling, the Government has allocated resources to cover all financial cost for the search process from the location to the inhumation. For the relative interviewed, participation in the field work has been very valuable and a continuing learning process that has helped him to understand the searching process and to support other families in other cases.

²⁴⁵ JPU-CUVI member, JPU-Prosecutor (2013).

Exhumation and recovery of remains can address the demands and real needs of the families,²⁴⁶ but it can also be a re-traumatizing experience. Therefore, it is important to consult with families regarding their decision whether to participate. The political context is crucial in exhumation. In Colombia it has impeded access to areas where remains are located, putting at risk the team and victims. In the original TJ context (post conflict, post authoritarian), exhumations have been carried out when the political context allowed the field work, such as in Guatemala, El Salvador, Brazil, Argentina, and Chile.²⁴⁷ However, in Colombia “many relatives feel that it is important to find the remains of their relatives, even in the midst of a conflict.”²⁴⁸

Identifying and returning the remains to families.

During the identification process, samples taken from a set of remains, together with family reference samples, are sent to laboratories. When taking the family’s biological sample, the authority explains that the sample will be used solely to search for the disappeared and where the data will be stored. Then the family signs a consent form designed in 2010 based on international practice.²⁴⁹

The ceremony to deliver the remains of disappeared person is part of the judicial process, which also seeks to assist and dignify victims.²⁵⁰ For the families, this ceremony provides some closure, mitigates the pain, satisfies the commitment toward the dead, and allows them to enact proper burials according to their religious beliefs and traditions.

The Exhumation Sub-Unit is in charge of the ceremony covering, for instance, the families’ transport, the coffin and the cemetery niche. However, there are limited resources to cover

²⁴⁶ Robins (2011) Navarro *et.al* (2010).

²⁴⁷ Navarro *et.al* (2010).

²⁴⁸ *Ibid.*

²⁴⁹ JPU-CUVI member (2013). They used the experience of Argentina and Bosnia, the guidelines of the ICRC.

²⁵⁰ JPU-CUVI member, JPU-prosecutor (2013).

all of the steps. Sometimes, members of the Exhumation Sub-Unit pay from their own salary part of the costs. In others cases, such as *Vereda el Faro*, after a bitter experience with the local authorities waiting for one week for an answer on which authority should pay the cost of the niche, finally the community helped to pay the expenses. Relatives though that, although Law 1448/2011 (Land restitution and victim's law) establishes that the local government must pay the funeral expenses, the reality for many families is different.

In principle, the prosecutor is not responsible for this cost. However, there is lack of clarity about this. The Law 1408/2010 establishes that the cost should be paid by new Victims' Unit of the National System, but Law 1448/2011 (Land restitution and victim's law) states that it should be covered by the local authorities.²⁵¹

The ceremony to deliver the remains of disappeared persons is a very comprehensive scheme for the victims' attention. During three days, an interdisciplinary team provides psychosocial attention, explains the identification process to families, clarifies the progress of the criminal investigation, and offers legal aid to families to claim the administrative reparation.

According to the informants,²⁵² the explanation by the forensic team to each family in a simple language of the identification process and why these remains are from their loved ones is a worthy experience for both families and the forensic team. Families can ask questions related to the identification process, and the forensic team can understand the importance of the identification process and provide answers to the families.

The psychosocial attention has been provided by psychologists from the JPU and more recently psychologists from the National System Victims' Unit (created by Law 1448/2011). For victim organizations, social-psychologist and relatives interviewed, this aspect must be improved. During these three days, the families are exposed to conflicting

²⁵¹ Law 1404/2010, Article 7, Law 1448/2011, Article 50.

²⁵² JPU-Prosecutor, JPU-CUVI member, and forensic-anthropologist (2013).

emotions and need psychological assistance with respect to their mourning process. For the relative of *Vereda el Faro*, the psychosocial attention was disrespectful toward his pain. “My mother was weeping during the whole first day, and it is normal you know, after all these years... then, suddenly a psychologist approaches my mom and said that she should stop crying and please be quiet, this was very offensive.”

State institutions and victim organizations have disagreed about the organization of the ceremony. For organizations and families, this ceremony is very rigid and scheduled. The preparation of the ceremony needed more consultation with the victims to ensure respect for their pain and their traditions and religious issues toward the dead.

Information on the progress and result of the search activities

There is no a unified criteria in the practice toward this issue. It depends on the good will of the authority in charge. The interviewed relatives, the forensic-anthropologist and the NGOs members noted that families do not know what happened to the remains after they were exhumed. They must file formal petitions to get information.²⁵³ In some cases, the answers given by prosecutors in charge of the search were shocking. In one case, in which families and their representatives participated in a meeting to discuss the identification process of remains recovered in a clandestine grave, the prosecutor claimed that there was no legal basis to allow their participation and that, regarding international standards, they must remember that the authority in the first term is obliged to the national constitution and domestic law.²⁵⁴

²⁵³ Article, 23, National Constitution. The relative of *Vereda el Faro* said that it is the only way he obtained answers about the search process, demanding that prosecutors enter the village to exhume the remains and then questioning that, two years after the exhumation, it was time to return the remains to the family.

²⁵⁴ Forensic-anthropologist (2013).

5.2.4 The Historical Truth

Law 975/2005 established the National Reparation and Reconciliation Commission which formed the Historical Memory Group to produce an historical account of the NIAC in Colombia. The group has been working on emblematic cases to reconstruct the memory of the events leading to the HR violations and their consequences.

Law 1448/2011 and Decree 4803/2011 transformed the Historical Memory Group into the new Centre of Historical Memory (CHM), which handles the collection of archives that contribute to the truth from both the historical and legal perspectives. The hearings and outcomes of the TJ judicial proceeding are incorporated into the archives, although confidential information may be restricted.²⁵⁵ The CHM will collect, systematize the historical memory, and support local historical memory initiatives.

The 2012 National Survey showed that the general population reported a low level of knowledge about the historical path. Only 8% in the affected population and 5% in the unaffected population have heard of it. The percentage of those who claim to know the historical path is visibly higher in organized victims (44%) and experts (91%). This population has a positive opinion on the CHM's role.²⁵⁶

Indeed, the CHM is doing important work preserving the historical memory. However, it has failed to invite the whole Colombian society to reflect about the violence and HR abuses committed during the fifty years of armed conflict.²⁵⁷ In that sense, one recommendation made during the 2013 Universal Periodic Review to Colombia was “to develop at the regional level State institutions tasked with reconstructing historic memory with regard to the

²⁵⁵ Law 1448/20011, Article 145.

²⁵⁶ CHM (2012)

²⁵⁷ Social-psychologist (2013), A/HRC/22/17/Add.3,para24.

armed conflict.”²⁵⁸ Respondents also have different attitudes regarding which truth the CHM is presenting and the audience it wants to capture.

The prosecutor interviewed said that the CHM is collecting much information that has served in the criminal investigation. This information regarding judicial truth and historical truth should in the future be part of the country’s history and be included in public education to prevent it from ever happening again.

The relatives, victim organizations, and members of NGOs interviewed felt that the dense reports elaborated by CHM are for selected sectors, such as academics and the international community.²⁵⁹ The reports contained a language that was not understandable by most of the victims.²⁶⁰

The relative of “*Vereda el Faro*” felt that the CHM is doing an important job. However, the “CHM is not a center for victims. The CHM’s initiatives come from the capital, from a desk, and are not consulted with us. (...) The country needs an historical truth. The victim’s truth about the conflict must become the history of the entire country.”²⁶¹ Some informants noted the need to recover the victim’s voice so that they can tell their stories in their own language, make their narrative visible, and make these stories public to generate a change in society.²⁶²

²⁵⁸ <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights23April2013pm.aspx>.

²⁵⁹ CCJ-Lawyer, Asfaddes-member, relatives *Pueblo Bello* and *Vereda el Faro* (2013).

²⁶⁰ *Ibid.*

²⁶¹ In the same sense social-psychologist (2013).

²⁶² Relatives *Pueblo Bello*, social-psychologist (2013).

5.3 Transitional Justice Initiatives 2005-2013

Since 2005, Colombia has quickly evolved to create a TJ legislative agenda. Among the legislative measures is law 1424/2010 which establishes benefits for demobilized paramilitaries who have not committed serious HR violations, or WC, or CAH; minor crimes such as conspiracy are suspended in exchange for contributions to truth and victims' reparation.²⁶³

A major legislative development is Law 1448/2011, Victims' and Land Restitution Law, which recognizes for the first time the existence of a NIAC and seeks to address its consequences. Nevertheless, from the perspective of victim's organizations, Law 1448/2011 does not adequately address enforced disappearance cases.²⁶⁴ Although victims' organizations and families drafted a proposal addressing the issue in the law, it was neglected in the law's final draft.

As noted, Law 975/2005 was reformed last December by Law 1592/2012, in which the judicial truth will reflect the pattern of macro-criminality of organized armed groups, and the JPU prosecutors will handle the cases according to prioritized criteria.

This prioritization has been included in the constitutional reform known as "The Legal Framework for Peace" Legislative Act 01/2012. This includes a selection of cases against the most responsible for CAH and WC. It also makes it possible to drop all other non-selected cases and suspend selected sentences against armed group members. This initiative also created an important TJ mechanism, a truth commission.²⁶⁵ This constitutional reform

²⁶³ OEA//Ser.G. CP/doc.4698/12

²⁶⁴ Asfaddes-member (2013).

²⁶⁵ Among informants, the creation of a Truth Commission poses a very difficult scenario in the midst of the NIAC. They are concerned whether the Truth Commission can be a substitute for justice. One informant refers to the creation of a Truth Commission in the current context as insane; another says that this shows how the Colombian Government exhibits a "state of political schizophrenia."

raised concerns among the UN system, and the OPICC.²⁶⁶ Nevertheless, for the Colombian government the legal framework for peace is a unique opportunity for TJ mechanisms to achieve peace.

²⁶⁶ 2013 Colombia UPR 23-26 April UN A/HRC/22/17/Add. 3, OPICC (2012).

6 Conclusion

This work attempted to account for the way the TJ mechanisms implemented in the midst of the Colombian NIAC ensure the victims' right to truth in cases of enforced disappearance and the obligation to locate the disappeared. Returning to the question posed at the beginning of this study, it is now possible to state that the TJ mechanism created by Law 975/2005 has contributed to the location, exhumation, identification, and inhumation of thousands of disappeared victims and has revealed how enforced disappearances were systematically committed by paramilitary groups. As never before, victims and communities have also begun massively to denounce cases of enforced disappearances.

Nevertheless, the implementation of Law 975/2005 reveals the limitations of the judicial path to ensure the victims' right to truth, both in the judicial proceedings and searching for the disappeared. Relatives continue to be seen as passive victims, not as active agents. The judicial truth presents only the perpetrator's truth and the official truth built on the depositions of the demobilized, without considering the relative's truth. The judicial proceeding can re-victimize the relatives.

Although it is doing important academic work documenting emblematic cases, the non-judicial mechanism for the clarification of historical truth, the CMH, has not reflected the victims' narrative and has failed to reach the whole Colombian society. A multiplicity of procedures and institutions are in charge of ensuring victims' right to truth and the obligations to locate the disappeared with overlapping functions generating some tensions among institutions, which is a hurdle for the effective realization of the right to truth and for the right of victims to be informed about the progress and the investigation results.

The results of this research support the idea that, in a TJ mechanisms created in a given context, tensions exist among the victims' expectations to clarify the truth about the disappeared (knowing the fate of the disappeared, need for human remains, establishing the pattern and context of enforced disappearances, restoring the dignity of their families, and

memorial site, among others), with the manifold's definition of truth given by TJ actors, with limits on seeking and revealing the truth in a politically sensitive situation, with the international obligations derived from HR and humanitarian treaties particularly on the right to truth and ICED, and the economic cost that TJ initiatives entail.

The TJ mechanism implemented in Colombia addresses only crimes committed by demobilized members of illegal armed groups nominated by the state. Therefore, only enforced disappearances committed by them fall under the jurisdiction of the JPU. Hence, the current work was unable to analyze the state efforts in enforced disappearance cases committed by the state or by non-nominated paramilitaries and the consequences for the victims' right to truth. Another limitation of this study is that it does not examine the efforts undertaken by the Colombian state to search for the disappeared from the point of view of forensic science, which was beyond the scope of the thesis and required specific knowledge.

There is, therefore, a definite need for the Colombian state to respond adequately to enforced disappearances. This is an essential condition for the effective realization not only of the right to truth, but also justice and reparation for victims. Furthermore, in a TJ project, which seeks to address this violation, the necessities of the victims require special consideration. Addressing the issue of the disappeared should not only be a strategy on the TJ "unusual Colombian case". Since this crime is still committed by all parties to the ongoing armed conflict, the issue requires strengthening the institutions and mechanisms to increase the government's response and foremost to guarantee the victims' rights.

Many important changes must be made in Colombia to ensure this right and the search for the disappeared. More personnel and economic resources are needed to conduct the search process and to provide legal aid for victims. Currently, the institutions in charge of the search process operate under administrative and resource constraints. No clear data exist about the NSP's implementation, which requires further research. The issue of the resources allocation to TJ initiatives aimed at locating the disappeared should be clarified to see

whether this situation corresponds to state resource limitations or constitutes a failure to allocate available resources in line with the TJ priorities and HR obligations.

Further research should be done to establish whether implementing TJ mechanisms before the end of a conflict can contribute to the peace-building process while achieving peace and considering the victim's right to truth, justice and reparation at the same time. The findings from this study seek to contribute to the current literature about the need adequately to address the disappeared issue in TJ and in the growing expansion of the TJ field. I have attempted to study TJ processes implemented in the middle of the conflict intending to address enforced disappearances. The TJ Colombian experience is highly contested mainly when the official TJ discourse is limited to illegal armed groups and has not addressed the legacies of the state's responsibility in the NIAC. The state's denial and accountability toward state crimes, such as enforced disappearances, challenges the TJ initiatives of the Colombian state.

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Appendixes

1. Table 1: WGEID. State's obligations toward the right to truth in relation to enforced disappearances.

State obligation	WGEID Explanation
1. To investigate until as the fate and whereabouts of the disappeared have been clarified.	This is a consequence of the continuous nature of enforced disappearance.
2. To communicate the outcomes of the investigations.	The State is obliged to let any interested person know the concrete steps taken to clarify the fate of disappeared persons, including the steps taken on the basis of the evidence provided by relatives and other witnesses. Although, the need for a criminal investigation may be restricted, this decision must be duly justified, and recourse should be provided at the domestic level to challenge the decision to refuse information.
3. To provide full access to archives.	The State is obliged to give full access to information to the authorities in charge of the investigation. They should have the necessary resources to conduct the investigation and full access to state archives, and, once the investigation is closed, the archives should be preserved and made fully accessible to the public.
4. To provide full protection to witnesses, relatives, judges and other investigation participants.	The State may establish a protection programme.
5. To take all of the necessary steps to find the disappeared persons.	The obligation to take the necessary steps to search for the disappeared is an obligation of means or conduct, ²⁶⁷ which states must undertake in a serious manner. Moreover, the impossibility of finding the disappeared does not release the state from its obligation to investigate.
6. To return the remains of the disappeared to their families.	Families have the right to have the remains of their loved one returned to them and to dispose of them according to their own tradition. The remains must be clearly and indisputably identified, including through DNA analysis. Further, the relatives' participation in identification and inhumations must be recognized.

²⁶⁷ The obligation requires that action reasonably calculated to realize the enjoyment of a particular right. See: Conde Victor, "Handbook of international human rights terminology," (2004), pp. 182-183, UN human rights indicators, (2012), p. 13.

2. Table 2. CED Guidelines. State obligations toward ICED Article 24

Obligation	Measures to be taken by states
<p>ARTICLE 24(2)</p> <p>The state party is obliged to guarantee the right of the victims to know the truth about the circumstances of the enforced disappearance, the progress and results of the investigation, and the fate of the disappeared person.</p>	<ul style="list-style-type: none"> • To provide mechanisms to ensure the right to know the truth about the circumstances of the enforced disappearance and the fate of the disappeared. • The mechanism must be adequate to ensure the right of victims to be informed about the progress and results of investigations and to participate in their proceedings.
<p>Article 24(3)</p> <p>States ought to: investigate and ensure the location of the disappeared persons and, in the event of death, to locate, respect, and return the remains to the next-of-kin.</p>	<ul style="list-style-type: none"> • To provide mechanisms to investigate, locate victims and, in the case of death, locate, respect and return the remains to relatives. • To provide protocols to handle remains of disappeared persons to their families in line with international standards. • Systematically collect ante-mortem data related to the disappeared and their relatives and establish DNA databases to identify victims. • To provide mechanisms for storage of genetic material of the disappeared and their relatives.
<p>Article 24(7) in relation to participation of associations of victims</p>	<ul style="list-style-type: none"> • To consult in place to ensure that associations of disappeared have a role in drafting relevant legislation.

3. Interview Guide for relatives of enforced disappearances

Name:

Place:

Date:

Time:

Informant number:

Comments:

I. About the events.

1. Could you please introduce yourself?

2. Can you tell me about your case? (Tell me your story)
 - a. When did it happen?
 - b. Who were the responsible?

3. What do you understand by “truth” in enforced disappearances cases?

4. Do you know which section of the General Prosecutor’s Office is in charge of your case?
 - a. Justice and Peace Unit
 - b. Enforced Disappearance Unit
 - c. Human Rights Unit.
 - d. a and b
 - e. a and c

5. Which is the path that you and your family followed for obtaining the clarification of truth and the location of your relatives disappeared?

6. How would you assess the State's response towards the clarification of truth and the search for the disappeared to your case?

II. Questions about institutions and mechanism in charge of guaranteeing the right to truth and searching for disappeared people.

7. Have you heard about the following Institutions and mechanisms? If so could you tell me your opinion on the role of these institutions and mechanisms towards ensuring the victim's right to truth and the search for the disappeared?
 - a. National Commissions for the Search for the disappeared
 - b. The Virtual Identification Centre CUVI
 - c. National Search Plan
8. What has been your experience and involvement (if any) with these mechanism and institutions? What are the main obstacles for ensuring the victim's right to truth and the search for the disappeared?
9. Have you heard about the law 1408/2010 to pay homage to enforced disappearance victims? If so could you tell me your opinion about the law and its implementation a how effective it can be to ensure victim's right to truth. (if was asked their opinion about some of the crucial aspect of the law such as Memories Sanctuaries, symbolic reparations, the ceremony of return the mortal remains)

III. Question regarding Transitional Justice mechanisms in Colombia.

10. Do you think that there has been progress on the clarification of truth in cases of enforced disappearances since the adoption of Transitional Justice mechanisms in Colombia?

11. Do you think that the criminal investigation created by the law 975/2005 has made a progress in clarifying the truth in enforced disappearances cases? If so in what sense?
12. How would you assess the victim's participation and the right to be informed on the progress of the criminal investigation of the law 975/2005? Could you tell me your experience?
13. How much progress has been made in the search for disappeared persons in the frame of Law 975/2005?
14. How would you assess the victim's participation and the right to be informed on the progress of the search for the disappeared in the frame of the law 975/2005 ? (From the location of the disappeared to the return of the remains to the families.) Could you tell me your experience?
15. In cases where recovering the mortal remains of disappeared persons is a difficult task. How do you imagine that the truth about the case can be clarified and the reparation to families can be ensured?
16. How would you assess the role of the Centre for Historical Memory in establishing the truth in enforced disappearance cases?
17. The Legal Framework for Peace established the creation of a Truth Commission. In your opinion, in your opinion how this truth commission should address the "truth" about the magnitude of enforced disappearance in the country committed by all parties to the conflict?
18. Is there anything you would like to mention?

4. Interview Guide for associations of families/civil society members and State institutions.

Name:

Organization/institution

Position:

Place:

Date:

Time:

Informant number:

Comments:

I. Background Information

1. Could you please introduce yourself and state your position?

II. Questions about institutions and mechanism in charge of guaranteeing the right to truth and searching for disappeared people

2. What have been the role of these institutions and mechanisms towards ensuring the victim's right to truth and the search for the disappeared?
 - a. National Commissions for the Search for the disappeared (Search Commission)
 - b. The Virtual Identification Centre CUVI
 - c. National Search Plan
3. How would you describe the communication and coordination between the Search Commission, the CUVI and The different Units of the Prosecutors Office in charges of enforced disappearances cases?

4. How would you describe the relationship between the Search Commission and relatives of enforced disappearances cases and its representatives? (depending on who was being interviewed)
5. How has been the National Search Plan implementation by the authorities? What are the main obstacles for their implementation?
6. What is your opinion on the law 1408/2010 to pay homage to enforced disappearance victims? How has been it implemented?

IV. Question regarding Transitional Justice mechanisms in Colombia.

7. Do you think that there has been progress on the clarification of truth in cases of enforced disappearances since the adoption of Transitional Justice mechanisms in Colombia?
8. Do you think that the criminal investigation created by the law 975/2005 has made a progress in clarifying the truth in enforced disappearances cases? If so in what sense?
9. How has been the victim's participation in the criminal investigation of the law 975/2005? What actions have been taken to ensure that families of disappeared persons are informed on the progress and results of the investigation? (Depending on who was being interviewed).
10. How would you assess the victim's participation and the right to be informed on the progress of the criminal investigation of the law 975/2005? (depending on who was being interviewed)
11. How much progress has been made in the search for disappeared persons in the frame of Law 975/2005?

12. How has been the victim's participation in the search for the disappeared in the frame of the law 975/2005? What actions have been taken to ensure that families of disappeared persons are informed on the progress and results of the searching process? (Depending on who was being interviewed).
13. How would you assess the victim's participation and the right to be informed on the progress of the search for the disappeared in the frame of the law 975/2005 ? (Location of the disappeared, exhumation, identification and return of the remains to the families.) (Depending on who was being interviewed).
14. Which are the main difficulties faced by public servants in charge of searching for the disappeared in a TJ contexts in the midst of an armed conflict? (depending on who was being interviewed)
15. In cases where recovering the mortal remains of disappeared persons is a difficult task. How do you imagine that the truth about the case can be clarified and the reparation to families can be ensured?
16. How would you assess the role of the Centre for Historical Memory in establishing the truth in enforced disappearance cases?
17. The Legal Framework for Peace established the creation of a Truth Commission. In your opinion, how this truth commission should be addressed the "truth" about the magnitude of enforced disappearance in the country committed by all parties to the conflict?
18. Is there anything you would like to mention?

5. Informal meetings and Overview of Informants

Informal meetings

Organization/institution

1. Colombian Commission of Jurists (CCJ) Deputy Director of Litigation and Legal protection (2013)
2. Attention of Victims Unit, 2 members in charge of the victims' attention (2013)

Overview of Informants and names used in this study.

1. State delegate to the Commission for the search of the disappeared (2013)

Name: State-delegate NSC.

2. Association of families of disappeared persons delegate to the Commission for the search of the disappeared: Interview with a member of the *Asociación de familiares detenidos desaparecidos* (ASFADDES), (2013)

Name: Asfaddes-member.

3. Relative of the *Vereda el Faro* Case. (2013)

Name: *Vereda el Faro* relative.

4. Civil society organization delegate to the Commission for the search of the disappeared: Colombian Commission of Jurists (CCJ) interview with Deputy Director of Litigation and Legal protection (2013)

Name: CCJ-lawyer

5. Relative of *Pueblo Bello* case (2013)

Name: *Pueblo Bello* relative

6. Social-psychologist working for the Colombian Commission of Jurists. (2013)

Name: Social-psychologist

7. Forensic-anthropologist working for an NGO. (2013)

Name: Forensic-anthropologist

8. Member of the Justice and Peace Unit of the Office of the Prosecutor delegate to the Virtual Identification Center and Exhumation Sub-Unit. (2013)

Name: JPU-CUVI member

9. Prosecutor of the Justice and Peace Unit (2013)

Name: JPU-Prosecutor