

ICMP REPORT:

COLOMBIA'S RESPONSE TO ENFORCED DISAPPEARANCES

Overview and Recommendations

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GLOSSARY

Full title in English	Original Full Title in Spanish	Acronym
Administrative Department for Security	Departamento Administrativo de Seguridad	DAS
Association of Families of Detained and Disappeared Persons	Asociación de Familiares de Detenidos/Desaparecidos	ASFADDES
Colombian Commission of Jurists	Comisión Colombiana de Juristas	
Colombian Institute of Family Welfare	Instituto Colombiano de Bienestar Familiar	
Colombian Interdisciplinary Team for Forensic Work and Psycho-social Assistance	Equipo Colombiano Interdisciplinario de Trabajo Forense y Asistencia Psicosocial	EQUITAS
Commission for Search of Disappeared Persons	Comisión de Búsqueda de Personas Desaparecidas	Search Commission
Fund for Reparation for Victims	Fondo para la Reparación de las Víctimas	Fund for Reparation
High Commissioner for Reintegration	Alto Comisionado para la Reintegración	
High Judiciary Council	Consejo Superior de la Judicatura	
Human Rights and International Humanitarian Law Unit of the State Prosecutor's Office	Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario de la Fiscalía	HRIHL Unit
Inter-Institutional Coordination Committee for Justice and Peace	Comité de Coordinación Interinstitucional para la Justicia y la Paz	
Inter-institutional Roundtable on Psycho-social Support for Victims of Enforced Disappearance	Mesa Interinstitucional sobre Asistencia Psicosocial a Víctimas de Desaparición Forzada	
International Organization for Migration	Organización Internacional para las Migraciones	IOM
Judicial Police Directorate	Dirección de Policía Judicial	DIJIN
Judicial Police Sections	Seccionales de Policía Judicial	SIJIN
Judicial Procurator for Justice and Peace	Procuraduría Judicial para la Justicia y la Paz	
Ministry of Interior and Justice	Ministerio de Interior y Justicia	
Mothers of the Candelaria	Madres de la Candelaria	
Municipal body	Personería	Personería
National Commission for Reparation and Reconciliation	Comisión Nacional de Reparación y Reconciliación	CNRR
National Form for Search of Disappeared Persons	Formato Nacional para Búsqueda de Personas Desaparecidas	National Form

National Institute for Legal Medicine and Forensic Sciences	Instituto Nacional de Medicina Legal y Ciencias Forense	INMLCF
National Police	Policía Nacional	PONAL
National Register of Disappeared Persons	Registro Nacional de Desaparecidos	National Register
National Search Plan	Plan Nacional de Búsqueda	NSP/Search Plan
National Unit for Justice and Peace of the State Prosecutor's Office	Unidad Nacional de Fiscalías para la Justicia y la Paz	JPU/Justice and Peace Unit
Network Information System on Disappeared Persons and Cadavers	Sistema de Información Red de Desaparecidos y Cadáveres	SIRDEC
Office of the High Commissioner for Peace	Oficina del Alto Comisionado para la Paz	
Ombudsman	Defensoría del Pueblo	Ombudsman
Organization of American States	Organización de los Estados Americanos	OAS
Presidential Advisor on Human Rights	Consejero Presidencial para los Derechos Humanos	
Presidential Agency for Social Action and International Cooperation	Agencia Presidencial para la Acción Social y la Cooperación Internacional	Acción Social
Presidential Program on Protection of Liberty	Programa Presidencial para la Defensa de la Libertad	
Regional Commissions for Property Restitution	Comisiones Regionales para la Restitución de Bienes	
Regional Prosecutors	Fiscales Seccionales	
Regional Prosecutor's Directorate	Dirección Seccional de Fiscalías	
Social Solidarity Network	Red de Solidaridad Social	
Special Prosecutor	Fiscales Especializados	
State Procurator's Office	Procuraduría General de la Nación	Procurator
State Prosecutor's Office	Fiscalía General de la Nación	Prosecutor
Sub-committee on Genetics/Sub-committee on DNA	Sub-comité de Genéticas/Sub-comité de ADN	
Sub-Unit for Exhumations of the Justice and Peace Unit	Sub-unidad de exhumaciones de la Unidad de Justicia y Paz	Sub-unit for Exhumations
Technical Body for Investigation	Cuerpo Técnico de Investigación	CTI
UN Office for Coordination of Humanitarian Affairs	Oficina de Coordinación de Asuntos Humanitarios de las Naciones Unidas	UN OCHA
Urgent Search Mechanism	Mecanismo de Búsqueda Urgente	USM
Virtual Identification Centre	Centro Único Virtual de Identificación	VIC

I. INTRODUCTION

1. One of the many tragic consequences of Colombia's internal armed conflict has been the enforced disappearance of many thousands of people. In cases of enforced disappearance, individuals are abducted, often tortured and killed, and are never heard from again. Frequently their mortal remains are concealed in clandestine graves. In Colombia, acts of enforced disappearance have been perpetrated by a variety of actors, including paramilitary and guerrilla forces and even state actors. Furthermore, the conflict is not over and acts of disappearances continue to occur.
2. Colombia's response to the problem of enforced disappearance is the subject of this report. In September 2007, following an initiative by the Spanish Agency for International Cooperation for Development (AECID) and the United Nations Development Program (UNDP), the Head of the Justice and Peace Unit of the State Prosecutor's Office invited ICMP to conduct an assessment of the scope of the problem and the progress made to date by state institutions and others in addressing the issue. In addition, the Head of the Justice and Peace Unit requested recommendations from ICMP on the development of mechanisms to advance strategies to address the issue. ICMP conducted its assessment visits in December 2007 and March 2008. While in Colombia, ICMP experts met with numerous representatives of state institutions, NGOs, victims' groups, foreign governments and international organizations in Bogota and Medellin.
3. ICMP would like to express its sincere gratitude to the officials of the various institutions for their frankness in describing the current situation as well as their openness to new ideas. ICMP would also like to note the exceptional level of support and assistance provided by the staff of AECID, which enabled a far more comprehensive review of the situation in Colombia than could have been anticipated at the beginning of the assessment. Furthermore, ICMP would like to thank UNDP for its generous support.
4. In conducting its assessment, ICMP reviewed the following:
 - Legislation applicable to the issue;
 - Institutions engaged in the process;
 - The technical capability of the state to locate, recover and identify the missing;
 - The inclusion of the families of the missing and other victims groups.
5. In recent years, Colombia has demonstrated the political will to start dealing with the problem of enforced disappearance. This will is complemented by Colombia's robust technical capacity to locate, recover and identify victims. Nevertheless, systemic deficiencies and redundancies exist in the process, which weaken the ability of Colombia to meet its stated objectives of "truth, justice and reparations"¹ for the victims. Most notably, these include:
 - Overlapping and/or non-implemented legislation relevant to the process of locating, recovering and identifying the victims of enforced disappearance, as well as the process of addressing the rights of victims;
 - Duplication of work, resulting in parallel activities and insufficient co-ordination between institutions engaged in the process;
 - Insufficient efforts on the part of the state to determine the scale of the problem of enforced disappearances;
 - Lack of a functional centralized database, resulting in duplication of databases and data collection efforts between and within institutions;
 - The absence of a centralized structure and strategy to address the issue of enforced disappearance, which takes into consideration the on-going conflict;
 - Insufficient engagement of civil society in the process, resulting in fear, lack of confidence in the relevant institutions and the process, as well as an inability of victims to access rights.

¹ See Article 4, Justice and Peace Law.

6. If the above issues are not properly addressed in a timely manner they will have negative consequences, not only for the families of the missing, but also for the credibility of the state to appropriately address this fundamental human rights issue.
7. This report aims to provide Colombia with an overview of the current process and constructive solutions to address shortcomings in a manner that ensures that state institutions are engaged in sustainable efforts to address large numbers of cases of enforced disappearance. The recommendations seek to ensure the following:
 - Coordination of the efforts of relevant state institutions to locate, recover and identify missing persons;
 - An increase in the number and rate of missing persons located and identified;
 - Reductions in the cost of the process;
 - Establishment of effective means of dialogue between the government and family associations;
 - Provision of reliable and accurate information by the government regarding the number of persons missing, the circumstances and patterns of their disappearance, and the search process itself;
 - The ability of families of the missing to effectively access the right to truth, justice and reparations;
 - Adherence to the highest working standards by those involved in operational activities, including reliable and accurate collection and storage of information in a database that can also serve as a future repository for historical documentation.

II. SUMMARY

8. The adoption of the Justice and Peace Law in Colombia in 2005 created a political dynamic that had a profound impact on the pre-existing structures created to address the issue of enforced disappearance. To a large degree, the implementation of this law galvanized Colombia's engagement in the process, but it also overran previous strategies. In many respects, the law instituted a structure that runs parallel to existing legislation, institutions and strategies, such as the Commission for the Search of Disappeared Persons and the National Search Plan. Furthermore, while the law accelerated the process of locating and recovering the mortal remains of missing persons from places of clandestine burial, no viable provisions were made to identify the bodies, thus causing large numbers of unidentified bodies to be stored in a variety of locations.² In addition, it appears to have triggered the creation of a schism between victims' groups, some of whom suddenly found themselves on the 'wrong' side of the Justice and Peace Law.
9. The fact that the scale of the problem is unknown makes it difficult for Colombia to create adequate provisions for an appropriate response. It must be recognized that the very nature of the issue of enforced disappearance makes it almost impossible to establish exact numbers. However, in Colombia, where there are no official numbers, unofficial figures range dramatically from 3,000 to over 15,000 with some victims groups even estimating the total number to be over one hundred thousand.³ In a recent study conducted in the Colombian Department of Casanare, a statistical analysis revealed an "undocumented rate" of about 40% of the estimated number of reported disappearances.⁴ While the report emphasizes that this analysis should not be used to gauge numbers of missing persons in Colombia as a whole, it does provide an insight into the size and nature of the problem.
10. Moreover, these issues are exacerbated by the fact that the conflict continues in Colombia. This makes it difficult to properly address the issue of enforced disappearance on many levels. Excavations of clandestine gravesites are sometimes conducted in dangerous areas of Colombia, where expert teams, including prosecutors, forensic experts and others risk their lives to exhume the mortal remains of missing persons. In addition, many victims and witnesses are afraid to come forward with information for fear of reprisal, which may be one of the key reasons for the under-reporting of cases of enforced disappearance.
11. The vulnerability of the families of the missing also makes it difficult to collect ante mortem information, as well as biological reference samples to match to DNA profiles obtained from the mortal remains of the victims. The conflict has also caused displacement of populations across Colombia and sometimes into foreign countries, making it difficult to locate and reach out to victims.
12. The families of the missing have been noticeably absent from the process. However, their voices are gradually being heard, as they more frequently organize peaceful demonstrations to highlight their plight. However, for the issue to be addressed comprehensively and effectively it is critical that family members are brought into the process and that they fully understand the policies developed by the state to address the issue.
13. The challenges faced by Colombia to engage in a process of systematically and responsibly addressing the problem of enforced disappearances and meeting the needs of victims can be successfully tackled within the parameters of the legislation and institutions that currently exist and using the technical capacity that Colombia has already developed. It is strongly recommended that the momentum and energy created by the Justice and Peace Law, which was designed as a temporary mechanism, are harnessed to revitalize the development of long-term structures such as the Commission for the Search

² According to the Justice and Peace Unit of the State Prosecutor's Office, only 12% of the mortal remains recovered since 2006 have been identified.

³ Interview with an association of family members, conducted in Bogota, Colombia, December 2007.

⁴ Daniel Guzman, Tamy Guberek, Amelia Hoover and Patrick Ball, "Missing People in Casanare," November 2007.

of Disappeared Persons, as well as reinvigorating adherence to the National Search Plan. Additionally, Colombia needs to recognize and accommodate the enormity of the problem that it faces by carefully managing the process and the resources that it has rather than rushing to create new institutions or building new DNA identification laboratories.

14. It is critical that Colombia consistently recognizes that the victims of enforced disappearance include the relatives of the disappeared persons and that equal treatment should be provided to these victims regardless of whether or not they fall within the parameters of the Justice and Peace Law. Addressing this issue could be used as a unique opportunity for Colombia to engage victims' groups in a consultative and trust-building process that could be coordinated by the state to create policies or even special legislation that would address their rights and specific needs.
15. Colombia needs to weigh the difficult and competing demands of engaging in a large-scale recovery process of mortal remains of disappeared persons from clandestine graves in regions where there are ongoing hostilities. On one hand there is the political dynamic created by the Justice and Peace Law and the demands of victims' groups for the state to find their relatives. On the other hand, a recovery process conducted in unstable areas puts expert teams, families of the missing, and witnesses at great risk. In addition, the current pace of the recovery process by far exceeds the ability to identify the victims, thus creating another difficulty for the state in meeting the needs of victims.
16. With this in mind, the state should consider creating provisions for the protection of clandestine graves, so that they can be secured, documented and, if immediate recovery is not possible or convenient, excavated at a later time. However, if Colombia continues to engage in a large-scale recovery of mortal remains, then it must improve: conditions for their storage, adherence to chain of custody procedures, and, critically, the coordination and sharing of information within the State Prosecutor's Office and between the laboratories involved.
17. Credit should be given to the State Prosecutor's Office for recognizing the need to enhance the management of the process of locating, recovering and identifying mortal remains. At the end of 2007, the State Prosecutor signed a provision to create a "Virtual Identification Center."⁵ The Virtual Center, which has not yet been established, is foreseen as a way to enhance cooperation and coordination between the State Prosecutor's Office and other agencies and provide technical and scientific support in the process of exhumations and identifications. The prospective creation of the Virtual Center should be used as an incentive for the State Prosecutor's Office and other agencies to analyze existing challenges, find solutions to manage the process and bridge the gap between the operations of the Justice and Peace Unit and the Human Rights and International Humanitarian Law Unit of the State Prosecutor's Office.
18. This report provides an analysis of the current process and issues faced by Colombia, as well as recommendations. The recommendations include:
 - The state should provide prompt and accurate information regarding the process of searching for missing persons and should also make every effort to determine the magnitude of the problem of enforced disappearance and to determine patterns of disappearance;
 - The state should adopt consistent language to define victims of enforced disappearance, which includes the relatives of the disappeared person;
 - The role of the Commission for the Search of Disappeared Persons should be strengthened. The Commission for the Search of Disappeared Persons should be empowered to report on the compliance of state institutions in the implementation of the National Search Plan;
 - The National Search Plan, the National Register of Missing Persons, and the National Search Form should be fully implemented, adhered to and utilized by all relevant institutions;
 - It is crucial that relevant state institutions enhance coordination efforts to locate, recover and

⁵ Agreement 0102 of 2007, signed on 19 December 2007, between the State Prosecutor's Office, the National Police, the Administrative Department for Security, and the National Institute for Legal Medicine and Forensic Sciences.

identify missing persons. The recent initiative to create a “Virtual Identification Center” within the State Prosecutor’s Office is a constructive step forward in this regard;

- The Ombudsman’s Office should reinforce its engagement in the missing persons issue in line with its mandate and as outlined in the Justice and Peace Law and the National Search Plan;
- Appropriate legal provisions on data protection, including genetic information obtained from the exhumed remains and the relatives of the missing, should be adopted as soon as possible;
- Legal provisions for the protection of clandestine graves relevant to cases of enforced disappearance should be considered;
- All crimes committed in relation to the crime of enforced disappearance (e.g., torture, sexual violence, and mutilation) should be properly recorded and investigated;
- The right to remedy should be reinforced and applied in a non-discriminatory manner;
- The system of “administrative reparations,” which is in the process of being established should be extended to include all victims of enforced disappearance;
- A nationwide strategy for addressing the rights of victims during judicial proceedings and the search process is needed. An integrated plan would determine how rights are implemented and how state institutions can better coordinate this effort, as well as define areas in which non-state institutions can assist victims;
- In its efforts to assist the state in relation to the issue of enforced disappearance, the international community should consider providing coordinated and sustainable assistance, including assistance to associations of families of the missing, to ensure that they are educated and engaged in addressing their rights and in raising awareness the problem of enforced disappearance.

III. LEGISLATION AND INSTITUTIONS

1. Legislation

19. Colombia is a signatory to the Inter-American Convention on Forced Disappearance of Persons, as well as the Rome Statute of the International Criminal Court. On 8 November 2005, the President of Colombia signed Decree 3974 which promulgated the former into domestic law. In line with the text of the Convention, Colombia agreed not to practice, allow or tolerate the enforced disappearance of individuals and to sanction, within its jurisdiction, the perpetrators, accomplices and those who conceal such crimes. Colombia is also a signatory to the International Convention for the Protection of All Persons from Enforced Disappearance; however, to date it has not been ratified.
20. Colombia has many sophisticated laws that relate to the issue of enforced disappearance; however, most of these laws are not sufficient to fully address the issue or are duplicative, and in some cases, are not fully implemented.
21. Article 12 of the 1991 Constitution of Colombia prohibits enforced disappearances.⁶ However, it was not until the year 2000 that the act of enforced disappearance was explicitly criminalized through Law 589. This law also created the Commission for the Search of Disappeared Persons (Search Commission), the National Register of Disappeared Persons (National Register), and the Urgent Search Mechanism for the Prevention of Enforced Disappearance (USM). All aspects of this law were directly incorporated in the Criminal Code of Colombia (Law 599 of 2000).
22. Law 589 of 2000 defined the perpetrator of enforced disappearance as “the person ... who deprives another individual of his/her liberty, conceals them and refuses to acknowledge the deprivation of liberty or give information on the whereabouts of the person, thus removing that person from the protection of the law.”⁷ Unlike the UN Declaration on the Protection of all Persons from Enforced Disappearance or the Inter-American Convention on Forced Disappearance of Persons, Law 589 of 2000 allows for acts committed by non-state actors to qualify as acts of enforced disappearance. This approach appears to be in line with the approach taken in the Rome Statute of the International Criminal Court and the International Convention on the Protection of all Persons from Enforced Disappearance; however, in Colombia it led to a transfer of the general responsibility to provide reparations to the victims from the state to the individual perpetrator.⁸
23. While Law 589 of 2000 indirectly defines a disappeared person, it does not provide a clear legal differentiation between “kidnapped” and “disappeared”. This ambiguity in Colombian law has resulted in numerous cases being registered as kidnapped rather than disappeared. This affects efforts to assess the scale of the problem of enforced disappearances and has consequences on case reporting and access to rights for families of missing persons where the authorities may have registered the person as kidnapped. Decree 4218 of 2005 (*see infra*) provides a broader definition of a disappeared person,⁹ but only for the purposes of the National Register.
24. Article 11 of Law 589 of 2000 places the responsibility on the state to undertake all actions necessary

⁶ “No one shall be subjected to enforced disappearance, torture, or cruel, inhuman or degrading treatment or punishment.” Article 12, Political Constitution of the Republic of Colombia.

⁷ Article 1, Law 589 of 2000; Please note that Law 589 defines the perpetrator of enforced disappearance as a member of an armed group on the margin of the law, a public servant, or a person acting under the command or with the acquiescence of said public servant.; Please note that the Constitutional Court Decision C317 of 2002 struck down the part of Article 1 which requires that the perpetrator of enforced disappearance is a member of an armed group on the margin of the law.

⁸ Article 42, Justice and Peace Law.

⁹ Decree 4218 of 2005 defines a disappeared person as “a victim of enforced disappearance as defined in Article 165 of Law 599 of 2000, or persons of any age reported as missing in circumstances that indicate that the disappearance was not voluntary, that it was intentionally caused by a third person, and that the physical and mental security of that person are at risk.”

to establish the whereabouts of victims and the reasons for their disappearance, and to inform their families of such findings. This obligation remains even if related criminal proceedings have been concluded.

25. In addition to Law 589 of 2000, Decree 4218 of 2005 on the National Register, and Decree 929 of 2007 on the structure and scope of work of the Search Commission were adopted. Recognizing that the USM as established by Law 589 of 2000 was not being implemented, Law 971 of 2005 was passed to further elaborate the nature and purpose of the USM, defining it as:
“ (...) a public mechanism that protects the personal liberty and integrity and other rights and guarantees established for those persons presumed disappeared. Its purpose is for all judicial authorities to immediately undertake all actions needed to locate such persons, as an effective mechanism to prevent the crime of enforced disappearance.”¹⁰
26. The judicial authorities are obliged to launch the USM within 24 hours of the submission of a request. Although the law provides a detailed description of how the mechanism should function, it does not specify a limitation on the amount of time between the disappearance and the submission of a request, nor does it precisely define who may submit a request to activate the USM¹¹ or under what circumstances. As a rapid response mechanism, the USM is independent from the investigation of the criminal act itself and can be launched even in the absence of a preliminary investigation. To date, few USMs have been activated and even when they have, the results have been highly limited.
27. On 25 July 2005, Law 975 of 2005, which is also known as the “Justice and Peace Law”, was adopted. It was created to restore peace and justice by assisting in the demobilization of members of “armed groups on the margin of the law”¹² through the provision of alternative punishment and other incentives, in return for cooperation on issues of justice, reparation for victims, contribution to peace, and re-socialization.¹³ The Justice and Peace Law assists in the demobilization of individuals who, under Law 782 of 2002, could not be demobilized with amnesty, pardon or other benefits.¹⁴
28. Further, the Justice and Peace Law guarantees the right to truth, justice, and reparation for victims. Nonetheless, its adoption sparked criticism, particularly from victims’ groups who feel that the law does not provide benefits for all victims, provides relative amnesty or even impunity to perpetrators, and ultimately sacrifices justice for peace. On 18 May 2006, the Constitutional Court adopted Decision C-370, which struck down key contentious sections of the law. Subsequently, problems arose with the issuance of Decree 3391 of 2006, which contained the very provisions of the Justice and Peace Law that had been struck down in Decision C-370.¹⁵
29. The basis for criticism stems from article 14 of Law 589 of 2000, which states that the crime of enforced disappearance cannot be subject to amnesty or pardon. Contrary to the claims of the victims, the government has taken the position that the alternative punishment provided by the Justice and Peace Law does not constitute amnesty or pardon. Rather, the government claims that the law provides

¹⁰ Article 1, Law 971 of 2005.

¹¹ Article 3, Law 971 of 2005, states in the pertinent part that “Whoever knows that a person has probably disappeared can request the activation of the USM from any judicial authority.”

¹² “*grupos armados al margen de la ley.*”

¹³ According to Article 29, Justice and Peace Law, alternative punishment consists of a sentence of deprivation of liberty for a term of five to eight years.

¹⁴ Article 21, Law 782 of 2002, excludes those who are being processed or have been condemned for crimes which according to the Constitution, the law or international treaties signed and ratified by Colombia cannot receive such benefits. Law 782 defines such crimes as atrocious acts of ferocity or barbarism, kidnapping, genocide, terrorism, and murder committed outside combat.

¹⁵ See Report of the Colombian Commission of Jurists at <http://www.viva.org.co/cajavirtual/svc0034/articulo07.pdf>

an alternative to the ordinary punishment provided for by the Criminal Code.¹⁶

30. The Justice and Peace Law envisaged the creation of a robust structure that would, within a limited timeframe and in an expedited manner, deal with a vast number of victims and cases of atrocities. The law established, *inter alia*, the National Commission for Reparation and Reconciliation (CNRR), the Fund for Reparation for Victims, and the National Unit for Justice and Peace of the State Prosecutor's Office.
31. To ensure the cooperation of all relevant institutions in the implementation of the law, an Inter-institutional Coordination Committee for Justice and Peace was formed, comprising the following institutions:
 - Office of the Vice President;
 - Ministry of Interior and Justice;
 - Ministry of Defense;
 - Office of the High Commissioner for Peace;
 - Presidential Agency for Social Action and International Cooperation;
 - State Prosecutor's Office;
 - High Judiciary Council;
 - Supreme Court of Justice;
 - Ombudsman;
 - State Procurator's Office;
 - High Commissioner for Reintegration;
 - Colombian Institute of Family Welfare;
 - National Commission for Reparation and Reconciliation;
 - Regional Commissions for Property Restitution.
32. The adoption of the Justice and Peace Law represents a step away from what might be termed the conventional legislative and institutional evolution on the issue of missing persons in Colombia. The Justice and Peace process is effectively an *ad hoc* transitional justice mechanism implemented in a country experiencing ongoing conflict. In its current operational form, it can address a large number of cases in a short period of time by providing alternative punishment for perpetrators, limited reparations and, potentially in the future, justice for victims. As such, it is different from the conventional judicial system which handles a smaller number of cases and seeks to provide full reparation for the victims and full punishment for the perpetrators. To date, these divergent approaches have led to operational problems between the Justice and Peace Unit and the Human Rights and International Humanitarian Law Unit of the State Prosecutor's Office, which ultimately has had negative repercussions on the process and consequently for the victims.¹⁷

2. Institutions

2.1. National Commission for the Search of Disappeared Persons (Search Commission) and the National Search Plan (NSP)

33. Although established by Law 589 of 2000, it was not until Decree 929 of 2007 that the structure and mandate of the Search Commission were precisely defined. The Search Commission is a permanent body at the national level with a mandate to support and promote investigations into cases of enforced disappearance, regardless of whether the acts themselves took place before or after the Search

¹⁶ See Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/7/2 of 10 January 2008 para. 87. Further, please note that if the requirements for obtaining alternative punishment are not fulfilled, the perpetrators can be processed through conventional proceedings and sentenced to full punishment.

¹⁷ See paragraph 59 and 60 of this report.

Commission was established. The Search Commission designs, evaluates and supports the implementation of search plans, such as the National Search Plan (*see infra*), and establishes working groups on specific cases. Further, the Search Commission assisted in creating and establishing the National Register of Disappeared Persons (National Register) and should supervise the process of consolidating existing information in the National Register.¹⁸

34. The Search Commission's mandate also includes the obligation to advocate for programs of support for the families of disappeared persons from government institutions and private organizations.¹⁹
35. The Search Commission was envisaged as a body with no operational mandate in the field that would assist in coordinating the work of its member institutions, which have such operational mandates. Based on an explicit request to the Search Commission from the family of a missing person, the Search Commission can request from the relevant judicial authority to be allowed to be present or participate in the process of exhumation or identification of mortal remains. In addition, judicial authorities can request that the Search Commission designate national or international experts to assist in exhumation and identification activities.
36. At the time of its establishment, an effort was made to formally include the families of disappeared persons in the work of the Search Commission through the inclusion of the Association of Families of Detained and Disappeared Persons (ASFADDES), the only association of family members of missing persons that existed at that time.
37. The Search Commission is composed of representatives from:
 - The State Prosecutor's Office;
 - The State Procurator's Office;
 - The Ombudsman;
 - The Ministry of Defense or from the Human Rights Office within the Ministry;
 - The Presidential Advisor on Human Rights;
 - The Director of the Presidential Commission on Protection of Liberty;
 - The Director of the National Institute of Legal Medicine and Forensic Sciences;
 - The Association of Families of Detained and Disappeared Persons (ASFADDES);
 - A representative appointed by nongovernmental human rights organizations from among themselves (currently this seat is occupied by the Colombian Commission of Jurists).
38. Given that the issue is concerned with human rights, the Ombudsman was assigned the responsibility of chairing the work of the Search Commission and providing it with administrative support. Regular meetings take place on at least a monthly basis, with extraordinary meetings held as required. However, the Search Commission has insufficient financial resources, which impedes its ability to carry out its work.
39. As noted, the Search Commission has no operational mandate, as it was designed to coordinate the efforts of its member institutions. However, the level of *de facto* institutional representation within the Search Commission is insufficient to ensure proper coordination. The members are unable to make decisions on behalf of their own institutions and, moreover, are unable to commit their respective institutions to the implementation of Search Commission decisions.
40. Furthermore, as the President of the Search Commission, the Ombudsman has, to date, been unable to compel member institutions to implement the Commission's decisions. This is equally true when it comes to the consolidation of information in the National Register; consequently, very few institutions are actively submitting data into the system.

¹⁸ See Article 2, point 8, Decree 929 of 2007.

¹⁹ See Article 2, point 17, Decree 929 of 2007.

41. The political situation in Colombia in 2008 differs greatly from what existed in the year 2000 when the Search Commission was established. As a consequence, it faces numerous challenges that it was not designed to address. Neither the Justice and Peace Law nor the subsequent increases in the number of mortal remains exhumed were envisaged when the Search Commission was formed. In addition, ASFADDES is no longer the only association of families of the missing in Colombia, nor does it represent the interests of all victims of enforced disappearance. Furthermore, ASFADDES does not recognize the legitimacy of the Justice and Peace Law or the institutions established by it, including the CNRR.
42. Presented on 15 February 2007, the National Search Plan (NSP) constitutes a major step forward in addressing the issue of enforced disappearance. The creation of the NSP was the result of efforts of the Search Commission and its member institutions, with additional input from EQUITAS.²⁰ The purpose of the plan is to determine who is missing, what happened to them, and their possible whereabouts. According to the NSP, if used properly it could assist in determining the scale and patterns of enforced disappearances, including which population groups are victims of enforced disappearance, the circumstances and socio-political context in which disappearances occur, the motives for such criminal acts, information regarding potential perpetrators, and whether state actors were involved.²¹
43. The NSP is structured in a clear and comprehensible manner that follows the entire search process. It has four phases and defines activities at each phase and sub-phase, outlining indicators and expected outcomes for each activity. However, the NSP does not specify how the institutions involved are to undertake their activities or coordinate between themselves; consequently, the lack of coordination has been one of the biggest impediments to the implementation of the NSP to date. Furthermore, the NSP does not provide indicators to measure its own progress.
44. The first phase of the NSP consists of the collection of information required to ensure the effectiveness of search efforts. This includes the consolidation of information from the National Register, the collection of additional information from state, governmental, and non-governmental sources, information provided by victims, witnesses and perpetrators during judicial proceedings, as well as historical archives, including press clippings.
45. The second phase involves the processing of information and the implementation of activities aimed at locating disappeared persons (whether they are alive or dead) for both judicial and humanitarian purposes. This includes the use of the USM, comparing information from various databases, reconnaissance visits to potential graves, planning the exhumation of mortal remains, and preparing a plan to provide support for families of the missing, ensuring their inclusion in the process, as well as the collection of information from them.
46. The third phase includes the recovery, post mortem analyses, and identification of mortal remains of missing persons. If the person is discovered alive then efforts aimed at his or her release are coordinated with the relevant law enforcement agencies.
47. The fourth phase covers the final disposition of mortal remains, and includes a final confirmation of identification,²² establishment of the cause and manner of death, informing the families, and the retention of post mortem data and information on where unidentified mortal remains are stored.
48. The NSP stresses the need for a “specialized agency that will guarantee the implementation of the

²⁰ EQUITAS is a Colombian based non-profit scientific organization dedicated to the recovery and identification of individuals who disappeared in Colombia’s internal armed conflict. EQUITAS offers pro-bono forensic and psychosocial services to the relatives of missing individuals for both humanitarian and legal purposes.

²¹ National Search Plan, presentation, paragraph 6.

²² National Search Plan, point 4.1: “undertake specialized and complementary examinations to establish the identity (genetics) ...”

search plan, with a mandate to provide information, attention and guidance to victims and their families and to coordinate relevant institutions. Initially, it is proposed that the Presidency and the Technical Secretary of the Search Commission assume this role.”²³ To date, such an agency has not been formed and the Search Commission has only partially assumed that role.

49. Various NGOs and government bodies have concluded that, despite the lack of oversight, most institutions that should follow the NSP are undertaking their regular responsibilities, but without the requisite coordination and information sharing in line with the NSP. In particular, these organizations have been critical of the State Prosecutor’s Office claiming that it is undermining the use of the NSP by not sharing information concerning ongoing investigations and exhumations.
50. The NSP also foresees the need for a pilot project to be undertaken prior to the implementation of the NSP on a national level. The first phase of such project was conducted in the region of Casanare in the second half of 2007. According to the Search Commission, the initial results are positive, although the formal results have yet to be released.
51. The NSP incorporates the efforts of the relevant legal bodies, institutions, and mechanisms currently in existence in the country that address enforced disappearances. Thus, the NSP should be used as a basis for coordination of efforts, but as a strategy it will regularly need to be reviewed, updated, and strengthened.

2.2. National Commission for Reparation and Reconciliation (CNRR)

52. The National Commission for Reparation and Reconciliation (CNRR) was created by the Justice and Peace Law with a limited eight year mandate. The CNRR is composed of representatives of the Office of the Vice President (who presides over the work of the CNRR), the State Procurator’s Office, the Ministry of Interior and Justice, the Ministry of Economy, the Ombudsman, two representatives of victims’ associations, the director of the Presidential Agency for Social Action and International Cooperation, which also provides administrative support, and five additional members appointed by the President of Colombia, who represent civil society generally.
53. According to the head of the CNRR, the organization includes all victims of the armed conflict in Colombia in its regular activities; however, the Justice and Peace Law only provides reparations for victims as defined by that law. The fact that various victims groups are not covered by this law accounts for their refusal to recognize and cooperate with the CNRR.
54. Insofar as enforced disappearances are concerned, the CNRR’s mandate relates solely to reparations.²⁴ The CNRR recommends criteria for reparations to the government and assists in providing collective and symbolic reparations. Further, it periodically evaluates the implementation of reparations, undertakes activities aimed at reconciliation and prevention of the repetition of acts of violence, and guarantees the participation of victims in judicial proceedings.²⁵ Past projects have included the creation of a website relating to missing persons in conjunction with the association “Madres de la Candelaria”, as well as the establishment of a working group to determine criteria for reparation specifically relating to cases of enforced disappearance. In addition, CNRR compiled registers of victims’ associations and NGOs that provide assistance to victims. CNRR efforts to provide collective and symbolic reparation of victims also include historical memory projects.
55. Further, the CNRR works to establish cooperation between state bodies and institutions on issues

²³ National Search Plan, General Considerations, Point 5.

²⁴ *De facto* the CNRR addresses only collective and symbolic reparations, as individual reparations under the Justice and Peace Law are determined during the judicial process. See paragraphs 184 and 185 of this report.

²⁵ Article 51, Justice and Peace Law.

relevant to the Justice and Peace Law. It can, for example, request that investigations be undertaken and that the results of such investigations be submitted to the CNRR. In addition, it has the authority to collect requests, petitions, and complaints from victims, to forward them to an appropriate authority and then to follow-up on any actions taken.²⁶

56. As noted earlier, the cooperation between the CNRR and the Search Commission to date has been minimal despite the fact that there is significant overlap between the victims' groups to whom both organizations should provide support.

2.2.1. Judicial proceedings

57. The mechanisms established to address enforced disappearance in Colombia are almost exclusively dependant on the judiciary. No specialized operational body on missing persons exists within the executive branch.²⁷ Thus, all efforts to locate, recover and identify missing persons are directly dependent on judicial investigations. The State Prosecutor's Office leads and coordinates investigations in criminal matters, and thus oversees all activities relevant to the exhumation and identification of missing persons. It raises charges against alleged perpetrators either *ex officio* or on the basis of individual initiatives. Further, it is obliged to inform the government on a monthly basis of any preliminary or formal investigations in cases of, *inter alia*, enforced disappearance.²⁸ Activities pertaining to this issue are undertaken under the authority of either the Regional Prosecutors' Directorate, the Unit for Human Rights and International Humanitarian Law (HRIHL Unit) or the Justice and Peace Unit (JPU).²⁹ The proceedings headed by the Regional Prosecutors' Directorate and the HRIHL Unit are considered conventional judicial proceedings, while the ones undertaken by the JPU are transitional justice judicial proceedings. The existence of such parallel structures within the judiciary (i.e., the existing, long-term, conventional structure and the Justice and Peace structure, which is a short-term transitional justice structure) further complicates the search for disappeared persons.³⁰
58. The cases that fall under the competencies of the Regional Prosecutor's Directorate are processed by either the Regional Prosecutors (cases that occurred prior to the entry of Law 906 of 2004 into force) or the Specialized Prosecutors (cases that occurred following to the entry of Law 906 of 2004 into force).³¹
59. Established by Resolution 2725 of 9 December 1994, the HRIHL Unit investigates grave, massive and systematic violations of human rights and breaches of international humanitarian law. The unit was created to "deal with a limited number of investigations in order to avoid the negative influence of excessive workload on obtaining positive results."³² Thus, only some cases are forwarded to the HRIHL Unit. The State Prosecutor's Circular Act 0012 of 2006 provides the basis for assigning such cases.³³ The HRIHL Unit also has authority in USM cases, as well as all cases of enforced

²⁶ Article 21, Decree 4760 of 2005.

²⁷ For example, in Bosnia and Herzegovina, Croatia, Serbia and Kosovo there are executive level bodies and/or inter-ministerial commissions that are responsible for the missing persons process. While focused on the human rights and humanitarian aspects, the efforts of these executive level bodies are fully compatible with those of the judiciary. This has allowed for a more streamlined process to meet the needs of victims and to share information with them.

²⁸ Article 25, Law 684 of 2001.

²⁹ Prosecutors from the Unit against Kidnapping and Extortion also have authority in cases of enforced disappearance that have occurred in Bogota or Cundinamarca; see State Prosecutor's Office Resolution 0-0382 of 2 February 2005).

³⁰ See Annex 1 to this report, *Slide 1 – Existing Institutional Structure* for graphic representation of the institutional structure and further details.

³¹ Article 35, Law 906 of 2004.

³² State Prosecutor's Circular Act 0012 of 2006.

³³ Cases can be assigned only by a special resolution of the State Prosecutor on the basis of a request made by the National Directorate of Prosecutors, the Regional Prosecutor's Directorate, or the HRIHL Unit. Such requests must meet the conditions laid out by the State Prosecutor's Circular Act 0012 of 2006. The HRIHL unit has regional offices in

disappearance raised in front of the Inter-American Court of Human Rights, and cases that due to their nature could be raised in front of the International Criminal Court.³⁴

60. Established by article 35 of the Justice and Peace Law, the JPU has responsibility for cases specifically defined in the Justice and Peace Law, which occurred prior to the law's entry into force in 2005. In this regard, the JPU has authority over; *inter alia*, investigations, exhumations, identifications, and establishing the cause and manner of death in cases of disappeared persons. The JPU has 3 regional units that cover the entire territory of Colombia.³⁵
61. Given that the mandates of the two units overlap, the functional division is not always clear. From a formal point of view, all cases falling within the purview of the Justice and Peace Law which occurred prior to its entry into force should be processed by the JPU. In practice, however, confusion exists given that some of these cases were initiated by the HRIHL Unit prior to the establishment of the JPU. As a consequence, there have been instances where both units lead parallel investigations on the same or related cases, without mutual consultation. This also causes problems later in the process of identifying mortal remains.
62. Article 48 (2) of the Justice and Peace Law creates an additional challenge to effective cooperation between the units of the State Prosecutor's Office. This article states that the search for disappeared persons is "primarily tasked" to the JPU. A strict interpretation of this point might be that the JPU has the lead authority to search for and exhume the mortal remains of victims as they are defined under the Justice and Peace Law. However, this provision has given rise to claims by the JPU that it has the sole authority to exhume mortal remains as part of the search for disappeared persons in Colombia. In response, the HRIHL Unit has noted that those cases which the JPU exhumes, but which fall outside the strict interpretation of its mandate, will fail when they reach the courts.
63. Various governmental and non-governmental organizations have raised concerns regarding the reluctance of the units of the State Prosecutor's Office to share information, finding the reasons for non-cooperation provided to be insufficient. Such reasons include the need to protect confidential information or to protect judicial proceedings, although in numerous situations the release of the requested information should have no influence on ongoing proceedings.
64. The inability of the State Prosecutor's Office to properly share information affects the entire spectrum of activities, including those of the institutions with which it works (e.g. the Search Commission and CNRR). Consequently, it is almost impossible for the Search Commission or CNRR to fulfill key aspects of their mandates, including the provision of information to families of the missing. Concurrently, the lack of information sharing precludes proper input and consolidation of data in the National Register as well as inter-institutional coordination within the NSP.
65. It is not unusual for a prosecutorial body to have serious concerns regarding information sharing, especially given the need to protect investigations and ensure the security of victims and witnesses. However, these concerns should be weighed against the responsibility to provide information, as well as the risk of hindering the collection of additional information, the functioning of the National Register, and the rights of victims.
66. The legal responsibility to inform families of the status of exhumations and identifications falls to the Search Commission. In spite of this, the Search Commission claims that it is rarely able to fulfill this

Barranquilla, Bucaramanga, Bogota, Cúcuta, Cali, Cartagena, Ibagué, Medellín, Neiva, Pasto, Popayan, Santa Rosa, Valledupar, and Villavicencio.

³⁴ The HRIHL Unit establishes temporary commissions for stimulating investigations in specific regions of the country. To date such commissions have been established in: Magdalena, Casanare, Guaviare and Putumayo.

³⁵ Resolution 0-2426 of 03 August 2006 established the main seat of JPU in Bogota with offices in Barranquilla and Medellín.

obligation, primarily due to the State Prosecutor's Office not sharing information. At the same time, the obligation to inform families and the general public about criminal investigations falls within the mandate of the State Prosecutor's Office. Despite efforts to provide such information, primarily through the JPU website, the general opinion of the NGO community and some government bodies is that the information provided is often insufficient and confusing.

67. The State Prosecutor's Resolution 0-3891 of 29 November 2006 established an Exhumation Subunit that coordinates the exhumation efforts for JPU cases. The Exhumation Subunit has eight subdivisions organized in three centers covering the entire territory of Colombia. Cases processed under the authority of all other units are not directly supported by this subunit.
68. On 20 December 2005, Decree 4760 was adopted, which regulates the Justice and Peace judicial proceedings. Article 5 of the Decree provides that all those who have demobilized and applied for benefits under the Justice and Peace Law must give *version libre* requiring them to confess all crimes committed as part of an armed group on the margin of the law and provide all necessary elements for establishing the truth. The information disclosed is to be used later in the investigation stage of the Justice and Peace proceedings.
69. To date, the information disclosed in the *versiones libres* about committed atrocities, combined with the perceived lack of remorse on the part of those applying for benefits under the law, portraying victims as "collateral damage" in an armed conflict, or claiming the victims deserved their fate, has prompted some victims' groups to characterize the *versiones libres* process as providing "burlesque versions of the truth."³⁶
70. Unlike the conventional proceedings, which are based on *ex officio* investigations and information received from victims and witnesses, JPU proceedings are also based on information disclosed by perpetrators during the *versiones libres*.³⁷ Both state institutions and the NGO sector worry that, once a confession is obtained, the JPU prosecutors do not request and/or collect sufficient additional information from the demobilized individuals that could assist in efforts to identify the victims. For example, in practice during a confession, information may be obtained regarding the location and potential number of victims buried in an illicit grave, but no information may be obtained regarding the possible identity of the victims. Some critics believe that is one of the reasons for the low number of identifications relative to the number of remains recovered by the JPU. This problem is compounded by the lack of training for prosecutors on the type of information that can be obtained from perpetrators to assist investigation efforts and the work of forensic experts.
71. Additionally, some demobilized individuals applying for benefits under the Justice and Peace Law have allegedly confessed to crimes that were actually committed by others, so that one person serves alternative punishment for atrocities committed by multiple persons. Leaving aside the numerous implications of this practice on investigations and judicial proceedings, it should be noted that the quality of information obtained from such "confessions" also has a negative impact on the process of locating and identifying the missing.
72. Victims' groups and the NGO sector are of the opinion that the two judicial processes serve different purposes. They see the purpose of conventional proceedings as establishing the truth, restoring justice, punishing perpetrators, and implementing the rights of victims. In contrast, they see the purpose of the JPU proceedings as: determining whether the perpetrator qualifies for alternative punishment and other benefits under the Justice and Peace Law; disclosing information; and providing limited reparations for victims. Critically, many of them view the JPU process as "sacrificing justice." Victims' groups perceive that the quantity and quality of information collected by the JPU during the *versiones libres* is

³⁶ Interview conducted with an NGO in December 2007, in Bogota, Colombia.

³⁷ Please note that the HRIHL Unit receives weekly updates on the scheduled *versiones libres* in front of the JPU, in order to be able to raise questions on matters of interest to them.

the minimum required to determine if benefits and alternative punishment should be granted to perpetrators. In an efficient system with a limited number of cases, this practice might not cause problems in addressing cases of missing persons. For example, once the JPU prosecutors confirm that a perpetrator qualifies for benefits under the Justice and Peace Law, they could proceed to the investigation phase and obtain all relevant information from the perpetrators. However, as of March 2008 only one JPU case had reached the investigation stage.

73. The State Prosecutor's Office recognizes that cooperation between the respective units and the cooperation with other state bodies needs to be improved, at least at the operational level. This is evidenced by the agreement signed on 19 December 2007 between the State Prosecutor, the National Police, the Administrative Department for Security, and the National Institute for Legal Medicine and Forensic Sciences to establish the "Virtual Identification Center."
74. As currently envisioned, the Virtual Identification Center, or Virtual Center, would be administered by the JPU, but would assist both the JPU and the HRIHL Units to conduct operational activities relevant to investigations, exhumations, examinations, and identifications of mortal remains. The Virtual Center, which is not yet functional, is based on the principle of delegation of staff and resources by the signatory agencies to the December 2007 Agreement. The Virtual Center may provide an opportunity to manage large scale forensic operations both in the field and in the labs. If properly structured, the Virtual Center could create a system that would accelerate the number of identifications of mortal remains.
75. However, the agreement to establish the Virtual Center does not refer to the NSP, nor does it oblige institutions to submit information to the National Register, thus leaving the issue of information sharing unresolved. Moreover, the 19 December agreement does not fully outline the operations of the Virtual Center, its placement within the State Prosecutor's Office or its relations with the Special and Regional Prosecutors; except to say that it will be administered by the JPU.
76. Finally, as concerns judicial proceedings, all crimes committed by members of the police or military forces during and in relation to their active service are prosecuted by military tribunals under the Military Criminal Code,³⁸ with the notable exception of genocide, torture and enforced disappearance.³⁹ Despite this, the military justice system continues to challenge the exercise of jurisdiction by civilian courts in cases that involve credible allegations of human rights violations by security forces.⁴⁰ Cases have been registered where civilians are killed, subsequently dressed in guerilla-like uniforms, and handed over to the authorities. Arguably, a reason for this may lie in the financial and other incentives provided to members of the Colombian security forces for bringing in bodies of guerrilla and members of other armed groups on the margin of the law.⁴¹

³⁸ Article 221, Political Constitution of Colombia, 1991.

³⁹ Article 3, Law 522 of 1999 (Military Criminal Code).

⁴⁰ According to the Colombia-Europe-USA Coordination, a coalition some 166 NGOs, between July 2002 and June 2006 at least 235 persons have disappeared as a result of activities of the Colombian army forces. For more information on extrajudicial executions see *Preliminary Report of the International Observation Mission on Extrajudicial Executions and Impunity in Colombia*. Also, see paragraph 21 and onwards of the UN Office of Commissioner for Human Rights report A/HRC/7/39 of February 2008.

⁴¹ See *Colombia: The "other" death penalty*; <http://ipsnews.net/news.asp?idnews=39635>

See *Colombian Troops Kill Farmers, Pass Off Bodies as Rebels*. The Washington Post, 30 March 2008; <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/29/AR2008032901118.html?referrer=emailarticle>

3. National Register of Disappeared Persons, National Form for Search of Disappeared Persons, and the Network Information System on Disappeared Persons and Cadavers

3.1. National Register of Disappeared Persons

77. Law 589 of 2000 created the National Register of Disappeared Persons (National Register). The National Register, which is administered by the National Institute for Legal Medicine and Forensic Sciences (INMLCF), is an information system containing reference data submitted by various institutions, all of whom should have access to the data. Decree 4218 of 2005 stipulates that the National Register should provide reliable, timely and useful information for the identification of mortal remains submitted for forensic autopsy, give direction to the search for disappeared persons and assist in following open cases and the implementation of the USM.⁴²
78. The purpose of the National Register is threefold: 1) to serve as a technical tool to assist public authorities in the creation of policies to prevent enforced disappearance; 2) to serve as an effective technical tool for judicial and other institutions to access information relevant to the search for and identification of disappeared persons; and 3) to provide civil society and victims' organizations with information to advocate the relevant authorities for policies to prevent and/or respond to acts of enforced disappearance.⁴³
79. When launching an official investigation, a prosecutor or procurator must ensure that all available information concerning the victim of enforced disappearance is submitted and entered into the National Register; however, to date this has not been the practice. Further, under the law both prosecutors and procurators have access to information in the National Register needed to locate missing persons.⁴⁴
80. The government is responsible for the design, implementation, and operation of the National Register, while the INMLCF is tasked with its administration. The INMLCF, in coordination with the Search Commission, is responsible for establishing procedures for data transfer from the institutions and the incorporation of information in the National Registry.⁴⁵ Further, the Search Commission should supervise the process of consolidating existing information in the National Registry.⁴⁶
81. Law 589 of 2000 sets forth the minimum required information for the National Registry. This includes: a) information relevant to the identity of the disappeared person; b) date and place of disappearance; and c) possible connections between the disappeared person and recovered mortal remains, based on the place and time of their discovery, specific conditions and characteristics of the remains, evidence, results of technical and scientific examinations, testimonies and other information.
82. Decree 4218 of 2005 expands on the above categories outlined above and includes: a) basic information needed for the identification of a missing person, i.e. first and last name, identity documents, sex, age, size, distinguishing physical features, and other information that might assist in the identification; b) basic information on the results of autopsies of cadavers and skeletal remains; c) basic information collected by all authorities in line with their respective mandates that might assist in determining identity; and d) other information needed for the functioning of the National Register.⁴⁷
83. In addition, Decree 4218 of 2005 allows the government (in practice the Search Commission) and the INMLCF to determine if additional information and modules should be added to the National Registry.

⁴² Article 2, Decree 4218 of 2005.

⁴³ Article 3, Decree 4218 of 2005.

⁴⁴ Article 9, Law 589 of 2000.

⁴⁵ Article 5, paragraph 1, Decree 4218 of 2005.

⁴⁶ Article 2, point 8, Decree 929 of 2007.

⁴⁷ Article 5 Decree 4218 of 2005.

84. Like the National Plan, if the National Register was properly used, it could serve as an important tool for exchange of information between institutions. In addition, it could be used to verify information that would assist Colombia in obtaining a better understanding of the magnitude and characteristics of the problem of enforced disappearance, which should help inform future activities and efforts.

3.2. Network Information System on Disappeared Persons and Cadavers

85. The Network Information System on Disappeared Persons and Cadavers (SIRDEC) is the software platform for the National Registry. The software contains various modules covering different aspects of the process, including information from the National Form for the Search of Disappeared Persons, post-mortem examinations, a genetics module, and information on temporary burial of mortal remains. In its current form the SIRDEC does not contain information pertaining to field activities, e.g. locating and recovering mortal remains from clandestine places of burial, but the software can be upgraded with additional modules. The institutions required to input information into the National Register⁴⁸ can access the SIRDEC via the internet⁴⁹ using assigned access codes.
86. Created as a storage database, the SIRDEC's searching, matching and other automated functions are limited. Currently it can only be used to search for information by the name of the disappeared person or by technical specifications of exhumed cases. The SIRDEC does not allow for full automatic cross referencing of data. Various institutions have stated that it would be useful if the SIRDEC could match ante mortem and post mortem information. While the genetics module provides information regarding which institution has obtained genetic profiles for specific cases, the software does not store these profiles, nor does it allow for DNA matching. Institutions with DNA capability would like to see the inclusion of a matching software application in the SIRDEC, which they feel could expedite the identification process. In a scenario where a multitude of institutions conduct exhumations, examinations and identifications without proper coordination, a solid electronic tracking system should enhance the process of coordinating the flow of important information.
87. However, a functioning software system does not necessarily translate into a functioning database. The reluctance to share information extends to the use of the SIRDEC. Although by now almost all of the relevant institutions use the National Form for the Search of Disappeared Persons to record information (although not always properly), they inconsistently upload the data into the SIRDEC. The disinclination to share information is further aggravated by the inability of institutions to process the large quantity of information that needs to be transferred, due to the increased number of cases of enforced disappearance being registered, along with the backlog of data maintained in hard copy.
88. At the same time, most institutions maintain their own, parallel databases. For example, the Search Commission has a separate database of missing persons, as do both the JPU and the HRIHL units of the State Prosecutor's Office. The Technical Body for Investigation (CTI) has an internal database called Evidentix. The Administrative Department for Security (DAS) and the Central Directorate of the Judicial Police and Intelligence (DIJIN) also have separate databases. There are other databases which contain information that would be useful to the SIRDEC, such as those maintained by NGOs and victims' associations (particularly the ASFADDES database), the database of victims created by CNRR and International Office of Migration (IOM), and the database on NGOs of/for victims created by the United Nations Office for Coordination of Humanitarian Assistance (UNOCHA) and CNRR. Since February 2008 efforts are made to establish a system for information migration, following which

⁴⁸ As per Article 8, Decree 4218 of 2005, this includes all member institutions of the Search Commission, institutions with judicial police functions, institutions authorized to register cases of enforced disappearance, and other institutions with information related to the identification of missing persons and/or investigation of the crime of enforced disappearance, as well as the National Civil Register, the National Penitentiary and Prison Institute, the National Administrative Department of Statistics, the Administrative Department for Security, and the Ministry for Social Protection.

⁴⁹ <http://sirdec.medicinalegal.gov.co:8083/sirdec/>

various of the above databases should be available for incorporation into SIRDEC.

89. It is clear that neither the INMLCF nor the Search Commission currently have the institutional power or support to oblige other institutions to upload their data into the SIRDEC. Moreover, the government allocates funds for the functioning of the SIRDEC,⁵⁰ but the institutions responsible for uploading data into the SIRDEC are expected to do so with their current resources.
90. The online application of the SIRDEC contains a section available to the general public, which provides information on the status of registered cases of disappeared persons and the status of remains exhumed from specific locations. For security reasons, no information on surviving family members is available on the internet. Concerns related to the security of the SIRDEC have been raised on various occasions, following recorded attempts to tamper with the system.
91. The National Register and the SIRDEC should also serve as a tool for information verification. As noted above, prior to entering information into the SIRDEC, institutions should review and verify information relevant to their mandated activities, as well as information entered by other institutions. Special modules are being created that would allow the institutions, depending on their level of access and their internal databases, to electronically verify existing information within the SIRDEC. The possibility of directly connecting the SIRDEC to existing state electronic databases so that information can be automatically verified has not been explored yet. Thus it is fair to say that no systematic verification exist at this time.
92. Special modules are being designed that would allow for automated transfer of information from existing electronic databases into the SIRDEC. The database of the Vice President's Office, which is considered to be one of the better systems in the country, is the first database that will be transferred in this manner. Further, efforts are currently being made for establishing direct connection between SIRDEC and other databases, including the databases of the Ministry for Social Protection, DAS and other institutions.

3.3. National Form for the Search of Disappeared Persons

93. The National Form for the Search of Disappeared Persons (National Form) is the primary tool for the collection of information on missing persons. Judicial and investigative authorities are required to use the National Form whenever victims or witnesses provide information on an enforced disappearance.⁵¹ Furthermore, these authorities must enter the information from the form into the National Register. When the form is completed in a remote area without internet connections, hard copies should be forwarded to the nearest office of the institution in question that can actually upload the data. In all cases, the institution collecting the information should, within its area of expertise, verify the information collected.
94. The National Form consists of six pages, and carries the logos of the National Police, the Administrative Department for Security, the Procurator's Office, the State Prosecutor's Office, the INMLCF, and the Ombudsman. The National Form is designed to aid in registering disappeared persons, as well as the collection of information concerning these cases, including personal and professional information, ante mortem data, medical information, and information on the events surrounding the disappearance, as well as information on the person(s) reporting the disappearance. Notably, it is the only mechanism for collecting ante mortem data. The creation of the National Form was an inter-institutional effort. As such, the final form is a document with negotiated categories, some of which, according to the INMLCF, are less specific and thus might be insufficient for posterior identification purposes.

⁵⁰ Article 7, paragraph 1, Decree 4218 of 2005.

⁵¹ Article 6, Decree 4218 of 2005.

95. While the practice of standardizing information collection through the use of a single form is commendable, it is not clear whether adequate provisions have been made for the protection of personal data collected (such as financial and criminal records), thus raising the concern for the privacy and possibly the security of persons providing information.
96. In addition, it appears that appropriate provisions have not been made regarding training on how to use the form and it is not clearly defined who can use the form in addition to the agencies listed above. Proper training is therefore particularly important given the multitude of organizations that use the form, including NGOs, and given that many of the categories contained in the form are either highly technical in nature or are vaguely worded, thus leaving it to the individual collecting the information to interpret. As a consequence, information is not always collected properly (e.g. multiple efforts to collect information from families can occur, as well as duplication of data), and crucial information is often omitted. Proper use of the National Form is critical in a system that relies almost exclusively on such information to conduct ante mortem and post mortem analysis for identifications.

IV. TECHNICAL ISSUES: THE PROCESS OF LOCATING, RECOVERING AND IDENTIFYING MORTAL REMAINS

97. Colombia has a robust and sophisticated technical capacity to locate, recover and identify missing persons that includes highly motivated and well trained forensic professionals, as well as advanced laboratory facilities and databases. However, it lacks a well coordinated and efficiently managed system that can deal with the recovery and identification of large numbers of missing persons. This situation is understandable given the sudden rise in the number of cases to be handled, the creation of new institutions, and the fact that field operations can occur in areas of ongoing hostilities.
98. The political incentives created by the Justice and Peace Law resulted in a rush to locate and recover missing persons, with no adequate provisions made to identify them. According to the JPU just over 12% of recovered bodies have been identified since 2006.⁵² This low number of identifications relative to the high number of mortal remains recovered is indicative of underlying problems inherent in the current system.

1. Organization and Coordination

99. The technical process of locating, recovering and identifying disappeared persons is conducted under the authority and direction of the State Prosecutor's Office through the JPU, HRIHL Unit, the Regional and Special Prosecutors Offices. In practice, these activities are carried out by the Technical Body for Investigations (CTI) and the Central Directorate of the Judicial Police and Intelligence (DIJIN) as judicial police bodies, as well as the Administrative Department for Security (DAS) and the National Institute for Legal Medicine and Forensic Sciences (INMLCF).
100. However, there is no overarching system that regulates how these agencies should work together and coordinate their activities, which has resulted in ineffective communication, coordination, and, in a few cases, parallel investigations.⁵³ In order to assist the JPU in the exhumation of human remains, a Sub-unit for Exhumations was created in November 2006. By comparison, the HRIHL Unit does not have a specialized sub-unit for exhumations, with the prosecutor in charge of the investigation being present at the exhumation.⁵⁴
101. Given the increase in the number of exhumations following the adoption of the Justice and Peace Law in 2005, the approach to grave and case processing is no longer sufficient, and requires modification to prevent potential loss of information and/or evidence, as well as mortal remains. Observations to this effect were made by many governmental and non-governmental organizations, including those directly involved in the exhumation and identification process.
102. The following agencies have investigative and/or forensic science roles in the process of locating, recovering, and identifying victims of enforced disappearance:⁵⁵
- **INMLCF**
Seated in Bogota, INMLCF is referred to as the "reference laboratory" for all identification efforts. INMLCF has 8 regional seats, 28 sectional seats, and 116 basic offices through the country. INMLCF is responsible for registering and tracking cases upon completion of

⁵² <http://www.fiscalia.gov.co/justiciapaz/exh/exhumaciones.htm>

⁵³ See Annex 1 to this report, *Slide 2 – Technical Process of Locating, Recovering, and Identifying Missing Persons* for graphic representation of the legal/technical process and further details.

⁵⁴ See paragraph 67 of this report.

⁵⁵ Article 406, Law 906 of 2004 provides the basis for the involvement of these agencies in the recovery and identification process: "The expert services shall be provided by judicial police experts, experts of the National Institute of Legal Medicine and Forensic Sciences, public or private entities, as well as individuals specialized in the relevant area."

postmortem examination, including their identification status, repatriation to relatives, and/or temporary burial pending further full identification. The SIRDEC is used by the INMLCF to store all of this information. INMLCF has DNA laboratories in Bogota, Cali, and Medellin, comprising of 27, 10 and 10 experts respectively;

- CTI
Seated in Bogota, CTI is an agency within the State Prosecutor's Office which concentrates on judicial investigations, including providing technical, scientific and investigative support. CTI has 24 units in all the judicial districts of the country, which in total have 143 judicial police units. The CTI Identification Section within the Criminalistics Division includes sub-sections specialized in, *inter alia*, genetics, field criminalistics (including crime scene processing and exhumations), topography, dactyloscopy, morphology, odontology, anthropology, and archaeology. The Criminalistics Division also has specialized laboratories for ballistics, photography and videography, questioned documents, acoustics, and chemistry. CTI employs at least 8 anthropologists with a variety of training and experience, all working both in laboratories as well as the field, and has one DNA laboratory located in Bogota. CTI uses EVIDENTIX database for case tracking;
- DAS
The Human Identification Department within DAS has two experienced exhumation teams and one laboratory-based team, totaling 15 forensic experts. DAS has an anthropology laboratory based in Bogota, and plans to establish a DNA laboratory during 2008;
- DIJIN
DIJIN has two exhumation teams, with two more scheduled to be formed during 2008. It has limited capacity for post-mortem examination and has a modern DNA laboratory in Bogota with 8 analysts.

2. Investigating, Locating and Processing Sites of Clandestine Burials (Individual, Multiple and Mass) and the Recovery of Human Remains

2.1. Investigating and obtaining information regarding sites and micro-locations

103. The process of locating places of clandestine burial depends primarily on the source and quality of available information. To date, most clandestine graves have been located using information provided by victims, other witnesses, demobilized members of armed groups on the margin of the law, or through investigations.
104. As noted, since the adoption of the Justice and Peace Law in 2005, the number of exhumations has dramatically increased. In line with this law, one of the requirements for alternative punishment is for the demobilized person to fully confess to past crimes. Consequently, there has been a rush to authenticate confessions and perform exhumations as quickly as possible, since it is believed that, once reported, graves might be disturbed and bodies removed by those wishing to conceal evidence of crimes (although in reality disturbances of graves to date have been a rare occurrence).⁵⁶ Such confessions have also prompted victims and witnesses to come forward with additional information concerning crimes and the possible location of disappeared persons. Moreover, political pressure, as well as pressure from family members adds to the urgency of the exhumation efforts.⁵⁷

⁵⁶ Interviews with staff of the State Prosecutor's Office, Bogota, December 2007.

⁵⁷ Cases have been registered where civilians, after waiting for the State Prosecutor's Office to excavate a site in which they believe their missing relatives could be buried, decide to excavate the site themselves outside the legal system. E.g. see "*Armed with a machete and sticks, Pastora exhumes looking for her daughter*". El Tiempo, 24 April 2007, page 7.

105. According to the JPU, between February 2006 and 31 March 2008, 1,087 illicit grave sites have been processed and 1,293 sets of mortal remains have been recovered, of which only 162 have been identified.⁵⁸ Currently, the State Prosecutor's Office has information on potential burial sites for approximately 4,000 missing persons, of which 1,500 – 2,000 are to be exhumed during 2008.
106. The CTI Manual⁵⁹ identifies the following parameters as necessary for preliminary analysis prior to deploying an exhumation team in the field: (1) information on the security at the site; (2) all available written and oral information (including inspection orders, reports of disappearance, familial information, witness and participant information, media, etc.); (3) established access routes; (4) mines and UXO situation; (5) regional climatic conditions; (6) characteristics of the terrain; and (7) the manner of deposition of the bodies. In reality, in many instances the investigative/forensic agencies receive limited information from the State Prosecutor's Office, with little more information than how to get to the site or the potential number of remains in the grave. Furthermore, reconnaissance efforts or pre-visit activities to gauge the site characteristics and necessary preparations are a very rare occurrence, with teams often being deployed for full exhumation with only a few days notice.
107. The combination of the lack of critical information and the hurried dispatch of teams often means that the exhumation teams are inadequately prepared. Security concerns and exhumation time constraints have, in some cases, resulted in improper recording and recovery of remains. Statements made by staff from two different institutions reflects these concerns, "we often feel like gravediggers and not exhumation teams, digging up bodies in conditions that do not allow us to perform our work in line with our professional training."⁶⁰
108. No strategy for systematic recovery of mortal remains exists. Most sites are being exhumed as information on their existence is received, which further complicates the problem as there is no time to sufficiently prepare for exhumations. The State Prosecutor's Office should better evaluate the need for immediate exhumation of sites, and if possible, postpone recovery operations until better conditions exist or further investigative information on the potential identity of the remains is collected. However, this needs to be done in parallel with the establishment of a system that guarantees the protection of such graves.⁶¹

2.2. Security and safety considerations at the site

109. As a result of the ongoing conflict, access to certain parts of the country remains limited. The security of an exhumation team to and on site is usually provided by the security forces of the agency conducting the exhumation. The security of the crime scene itself is not standardized and 24 hour/day security usually occurs only when the team overnights near the site. Violent events, resulting in the wounding or even death of members of exhumation teams have been documented and continue to occur. Over a year ago, an entire exhumation team went missing and was never found, and in March 2008 four members of a team were attacked and at least one person died. Members of the exhumation teams are considered to be courageous because of the risks they take in finding missing persons. While security and safety regarding landmines, UXO, booby trapping of sites, and environmental hazards are a serious concern, current protocols appear to be insufficient to address these dangers.⁶²

⁵⁸ <http://www.fiscalia.gov.co/justiciapaz/exh/exhumaciones.htm>

⁵⁹ CTI Manual of Protocols in the Area of Criminalistics, issued by the State Prosecutor's Office by Resolution 0-0694 on 18 February 2005.

⁶⁰ Interview conducted in Bogota in December 2007.

⁶¹ Protection of mass graves is especially important in countries with ongoing conflict or other security concerns. An example includes the Iraqi Law on Protection of Mass Graves. Provisions for protection do not exclusively include physical protection, but also surveying, mapping, documenting of mass graves and other sites of illicit disposal of human remains, as well as penal provisions for unauthorized recovery and/or tampering with such remains.

⁶² For example, the CTI Manual specifies that in the case of suspected booby trapping, the workers are "not to move or touch anything, trying to expose completely the cadaver and then following topographic and film recording, withdrawal

2.3. Determining the micro-location

110. Determining the micro-location of a grave in the absence of precise witness information is often problematic and is exacerbated by Colombia's diverse geography, as well as by the manner of death and perpetrator disposal and concealment practices. Information on these parameters helps to shape the exhumation strategy to maximize results for recovery of forensic evidence, including mortal remains, and results in solid interpretation regarding event reconstruction.
111. In Colombia, victims are often tortured or mutilated using machetes and chain saws during the perimortem period. Mutilation is used as a physical and symbolic mechanism of disappearance. Additionally, body mutilation facilitates the disposal process in water sites. Perimortem and postmortem burning of bodies, as a method of concealment, has also been registered.⁶³
112. Disposal methods focusing on patterns in site type used by perpetrators include burial (single, multiple and mass)⁶⁴ in clandestine graves in open fields, hillsides and cemeteries, and disposal into natural and man-made features such as rivers, ravines, chasms, and wells. Burials are one of the most common disposal methods.⁶⁵ A widely used burial site type is a sectional "clandestine cemetery" within the properties or encampments of perpetrator groups, which also often involve livestock or agricultural activity. These cemeteries often contain remains of individuals executed in different regions of the country.⁶⁶ Further, there is limited access to specific locations resulting from the security situation in some regions.
113. Another frequently used site type involves rivers. In 2006, 206 mortal remains were recovered from rivers and other water sites, of which 101 victims were killed by firearms, 36 by machetes and other sharp weapons, 13 beaten, and 11 strangled.⁶⁷ The complexity of river sites, compounded by body mutilation and extended postmortem intervals, can result in partial recoveries, extensive commingling, and even the complete loss of any mortal remains. It is unclear how these site types will be processed in the future, as they require significant time and resources, including specialized personnel such as divers and heavy machinery for damming, draining, and trolling river bottoms.
114. In cases where there is insufficient investigative information, the use of satellite imagery and aerial photography has been considered as an alternative method to determine potential sites of clandestine burial and may provide additional data, such as time of occurrence, terrain characteristics and access routes. Collecting information in this manner is beneficial as physical attendance at the location is not necessary, thus accomplices who may potentially disturb a site will not be aware that the location is under investigation. This in turn minimizes the necessity for securing a crime scene until it is

people from the grave, tie a rope to the body and strongly pull to assure every mechanism is deactivated before the cadaver is handled"; CTI Manual of Protocols in the Area of Criminalistics, February 2005; point 10.1, paragraph 3.

⁶³ Revista La Semana, issue 1336 of 10 December 2007, Special Report.

⁶⁴ The INMCLF Manual provides a protocol on field activities for collective deaths, which are defined as 4 or more people dead as a result of the same fact. If the event is complicated with the number of victims higher than what can be managed on that location, the event will be classified as a disaster or catastrophe with massive death.

⁶⁵ Burial categories listed in CTI Manual: (1) Individual or mixed - where a grave contains one or more persons buried at the same time or at different times; (2) Isolated or adjacent - an isolated grave is one that is separated from another grave and can be excavated without disturbing the other grave; an adjacent grave is one where the wall of one grave comprises the wall of another grave, thereby requiring a different excavation strategy; (3) Primary and secondary - a primary grave is the first burial location; if the remains are exhumed and buried again, the re-burial is considered a secondary grave; (4) Altered and un-altered - a non-altered burial is one that has not undergone changes (excluding natural processes) from the moment of primary burial; an altered burial is one that has been changed by human intervention following the initial burial. Archaeological methods can be applied to detect alterations in the primary burial.

⁶⁶ See *Who is Missing? Problems in the application of forensic archaeology and anthropology in Colombia's conflict*; Ana María Gómez López and Andrés Patiño Umaña; 2007.

⁶⁷ "Finding victims in mass graves will change the statistics on murders" article in *El Tiempo*, 01 October 2007.

logistically feasible to process it. The disadvantages to using imagery analysis include the limited availability of images and resources to obtain them, in addition to the constraints inherently imposed by a given site type (e.g. extensive arboreal ground cover).

115. Non-invasive geophysical methodologies, such as ground-penetrating radar (GPR) or soil resistivity surveying, have also been considered in order to assist in determining the micro-location of grave sites and are beneficial to specific site types by indicating the presence and dimensions of disturbed subterranean features. Noted disadvantages include: (1) technique-specific dependence on the environmental and geological conditions of the site (e.g. GPR is not applicable to areas with clay soils or shallow bedrock and resistivity is not applicable to areas with high water tables); (2) human agricultural practices impede results; (3) logistical and time constraints (e.g. GPR does not produce immediate on site results); (4) presence of on-site experts and training of personnel in the identification of appropriate conditions; and (5) resource availability. However, it should be stressed that this technology can be used to exclude the existence of a clandestine place of burial, and not to confirm it. Nevertheless, efforts can be made to conduct studies and identify regions and site types where geophysical methods can aid in the search of micro-location, which in turn could save time and manpower.
116. Current techniques being regularly used in Colombia for locating burials include traditional archaeological visual assessments of ground disturbances and environmental changes, probing using hand-held devices, and using flat-headed shovels to skim the surface soils to expose changes in soil that indicate a burial, as well as minor trenching using heavy machinery.

2.4. Processing the crime scene: exhumations

117. There are nine exhumation teams operating under the authority of the State Prosecutor's Office with the presence of a prosecutor being mandatory on site. The teams are each comprised of an investigator, a topographer, a photographer, a forensic anthropologist, and a field worker. Manual labor is undertaken by either personnel from the investigative agency, or by external sources, such as cemetery employees. The INMLCF Manual requires that the site be secured with access restricted to authorized personnel in order to avoid site contamination. This is facilitated by the judicial police. Although the possibility to include other experts, such as geologists, botanists and pedologists, in the exhumation of mortal remains exists, this is not an established practice. Despite the fact that the INMLCF Manual for Cadaver Identification promotes the application of forensic archaeology and the potential benefits are recognized by all institutions, in practice the participation of a forensic archaeologist at site has been scarce, thus resulting in the forensic anthropologist assuming the extra role.
118. The role of the forensic anthropologist is key to the exhumation (and postmortem examination) due to the extended postmortem interval, which results in the tendency for mortal remains to exhibit advanced stages of decomposition (mainly skeletonization). The forensic anthropologist acts as the exhumation site supervisor and is responsible for delegating tasks to team members and accounting for their participation on site. This expert coordinates and implements the on site exhumation process and ensures proper registration of all recovered evidence and mortal remains. Further, the forensic anthropologist is responsible for full documentation of on site activities, characteristics of the crime scene and burial, the state of the remains and grave, using a standardized form called "*Ficha de Campo*." However, despite the above, in some cases prosecutors tend to override decisions of forensic anthropologist during recovery operations.
119. Once the site is secured and the mortal remains and the physical evidence are exposed *in situ*, the exact anatomic position of the remains and the relative location of the evidence to the remains are documented prior to removal. This includes written observations, 2D or 3D documentation (via topographer) and photographic imaging.
120. Existing protocols specify that each recovered body part should be packed in a separate bag (with loose

teeth packed in a plastic container), appropriately labeled, and put into a thick cardboard box (one skeleton per box). In practice, recovered bodies are individually stored in separate containers (cupboard box or body bags) with teeth being stored separately..

121. Exhumation practices and documentation strategies of site and forensic evidence, including human skeletal remains vary between agencies.⁶⁸ However, the protocols are largely in accordance with the 1991, “UN Manual on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions,” better known as the Minnesota Protocol. The agencies’ experts and various NGOs consider that the methods used represent good practice in relation to international norms. There have been numerous developments since the adoption of the UN manual, some of which are incorporated in the daily activities of the agencies, even though they are not yet fully incorporated in their manuals and thus are inconsistently applied.⁶⁹
122. Despite the fact that the INMCLF and CTI Manuals are in line with international standards and stress the importance of complete and deliberate exhumation efforts and documentation practices, the reality in the field is that there is a failure to properly document the characteristics of entire crime scene due to security reasons, time restraints and a lack of logistical and operational resources. This contributes to an exhumation process that focuses on the recovery of mortal remains, with insufficient documentation of other evidence that could be important for establishing the circumstances of the crime, linkage among crimes/sites, or the probable perpetrator. The failure to identify and record evidence of all crimes (such as torture or the practice of using blindfolds and ligatures) will also contribute to a loss of information on the basis of which individual crimes may be linked together or indicate the probable perpetrator.
123. Many agency representatives expressed their concerns about the negative impact of previous practices at sites where unqualified individuals (such as municipal workers, cemetery employees, or rescue teams) conducted exhumations. For example, the National Army has recovered mortal remains from surface sites and exhumations from conflict zones without transferring site or investigation information that could be useful in determining the identities of the victims.

2.5. Transfer of evidence and data: Chain of Custody (CoC) and supplemental documentation

124. The transport and transfer of remains from the institution conducting the exhumation to the institution charged with postmortem examination is performed under the order of the prosecutor. The relevant prosecutor determines which agency receives recovered mortal remains for examination, depending on their current capacities.
125. Despite the fact that the concept of CoC was introduced by the Criminal Procedure Code (Law 906 of 2004) and is reflected in the INMLCF Manual for Cadaver Identification⁷⁰ and the Manual on Chain of Custody Proceedings, there are recorded instances where cases of human remains and evidence could

⁶⁸ ICMP was provided with the CTI Manual of Protocols in the Area of Criminalistics and the INMLCF Manual for Cadaver Identification. The protocols for DAS and DIJIN relevant to exhumation and examination were not available.

⁶⁹ E.g. the use of a stratigraphic approach to excavating crime scenes and its documentation in three-dimensions, which allows for improved crime scene processing and evidence collection, greater precision in documenting the spatial context of the scene, event reconstruction, and re-association of remains.

⁷⁰ “With the purpose of demonstrating the authenticity of the probatory material and physical evidence the CoC will be applied considering the following factors: identity, original state, conditions of collection, preservation, packaging and submission, places and dates of storage and the change that everyone who held it in custody has made. Equally the name and identification of every person who has been in contact with these elements have been registered. The CoC is initiated in the place where the probatory material and physical evidence are discovered and if someone hands them over to you or are found and ends with the order of the competent authority”; INMLCF Manual for Cadaver Identification.

not be located during the process.⁷¹ Furthermore, according to the INMLCF Manual until December 2004 the method by which mortal remains and evidence were sent to laboratories was not routinely documented, with the evidence being accompanied only by an office request for analysis.

126. The INMLCF Manual also requires that transfer of probatory material/evidence (from the field or laboratories) be accompanied by relevant supplemental documents as well as the CoC. Supplemental documents include a description of the items, an explanation for the type of study requested, and copies of inspection orders, autopsy protocols, photographs, witness declarations, and clinical records, which are essential to the processing of evidence, especially for establishing identity (critical if there is a presumptive identity), cause and manner of death and determining postmortem interval. Numerous institution representatives have expressed their concern over the delay in information transfer between the field and the laboratories and between laboratories, which has been noted to take weeks or months and in some cases such information has not been transferred at all.

2.6. Postmortem examination and identification of human remains

127. The agency involved in the exhumation transports the evidence to their regional office and then the evidence is submitted to the appropriate laboratory for analysis.⁷² As a general rule mortal remains with soft tissue are transferred directly to INMLCF regional offices. Once reaching Bogota, an autopsy will be performed and then, if necessary, the case will be sent to an anthropology laboratory in Bogota, Medellin or Tunja. Cases of skeletal remains are usually sent to an anthropology lab for a “preliminary identification” (i.e. the determination of a biological profile and other investigative analyses). The remains are then submitted for autopsy and review, resulting in an official scientific determination of status. If this investigation does not result in a positive identification, then the case will be signed off by a pathologist as “unidentified” (or *Nomen Nominandum*, “NN”).
128. For recovered mortal remains whose identity is presumed known (i.e. investigative or associated evidence that indicates the person’s name), first the forensic anthropologist creates a biological profile, other specialists (e.g. medical doctors, odontologists, psychologists) also provide information, which is then compared with information from the investigation and the National Form, including available antemortem records. A DNA profile is then generated from the remains and compared to familial profiles.⁷³ If a match is rendered, a pathologist will sign off the case as “positively identified”, in line with the requirements of Article 251 of the Criminal Proceedings Code.⁷⁴
129. For postmortem examinations to be effective in contributing to identifications, antemortem data

⁷¹ Tracking is further complicated by the assignment of various numbers to evidence. For example, according to a representative at the INMLCF, in the field the numbers include: 1) Noticia Criminis number; 2) number assigned by State Prosecutor’s Office; 3) number of the exhumation; 4) number of the trait; and 5) number of the letter sending the remains. Upon reaching INMLCF, a case of human remains will receive at least 3 or 4 new numbers. These numbers include: 1) “*radicacion*”, the internal INMLCF tracking number; 2) autopsy number; 3) anthropology lab number, and 4) other numbers specific to lab type.

⁷² This does not necessarily mean that the agency responsible for the exhumation will be involved in the examination and identification process.

⁷³ “When requesting genetic matching it is required that the case is previously processed by pathologists, anthropologists and all experts prior to sampling so to reduce number of samples to be processed and on the other side, only the body parts that are completely identified are handed over which leads to a situation where body parts with no identity remain with the institute. Recent experiences in other countries such as US, Norway and the former Yugoslavia show a different methodology in cases of high body fragmentation, such that depending on available resources in the first instance DNA profiles are taken from all parts as well as the profiles from presumptive families followed by re-association of human remains through efforts of doctors and forensic anthropologist”, INMLCF Manual, Collective Death Section.

⁷⁴ Criminal Proceedings Code, Article 251: “For the identification of persons, different scientific methods accepted in the criminalistics manuals can be used, such as the morphologic characteristics of fingerprints, dental charts, and DNA genetic profiles (...)”

relating to individuals who may be represented by the remains must be collected accurately and be available for comparison. All information relevant to an enforced disappearance is collected on the National Form; however, most institutions that collect the National Form do not have trained individuals. Further, the form does not clearly define the categories of information required from relatives of the disappeared persons.⁷⁵

2.7. Creating the biological profile

130. In general, anthropological examinations conducted in all agencies follow similar standards. The anthropologist begins the examination by noting the date, location, start and end time of the examination, and the names of the workers. The case is then laid out in anatomic position and an inventory is completed. X-rays are taken of all dental and skeletal features. For commingled cases, case numbers are written directly onto the bones prior to analysis.⁷⁶
131. The biological profile of the mortal remains is then established, including assessments of the sex, age, stature and ancestral affiliation of the person, as well as notation and interpretation of skeletal changes indicating sickness, pregnancy, handedness, and antemortem trauma and pathologies. An odontological assessment is also conducted at this time. The key methodologies for creating a biological profile are based on relevant international studies and methods,⁷⁷ as well as on population-specific studies for stature estimation⁷⁸ and age estimation.⁷⁹ However, discrepancies are present between the existing protocols on establishing a biological profile among different institutions, as well as a significant difference in the experience and training of anthropologists across the board.

2.8. Assessing trauma

132. The anthropologist documents any traumatic changes to the skeleton and dentition that occurred during the perimortem and postmortem periods in order to help the forensic pathologist infer cause and manner of death, as well as to estimate the postmortem interval. The INMLCF Manual is limited regarding this subject and only explains how bone reacts to trauma over a 2 month period. Specifically, the manual is lacking explanation of postmortem detection of torture and does not describe the type of trauma or its causes.⁸⁰
133. Various types of torture and postmortem body mutilation are common in cases of enforced disappearance in Colombia. It is unfortunate that there are no published studies on perpetrator dismemberment and very few published studies on concealment patterns in Colombia,⁸¹ which would benefit the interpretation of cause and manner of death by correlating traumatic markings on soft tissue

⁷⁵ See paragraphs 94, 95, 96 of this report.

⁷⁶ The potential of commingled remains amongst cases is a recognized problem in anthropological work in Colombia, which greatly impedes the process of identification due to time constraints and uncertainty of re-association. Commingling can be encountered under the following circumstances: 1) within burials where more than one individual have been dismembered and interred together; 2) due to natural taphonomic processes, such as encountered in rivers as places of disposal; 3) during temporary storage practices when it is common for disinterment from the initial location after 3 or 4 years and subsequent burial in a communal grave; 4) as a result of hurried exhumations; and 5) inexperience of the individual responsible for case assessment on site.

⁷⁷ Suchey-Brooks study, Iscan-Loth study, etc.

⁷⁸ Sanabria study, 2001.

⁷⁹ Rodriguez study, 1998.

⁸⁰ The reference document for identifying torture is the 1991 UN Manual on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Execution: Annex II Postmortem Detection of Torture (Minnesota Protocol), which is a short summary document that provides minimum and now outdated information.

⁸¹ See *Who is Missing? Problems in the application of forensic archaeology and anthropology in Colombia's conflict*; Ana María Gómez López and Andrés Patiño Umaña; 2007.

to those on the skeletal elements so to establish a pattern of marking placement, intensity and frequency.

2.9. Investigative tools for generating hypotheses regarding identity

134. Other scientific tools which may aid in the identification process involve the sub-discipline of morphology, which is currently a technical sub-section at the CTI Criminalistics Division. Morphology merges artistic techniques in various media with the study of human variation to produce an estimated likeness of an individual that may be displayed to the public in hopes of stimulating recognition by relatives and friends. The morphology section focuses on verbal descriptions, graphic processes of aging and characteristics determination with possibilities for appearance changes, superimposition techniques, plastic (traditional) facial reconstruction, graphic facial reconstruction based on the skull (computer-generated 3D reconstruction), and image matching. Such images can be found on the website of the State Prosecutor Office. However, there is no published information on the number of cases in which the application of morphology has resulted in relevant additional investigative information.

2.10. Sampling of remains

135. At any given time during the examination stage, mortal remains or parts thereof may be sampled, with the extracted specimens sent to a different laboratory within an agency or to a different agency altogether. Inadequate coordination and lack of standardized tracking of samples contributes to the loss of data and specimens. Samples may be taken for biological profiling,⁸² genetic analysis⁸³ or for posterior analysis.⁸⁴ All remains intended to undergo chemical application for maceration must be sampled prior to preparation.

2.11. Postmortem examination reports

136. A final report, which is signed and dated, is prepared from all the proceedings, results and conclusions. The report must meet the legal requirements of the Criminal Procedures Code, Article 210. As of March 2008, the "Forensic Identification Report" has been implemented at INMLCF. In the case of CTI, a validation mechanism exists whereby the proceedings and results are verified by the Chief Coordinator for the area prior to submission to the prosecutor.

2.12. Transparency in the examination process

⁸² According to INMLCF Manual, the following includes specimens for transfer during autopsy to anthropologist for biological profiling under conditions when anthropologist is unavailable: 1) Sex estimation: cranium, mandible, pubic symphysis, ilium, complete femur, complete humerus; 2) Race/ancestry estimation: cranium and mandible; 3) Age estimation: cranium, 4th – 7th ribs, clavicle, pubic symphysis; and 4) Stature estimation: left or right complete femur and left or right tibia, left or right fibula, or complete left or right humerus, radius or ulna.

⁸³ For remains with soft tissue, the INMLCF Manual calls for blood, muscle or bone tissue samples. For bone samples, it is recommended that diaphyseal fragments with the dimensions of 8 x 2 cm are excised from the femur or tibia (a cross-section is not to be taken).

⁸⁴ According to CTI Manual, if the remains are to be reburied prior to positive identification, the following samples are preserved for posterior analysis: 1) a complete femur (if not available, another long bone); 2) two teeth (preference for mandibular incisor); and 3) one molar (for DNA testing). These samples are packaged with the ID number, date and person who took the sample. Although, it is unknown whether the INMLCF is extracting the same samples as CTI for posterior genetic analysis, INMLCF representatives have stated that reserve samples are extracted and stored within their facilities prior to reburial and that this practice has been standardized for the past 7 years.

137. Following the introduction of an accusatory system in Colombia, representatives of victims can participate in the process of examination of mortal remains. This provision has allowed for the presence of NGOs, such as EQUITAS and the AFFIC Foundation,⁸⁵ to offer families a “second opinion” when they believe that the INMLCF has inadequately documented vital information during the postmortem examination (e.g. skeletal trauma consistent with torture). Although the roles taken on by such NGOs help provide scientific transparency and thus accountability within the process, their inclusion in the process has not always been easy and has often resulted in strong confrontation with the state institutions who may consider that such independent monitoring questions their expertise.

2.13. DNA confirmation of a potential identity

138. The application of DNA typing for identification of human remains is presently conducted by three agencies: INMLCF, CTI and DIJIN. All laboratories are accredited by a Colombian national agency as adhering to ISO17025 standards. The INMLCF has the largest DNA capacity with laboratories in Bogota, Medellin and Cali. The INMLCF Bogota laboratory is the oldest, and acts as the principle center, staffing 27 experts for analysis of biological and genetic information. The laboratory in Cali is the newest, with operations projected to begin during 2008. The INMLCF laboratory in Medellin was built in 2007 and is currently operational with 10 scientific staff members. The CTI and DIJIN laboratories are located in Bogota, and are outfitted with modern equipment and sufficient physical laboratory facilities. It has also been announced that DAS will open a DNA laboratory during 2008. None of the facilities could be considered state of the art in terms of facility design, but all are more than adequate for the execution of high throughput DNA testing, given effective protocols and efficient work flow management.
139. In addition to the above listed agencies, there are other DNA testing capacities in Colombia (e.g. the DNA laboratory of the State Procurator’s Office, the National University, and the private *Servicios Medicos Yunis Turbay* laboratory in Bogota), currently not engaged in the process of DNA identification of victims of enforced disappearance.
140. Assignment of particular case samples to each laboratory for DNA typing tends to follow which agency was involved in the exhumation and/or examination of a case, but a firm rule does not exist. The individual prosecutor determines where to transfer samples for DNA confirmation of presumed identity. According to INMLCF, in cases where there are strong indications of possible identity a bone sample is taken from the case, usually from the long bones and/or teeth, and sent to the genetic laboratory for processing. However, in JPU cases exhumed and analyzed by DAS, CTI or DIJIN, a bone/tooth sample is taken and processed, even when there is no real indication of identity. The basis for engaging in the latter process is unclear, given that no effective means for matching DNA samples in the absence of hypotheses of identity exists.
141. Typically, bone/tooth samples taken from a set of mortal remains, together with presumed familial reference samples are sent to INMLCF, CTI or DIJIN. A single laboratory then performs DNA extraction, followed by directed comparisons between profiles from the bone/tooth sample and the reference samples from the relatives. However, it sometimes occurs that related samples and references are sent to different laboratories, which is a problem in the absence of a centralized system for data storage and genetic matching. This will result in DNA profiles from family members being “in limbo” with regard to matching with profiles from skeletal samples that may have been typed in a different laboratory. Additionally, in the absence of genetic database matching capability, DNA testing is limited to a confirmatory role for pre-existing hypotheses of identity. Since presumptive hypotheses of identity are not always correct, this likewise creates the necessity that DNA profiles be archived in an “active” form so that they are matched immediately if any matching profile is generated in the future, regardless of which lab produced the profile.

⁸⁵ Physical and Forensic Anthropology and Criminal Investigation Services (AFFIC).

142. The collection of family reference samples for DNA analysis is not systematic. When field exhumation teams have information on possible identity and family members are available, samples may be taken by them. Otherwise, the State Prosecutor's Office, INMLCF, CTI, DIJIN and DAS may collect samples at other places and times as specific information becomes available. As an example, the collection of biological reference samples during the pilot project of the Search Plan was undertaken in a systematic manner, with all samples collected by a single institution, usually at the same time with the submission of the National Form. On the other hand, there have been cases when teams would approach families to collect biological reference samples, starting with blood, then saliva, and finally hair, due to the limited number of kits available for collection of a specific sample.⁸⁶
143. The DNA identification system in Colombia requires a central database of family reference samples and a coordinated system by which reference samples are collected. Currently the process appears inconsistent and uncoordinated. For example, the CTI claims that it has teams that are systematically collecting reference samples from relatives of missing persons and that they have created a genetic database. However, the JPU has announced that it will begin systematic and coordinated blood collection efforts together with INMLCF, in targeted areas of the country during 2008. Further, presumptive hypotheses of identity can be wrong, and if directed comparisons with presumed family members fail to find a match, all genetic profiles must be archived in an "active" form so that they are matched immediately if any matching profile is generated in the future, regardless of which lab produced the profile.
144. The primary type of DNA testing performed in all the labs is nuclear short tandem repeat (STR) typing, but all laboratories have mitochondrial DNA (mtDNA) testing capabilities either currently in practice or planned for the near future. DNA testing methods required for human remains identification are comparatively specialized and demanding, for the most part involving recovery of DNA from bones or teeth. The samples that are tested may have been exposed to any of a wide variety of environmental conditions, differently detrimental to the preservation of DNA. Mitochondrial DNA is a high copy number genetic element, and for this reason can be recovered with higher success rates from highly degraded remains. However, mtDNA testing provides much lower surety with regard to hypotheses of identity. Final success rates of DNA extraction from bone/tooth samples is estimated at 90%, with 30% of all typed samples requiring re-typing. It appears that nuclear STR typing is the first choice of analysis in Colombia, with mtDNA used only when STR typing is not possible (e.g. the sample having too little DNA for successful nuclear DNA typing, or the availability of distantly related maternal relatives only).
145. Despite the specialized nature of DNA testing from degraded bone samples, and genetic matching between family relatives, none of the laboratories have dedicated facilities for this type of work. All the labs have significant case burdens of other types of "routine" criminal cases. The INMLCF, for instance, receives some 40 new sexual assault cases each month, and has a significant backlog of sexual assault cases they are under pressure to complete. At the same time they are under serious financial limitations for the purchase of the required reagents. Clearly, competing pressures and priorities make it difficult to establish a maximally effective and focused work flow for missing persons casework.
146. There is a lack of standardization among the laboratories. Each laboratory has its own protocols which, under proper forensic practice and requirement for accreditation, need to be supported by a separate set of validation experiments. In addition to requiring redundant effort, this has the unavoidable result that the laboratories will not have uniform capabilities with regard to difficult samples or cases requiring special treatment. Of greatest significance is that the choice of STR typing kits, each with its different

⁸⁶ There have been cases of families receiving notification that the identity of their missing relative has been established based on the donated blood samples, in cases where the families have donated saliva samples only. This undermines the entire identification process and causes the families to doubt the established identity.

set of genetic loci, is not standardized. This has the result that data from different laboratories may not be compatible for genetic matching or statistical calculation.

147. It is widely recognized that the current throughput of the laboratories (individually and combined) is insufficient for the missing persons caseload. The technical competency of the various DNA laboratory staff is solid and their dedication and motivation are commendable. However, levels of productivity are not high, and protocols are not optimized or are in a state of development. Different laboratories are working separately on the development of improved techniques, for example, targeting increased efficiency in DNA extraction.
148. The single greatest weakness to the combined cost effectiveness of the DNA typing capabilities in Colombia is duplication of effort. Each separate laboratory has to independently solve the same or similar sets of logistical, management, physical, informational, and technical problems. Working separately, each laboratory requires competent high level direction, trains its own personnel, develops its own methods policies, and competes for funding. Nonetheless, the notion appears to remain that increasing the capacity for DNA typing is best served by opening yet more DNA laboratories, sometimes by agencies that currently have no DNA capabilities. There also seems to be the idea that a greater regional distribution of DNA laboratories is beneficial for dealing with a caseload that originates from many regions of the country. On the contrary, it is far more cost effective to establish a reliable means for transporting samples wherever they need to go for DNA analysis at an efficient high-throughput testing facility.
149. Probably the largest obstacle to high throughput DNA typing is the arrangement of work flow that is generally the same in each laboratory: a single analyst receives victim (bone/tooth) and family reference (blood/saliva) samples, processes each through every stage of the DNA typing, analyzes the results, and prepares a report. Analysts compare only the victim and reference profiles submitted in the particular case, and if there is a match, perform statistical calculations by hand. At INMLCF, the stated goal for maximum output of an analyst was to complete ten cases a month, but even this is not achieved with regularity. This approach to work flow requires analysts to have a wide span of expertise, with long periods of training needed to add or replace staff, and a relatively high cost for employees with highly developed capabilities.
150. It was repeatedly mentioned that laboratories are insufficiently funded for the purchase of necessary reagents and consumables, with this being a limiting factor for operating the labs even at their current capacity. Notably, this invalidates the concept that addressing the throughput challenges should be met by an increasing profusion of DNA laboratories.
151. All DNA laboratories use a genetic database called CODIS (“Combined DNA Index System,” developed and distributed by the USA FBI). The database is designed to store DNA profiles from crime scenes and links them through direct matching to suspects or convicted offenders. Apparently, DNA profiles from missing persons casework are also stored in CODIS. CODIS searches for matching DNA profiles can be used in a “low stringency” mode to provide the ability to find matches between relatives, but since the CODIS application was not designed for this purpose, it is inefficient and inexact. As a result, the Colombian DNA typing efforts have no adequate means for performing matching between databases of DNA profiles from mortal remains and family members of the missing.
152. In addition, there is no capacity for complex statistical evaluation of genetic kinship. In the case of matches between victim and family reference profiles, calculations involving simple sets of immediate family members are done by hand. Software is required that is capable of performing calculations on any relationship pedigree, which permits making use of a much wider range of reference family members, and therefore significantly expands the scope of cases that can be resolved by kinship matches.
153. Despite the inherent challenges posed by different agencies working separately on the same general identification effort, and the high degree of duplication this entails, there were a number of positive

points observed: 1) The level of dedication of the various agencies to cooperate toward the ultimate goal of an effective identification process is high; 2) the level of territoriality and self-interest, while unavoidably present given the system, was relatively minimal; 3) the various agencies are aware of the challenges posed, and have a detailed appreciation of a large number of areas where coordination is vital; and 4) the agencies are taking concrete steps to mutually identify and act upon improvements in standardization, coordination, and communication that will be required for the system to function efficiently and effectively. The latter is the goal of the “Inter-institutional Subcommittee on DNA,” constituted by senior members of all DNA labs, which has been meeting for several years. The subcommittee has systematically identified areas where increased coordination and standardization are needed, and has analyzed the problem of throughput and resource limitations in detail.

2.14. Storage and final disposition of mortal remains

154. Once the remains have received their final, legal identification they are prepared and handed over to their families for burial. Storage of unidentified human remains is the responsibility of the Prosecutor’s office under whose authority the remains were recovered and processed, who, with the help of the institutions that processed the remains, coordinates with cemeteries to bury unidentified and unclaimed identified remains when storage capacity is exhausted. All institutions involved in the burial of such forensically examined remains have the obligation to report all information relevant to the burial location to the National Register.⁸⁷ As an example, according to the INMLCF, the current number of such bodies is estimated to be over 2000, of which, 89% are buried in individual graves/crypts, 5% in common graves and 6% in multiple crypts.
155. Unfortunately, and contrary to Article 14 of Decree 4218 of 2005,⁸⁸ cemeteries in Bogota and elsewhere do not always maintain proper records of buried mortal remains.⁸⁹ While SIRDEC contains a module in which the place of (temporary) burial of all processed unidentified bodies should be registered, historical data (prior to 2006) has not been consistently entered. In some cases, three to four years following the burial of unidentified (NN) remains in individual grave/crypts, the mortal remains are moved to ossuaries, where a danger of commingling with other sets of skeletal remains can occur. In addition, cases of cremation of remains have also been registered.⁹⁰ Such practices continue to occur despite the legal obligation of local cemeteries to guarantee the integrity of temporally buried remains at all times.⁹¹ Finally, it is alleged that local cemeteries hold remains of unidentified individuals recovered by civilians or rural authorities that never entered the identification process.

⁸⁷ Article 14, Decree 4128 of 2005.

⁸⁸ “(...) *the cemetery administrators shall guarantee the preservation and marking of the graves with the data required in line with the National Register of Missing Persons.*”

⁸⁹ See *Who is Missing? Problems in the application of forensic archaeology and anthropology in Colombia's conflict*; Ana María Gómez López and Andrés Patiño Umaña; 2007.

⁹⁰ See *Observations on unidentified human remains in Colombia*; EQUITAS, February 2008.

⁹¹ Article 14, Decree 4218 of 2005.

V. VICTIMS AND THEIR RIGHTS

1. Who is a Victim of Enforced Disappearance?

156. In recent years it has become almost universally accepted that victims of enforced disappearance include not only the disappeared persons, but their family members. This concept is reflected in the definition of a victim used in the International Convention for the Protection of All Persons from Enforced Disappearance.⁹² The UN Human Rights Committee and the Inter-American Court of Human Rights (along with the European Court of Human Rights) have also found families of disappeared persons to be victims, especially in cases when the state has failed or refused to undertake all actions necessary to establish the whereabouts of the disappeared person; or when the state has not provided the attention needed at the time when the disappearance is reported, and thus caused prolonged suffering to family members due to the ongoing uncertainty of the fate of their missing loved ones.⁹³
157. Colombia's struggle with this concept is reflected in its legislation.⁹⁴ A common definition of who constitutes a victim of enforced disappearance is of crucial importance in providing victims, including the families, with effective remedies, including reparations. While Law 589 of 2000 refers only to the missing person as the victim of enforced disappearance, other related legislation includes references to the rights of the family members, and in some cases explicitly defines them as victims. The spouse, permanent partner, and other direct relatives of a victim of enforced disappearance are also considered victims under the Justice and Peace Law.⁹⁵ The Search Plan, even more broadly, defines relatives of a disappeared person as: "all persons interested in the search of a disappeared person regardless of their consanguine connections with the disappeared."⁹⁶
158. Furthermore, in its Decision C-370 referring to the Justice and Peace Law, the Constitutional Court states that, "the family members of victims of violations of human rights... have the right to be considered victims themselves, for all legal, constitutional and conventional effects."⁹⁷
159. The definition of who is a victim of enforced disappearance in Colombia appears to be dependent on the context in which it is applied; broadest when using families as a source of information, e.g. the definition used by the Search Plan, and much narrower when referring to reparations, e.g. the definition in the Justice and Peace Law. However, it appears that the most commonly accepted definition, when discussing family members of the missing person as victims, is the one provided by the Justice and Peace Law, as extended by the Constitutional Court recommendation to include family members of those missing persons not covered by the law.

2. Targeted Groups and "Re-victimization"

160. In its report on Colombia, the UN Working Group on Enforced and Involuntary Disappearances noted two distinct periods in the evolution of acts of enforced disappearance (1) between the 1970s and late 1990s, where state actors were the alleged perpetrators in most cases (allegedly backed by paramilitaries), and activists, alleged guerrilla and members of left-wing parties and their supporters

⁹² The International Convention for the Protection of All Persons from Enforced Disappearance, Art 24 (1) states that "For the purposes of this Convention, "victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance." This is arguably the broadest international definition of a victim of enforced disappearance to date.

⁹³ See e.g. Bamaca Velasquez case, Inter-American Court of Human Rights, vol. 70, Series C, paras. 159-166 (25 November 2000); Quinteros Alemría v. Uruguay, Communication No.107/1981, final views of 21 July 1983, HRC, and Kurt v. Turkey, Application No. 24276/94, Judgment of 25 May 1998, European Court of Human Rights.

⁹⁴ For the definition of a missing person as a victim of enforced disappearance, see paragraph 37 of this report.

⁹⁵ Article 5, paragraph 2, Justice and Peace Law.

⁹⁶ Note that the Search Plan defines "relatives" rather than "victims".

⁹⁷ Constitutional Court Decision C-370, point 6.2.4.2.8.

and farmers were targeted as victims; and (2) between the late 1990s to date, where paramilitaries were the alleged perpetrators in most cases, and an increased number of “common people” and farmers were targeted as victims.⁹⁸ The UN report highlights how the changing nature of the conflict in Colombia has affected different groups at different phases of the conflict.

161. In Colombia specific groups tend to re-appear as victims of enforced disappearance. As an example, the “social cleansing” phenomenon, first noted in the 1980s, predominantly targets petty criminals, prostitutes, homosexuals, alleged civilian supporters of guerrilla groups and others. Further, the finding from recent exhumations point to the fact that a high number of individuals belonging to specific groups, such as, religious groups, indigenous tribes, the Afro-Colombian community and rural populations living in areas of economic interest are disproportionately targeted as victims of enforced disappearance.
162. A universal characteristic of enforced disappearances is that the majority of persons missing are men and the victims left behind are women (often mothers and single heads of household), children and the elderly. In addition, in Colombia most of these victims often live below the poverty line in rural areas and are uneducated. As such, the families of the missing have specific socio-economic needs that require direct and timely attention.
163. It is not unusual for family members of disappeared persons to be victims of other serious crimes, directly or indirectly related to the disappearance. In some cases, these crimes happen in conjunction with the disappearance (e.g. a man goes missing and at the same time as his wife is sexually abused by the perpetrators), or following the disappearance, either to intimidate the remaining family members to prevent them from reporting the disappearance, or as an act of revenge for having reported the disappearance. To date, the CNRR has officially registered at least 10 cases of “re-victimization” in Colombia.⁹⁹ This phenomenon may exacerbate the insecurity felt by the relatives of the missing and help explain why over 70% of the cases of disappearance are reported to the State Prosecutor’s Office by men and why cases of disappearance are believed to be chronically underreported.¹⁰⁰
164. Concerns have been raised by numerous NGOs that, when collecting information on cases of enforced disappearance, authorities tend to concentrate only on the disappearance itself and do not try to elicit information on related crimes. This exacerbates a situation where persons reporting the disappearances may already feel uncomfortable reporting additional criminal acts, especially in cases of sexual abuse, where victims may feel too ashamed or humiliated to report the case. Even the National Form, envisaged as a tool for the collection of all relevant information that could assist in the investigation of the crime of enforced disappearance, does not contain a reporting category for other crimes that occurred in relation to the disappearance.
165. Although the security situation has gradually improved in recent years, many victims remain reluctant to register crimes suffered and/or engage in public debates on the issue of enforced disappearance. The idea that reporting a disappearance can result in negative repercussions for other family members prevents many from officially registering cases. Even in areas that are now under the control of state forces, security remains fragile, and victims fear the perpetrators’ potential return. Some victims refuse to register their relatives as missing due to fears that state actors may be complicit in the act of disappearance. Although this situation has been improving over the past two years, the level of mistrust of state institutions on the part of victims remains high.

⁹⁸ UN Working Group on Enforced and Involuntary Disappearances, Mission to Colombia, E/CN.4/2006/56/Add.1, 17 January 2006, Paragraph 55. Please note that the Working Group Report refers only to the period between the first case received in 1973 to date.

⁹⁹ In Colombia, “re-victimization” is considered to be a crime, “committed by the same perpetrators towards the family members of the disappeared person following the initial disappearance, in direct or indirect connection with it.

¹⁰⁰ Information provided by the Justice and Peace Unit of the State Prosecutor’s Office at a meeting on 6 December 2007.

166. A specific challenge exists when dealing with certain victim groups, including indigenous tribes, specific religious groups, and the afro-colombian community. Such groups have specific customs related to mourning, burial, and handling of mortal remains. Consequently, any comprehensive strategy for assistance and outreach to victims in Colombia must take into consideration the specific needs of these groups.
167. Finally, the state and civil society need to give public recognition to all victims of enforced disappearance. This might include commemorations (e.g. the International Day of the Missing – 30 August), the creation of memorials at sites of disappearance, exhumations, and burials, the mounting of commemorative and memorial plaques, etc. It is important that such recognition be led by a state level strategy, in consultation with the victims and that it is implemented jointly between agencies that assist victims, and financed by the state. It should also provide a space for the inclusion of NGOs and victims in its implementation.¹⁰¹

3. Victims, Victim Groups and Victims' Associations

168. Until recently, victims of enforced disappearance in Colombia were generally unified. However, one effect of the Justice and Peace Law was to divide these victims into two groups: those defined as such under the new law, and those not defined as victims therein. Thus, Colombian law distinguishes between victims of the same or similar crimes based solely on the perpetrator. The same crimes, equal in gravity and the consequences for the victims, are not only processed via two different judicial mechanisms, but further the victims are provided differential access to rights. This effective discrimination stems not from the type of crime suffered, but only on whether or not the perpetrator qualifies for alternative punishment under the Justice and Peace Law. As expected, this has resulted in numerous criticisms, including allegations of discrimination on the part of the State.
169. The division of victims into two distinct groups further corresponds with the development of institutions mandated to address their needs. For example, the CNRR is mandated to work exclusively with victims defined by the Justice and Peace Law; while the Search Commission, although mandated to address the needs of all victims, has found itself in the role of primarily addressing the needs of victims falling outside the Justice and Peace Law.
170. This de facto separation of victims into two groups affects the ability of their associations to overcome differences of opinion and cooperate with each other, thus weakening their effectiveness. Regardless of their differences, there remain striking similarities in what the victims' associations identify as the primary needs of victims. These can be grouped into three core areas: (1) assistance to victims to participate in the process of exhumations and identifications; (2) assistance to victims to participate in judicial and other legal proceedings; and (3) psycho-social assistance. Most associations provide some assistance in all three areas, and in fact believe that the victims' associations are best placed to meet these needs.
171. One of the biggest challenges Colombia faces in addressing the issue of enforced disappearances is coordination and information flow, not only between institutions, but between victims and state institutions, which if not overcome creates barriers and mistrust. Inclusion of victims and civil society groups is critical to the efforts of the state to understand and address this issue and to the victims in their ability to effectively access their rights.¹⁰² While the engagement of ASFADDES in the work of

¹⁰¹ A positive example that can be followed is the Decree on Marking Sites of Exhumations and Burial by the government of Bosnia and Herzegovina, which stipulates a standard manner in which memorials are to be placed and designed.

¹⁰² By way of example, in Bosnia and Herzegovina, the State Ministry of Human Rights and Refugees incorporated victims' associations in a consultative process to draft the Law on Missing Persons, and following its passage, to relate problems in implementation of the law back to the government. Associations of families also actively participated in

the Search Commission and the joint effort of the *Madres de la Candelaria* and the CNRR in the creation of a website designed for victims of enforced disappearance is positive, it also has the negative effect of perpetrating the division of victims following the Justice and Peace Law.

172. The capacity of victims' associations to provide assistance is dependent upon available funding, and the assistance they receive from state institutions is limited. Most of their financing is provided by international donors on an *ad hoc* basis, which affects the sustainability of their programs. These funding limitations not only influence their capacity to provide assistance to victims, but their ability to be independent implementation partners of the Search Commission, CNRR, and other institutions.

4. Rights of Victims

173. Under international law, the prolonged suffering caused by the uncertainty of the fate and whereabouts of a disappeared person has been found to constitute a form of torture for the family members of the missing person.¹⁰³ In this regard, it is increasingly contingent upon governments not only to address the disappearance, but also the effects of that crime on the families of the disappeared.
174. There is no single law or decision that systematically and holistically regulates the rights of all victims of enforced disappearance in Colombia. Rather, references to these rights are scattered throughout different legislative acts, and implemented through various mechanisms which were not created to specifically address victims of enforced disappearance.¹⁰⁴ Victims are left to rely on general mechanisms created for victims of "armed groups organized on the margins of the law" (e.g. victims of forced displacement, murder, and sexual abuse); all victims of the armed conflict, or victims of regular crimes, none of which fully address the rights of victims of enforced disappearance.
175. The basic premise in relation to rights of victims of enforced disappearance is their right to know what happened to their missing loved ones, where they are, who caused the disappearance, punishment for the perpetrator, and the right to receive reparation for the harms suffered.
176. Within the framework of international law, the International Convention for the Protection of All Persons from Enforced Disappearance guarantees, *inter alia*, the right to know the truth about the circumstances of the disappearances and the right to reparation; the UN International Covenant on Civil and Political Rights guarantees the right to effective remedy, and the Inter-American Convention on Forced Disappearance of Persons places an obligation on the State to punish the perpetrators.¹⁰⁵
177. Under domestic law in Colombia, the rights to truth, justice, and reparation are provided for either implicitly (in various laws) or explicitly as is the case with the Justice and Peace Law.¹⁰⁶ In considering the Justice and Peace Law, the Constitutional Court states that "all victims (or persons who have suffered consequences of a crime) have the right to truth, justice, and reparations,"¹⁰⁷ which includes victims not covered by the Justice and Peace Law and victims of crimes alleged to have been carried out by state actors.

campaigns to educate groups about their rights. The government and associations jointly mounted a campaign to present and distribute a *Guide for Families of Missing Persons*, as well as other documents relevant to the needs of victims.

¹⁰³ See, e.g. Bamaca Velasquez case, Inter-American Court of Human Rights, vol. 70, Series C, paras. 159-166 (25 November 2000); and Quinteros Alemría v. Uruguay, Communication No.107/1981, final views of 21 July 1983, HRC, and Kurt v. Turkey, Application No. 24276/94, Judgment of 25 May 1998, European Court of Human Rights.

¹⁰⁴ See Annex 1 to this report, *Slide 3 – Rights of Victims of Enforced Disappearance* for graphic representation of the rights of victims and further details.

¹⁰⁵ UN International Convention for the Protection of all Persons from Enforced Disappearance, Article 24; UN International Covenant on Civil and Political Rights, Article 2, point 3 (a); Inter-American Convention on Forced Disappearance of Persons, Article 1 (b).¹⁰⁶ Articles 6, 7, and 8, Justice and Peace Law.

¹⁰⁶ Articles 6, 7, and 8, Justice and Peace Law.

¹⁰⁷ Constitutional Court Decision C-370, para. 6.2.4.2.7.

178. In addition, victims have specific rights during judicial proceedings, as well as the right to participate in the search process.¹⁰⁸ Such rights are directly provided for in the Justice and Peace Law and the Search Plan, or extrapolated from other laws, and include, *inter alia*, the right to be included in the process (both in judicial proceedings and exhumation and identification processes) and rights to protection and information.¹⁰⁹
179. There are social rights that the state must ensure for the victims, particularly those rendered increasingly vulnerable as a result of the crime suffered. In the case of Colombia, these include “administrative reparation” and the right to financial assistance for harm caused by the armed conflict.

4.1. Rights to truth, justice and reparation

180. A prerequisite for establishing truth, justice and reparation is the recognition of victims, which can come from legislation defining them as victims, from the response of the authorities upon registration of a disappearance, or, optimally, both. The failure of the state to recognize the victims constitutes a further breach of other rights, including the right to justice.
181. Article 7 of the Justice and Peace Law reads in the pertinent part, “Society, especially the victims, has an unalienable, full and effective right to know the truth about the crimes committed by armed groups organized at the margin of the law, and the whereabouts of the victims of kidnappings and enforced disappearance.” Further, the truth, as referred to in the law must be established by the judiciary.¹¹⁰
182. A basic premise in Colombian law is that perpetrators are responsible for compensating for harm caused by their actions. This reasoning accounts for the absence of specific provisions on reparation for the families of the disappeared in Law 589 of 2000, which only allows families to obtain compensation by filing claims for damages during judicial proceedings, known as *judicial reparations*. Conversely, the Justice and Peace Law explicitly states this basic premise and makes it a general obligation on the demobilized person(s) to provide reparation. These reparations are known as *individual reparations*.¹¹¹
183. Along with individual reparations, Article 8 of the Justice and Peace Law provides the right to collective and symbolic reparation. The three types of reparation envisaged in this law are jointly known as integral reparation. The right to integral reparation under this law includes restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. The specific form of reparation is determined by the judicial authority in its judgment and is financed by the perpetrators themselves from the proceeds of their illegal activities.¹¹² If the perpetrator is not identified, but connections are found between the crime and a beneficiary demobilized group under the Justice and Peace Law, the victim should receive reparations from the Fund for Reparations. This Fund consists of property handed over by perpetrators upon their application for benefits under the Justice and Peace Law, money from the state budget, and domestic and international (financial or in-kind) donations. Its goal is to provide for the reparation of victims of armed groups on the margin of the law. To date, few perpetrators have handed over property to the Fund, and what has been handed over allows for very little in the way of financial reparation.¹¹³

¹⁰⁸ When referring to the rights of victims during judicial proceedings and the search process, the Justice and Peace Law uses the term “*Rights of victims with respect to the Administration of Justice*.”

¹⁰⁹ Article 37, Justice and Peace Law.

¹¹⁰ See Justice and Peace Law, Article 7, paragraph 2; see paragraph 69 of this report;

See paragraph 72 of this report for more information on the access to the right to justice.

¹¹¹ Article 42, paragraph 1, Justice and Peace Law.

¹¹² Constitutional Court Decision C-370 states that perpetrators should respond to victims with all their property, not only with the property obtained as a result of their illegal activities. However, this position was not reflected in Decree 3391, promulgated subsequently.

¹¹³ CNRR, 2007 report to the Colombian Congress, page 42.

184. Symbolic reparation for the victims and society in general under the Justice and Peace Law aims to assist the preservation of historical memory, prevent repetition, enable public acceptance and pardon, and to re-establish the dignity of victims. Most activities in relation to symbolic reparation to date have been undertaken by the CNRR. However, these activities are hard to quantify, thus it is difficult to assess their effectiveness. The implementation of symbolic reparation should be an inter-institutional effort undertaken in a systematic manner in cooperation with civil society and associations of families of disappeared persons and provided to all victims, including those who fall outside the Justice and Peace Law.
185. Finally, Article 49 of the Justice and Peace Law obliges the government to implement a system of collective reparation (in line with recommendations from the CNRR) by establishing an inter-institutional program of action aimed at the re-establishment of the rule of law in areas affected by violence, including the restoration and promotion of the rights of those affected by violence and the recognition and dignity of victims. Just as in the case of symbolic reparation, most of the efforts are undertaken by the CNRR, but they lack a broader state institutional response or the inclusion of civil society. In addition, the delineation between symbolic and collective reparation and the mechanisms for their implementation, remain unclear.
186. Article 47, paragraph 2, of the Justice and Peace Law prescribes that all existing social services offered by the state should be considered reparation. Although victims may require social assistance, such assistance should not be confused with reparation for the victims of enforced disappearance.¹¹⁴
187. Unlike the Justice and Peace Law, in which the rights of the victims to a holistic form of reparation are defined within the law itself, in the cases processed by the HRIHL Unit, the Regional and Special Prosecutors under, *inter alia*, Law 589 of 2000, no explicit legislative provision for the right to reparation for the victims of enforced disappearance exists. Such reparation can be obtained only upon the request of the victim when raised during judicial proceedings against the perpetrator. Obtaining judicial reparation has proven to be complicated.

4.2. Rights of the victims during judicial proceedings and the right to participate in the search process

188. Victims of enforced disappearance have the right to be included and actively participate in ongoing judicial proceedings, as well as in the process of search, recovery, and identification of disappeared persons.
189. Article 37 of the Justice and Peace Law explicitly states the rights of the victims during judicial proceedings, which include the rights to privacy and guarantee of security, to present evidence, to physical protection, to access information on the status of the proceedings, and to legal assistance during judicial proceedings, among others.
190. Further, the Search Plan affirms the rights of families to participate in the technical process of searching, recovering, and identifying disappeared persons, as part of the judicial proceedings, “The relatives of the victims and their representatives have the right to know, access, and participate in all the phases of the criminal procedure and the search mechanism, in line with the law, constitutional norms, and international law.”¹¹⁵
191. However, implementation of the rights of the victims during judicial proceedings and the search process is highly fragmented. This is largely due to the lack of functioning mechanisms and the plethora of implementing institutions, including the State Prosecutor’s Office, the Search Commission

¹¹⁴ See *infra* paragraph 204 of this report.

¹¹⁵ National Search Plan, General Considerations, point 9.

and the CNRR. For instance, the State Procurator's Office and the Ombudsman are each mandated to provide for certain rights and assistance to victims during the judicial proceedings.

192. The State Procurator's Office is mandated to undertake disciplinary investigations and impose sanctions on civilian and state military agents. This responsibility also includes investigations related to alleged breaches of human rights. Thus, the State Procurator's Office has an important role in cases in which the involvement of state officials has been alleged, as well as in cases involving inappropriate actions of judicial authorities during proceedings. The State Procurator's Office has the authority to intervene in judicial and administrative proceedings (both civilian and military) when it believes that such proceedings do not respect the rights of the victims or others. In addition, the Justice and Peace Law established the Justice and Peace Procurator under the State Procurator's Office to assist the implementation of the Justice and Peace process.
193. The Office of the Ombudsman seeks to promote and protect the human rights of citizens, and undertakes, *inter alia*, activities related to education, training and awareness-raising on human rights. The Justice and Peace Law sets forth a dual and potentially contradictory role for the Ombudsman. The law states that the right of defense for the accused will be guaranteed through the mechanisms of the Ombudsman, and at the same time the Ombudsman should assist in the implementation of the rights of victims.¹¹⁶ The Search Plan further tasks the Ombudsman with providing assistance and attention to victims in several of its sub-phases. While the role of the Ombudsman has been limited to date, efforts are being made to increase this role, especially in the areas of psycho-social and legal assistance to victims during judicial proceedings. In this regard, the Ombudsman produced a "Guide for Legal and Psycho-social Orientation of Victims of Armed Groups Organized at the Margin of the Law,"¹¹⁷ which provides an overview of applicable legislation and provides instructions for representatives of the Ombudsman's office on how to deal with victims. However, the guide only addresses the authority of the Ombudsman relevant to victims of enforced disappearance in the context of the Justice and Peace Law.
194. Families of disappeared persons are essential to the process; they are a valuable source of information for the investigative proceedings, and assist in the identification process by providing ante mortem data and other information. Efforts aimed at increasing the inclusion and participation of victims can contribute to the overall process. Unfortunately, the level of inclusion of the families of disappeared persons in judicial proceedings, as well as the exhumation and identification process in Colombia to date has been far from sufficient.
195. Perhaps the most crucial issue that influences the level of inclusion and participation of victims in judicial and search processes is the issue of their security and protection. Article 37.2 of the Justice and Peace Law guarantees the security of victims, their families, and witnesses, but in reality this has been virtually impossible to ensure due to the general security situation in the country. Programs have been implemented by and in coordination with the State Prosecutor's Office and other institutions which provide protection for victims and witnesses (including the Ministry of Interior and Justice, the Ministry of Defense, the Ombudsman). However, this protection is not consistent or reliable, and thus increases the vulnerability of victims and the risk of "re-victimization." Precautions are taken at various stages of the process (e.g. during *versiones libres*, by physically isolating the victims from the perpetrators), but re-victimization incidents still occur. Victims' association members are often subject to harassment, threats, and in extreme cases, become victims of enforced disappearance or murder. In October 2000, two members of ASFADDES disappeared and their whereabouts remain unknown. More recently, in January 2007, Yolanda Izquierdo Berrio, a human rights activist and a victim processed under the Justice and Peace Law was killed few days after she informed the relevant authorities of threats made against her.¹¹⁸ As concluded in the 2006 UN report on enforced

¹¹⁶ Article 34, Justice and Peace Law.

¹¹⁷ See <http://www.defensoria.org.co/red/anexos/pdf/04/juspa4.pdf>

¹¹⁸ See <http://www.humanrightsfirst.info/pdf/07212-hrd-col-ltr-izquierda-us-amb.pdf>

disappearance, “Witness protection and victim protection measures such as exist do not appear to work.”¹¹⁹

196. A strategy for addressing the rights of victims during judicial proceedings, including the search process, is required. Such a strategy should clarify which institutions have the responsibility to provide for specific rights, establish a single standard for the entire country and provide for better inter-institutional coordination on this issue. The strategy could outline each instance where victims require assistance, from the registration of the disappearance, to the final burial. This strategy could also recognize areas in which non-state institutions can provide assistance to victims, as well as give basic guidelines on how such assistance can be provided. The creation of the strategy should be an inter-institutional effort, potentially coordinated by a single institution (e.g. the Search Commission or the Ombudsman), and should take into consideration the opinion of representatives of the victims’ associations.

5. Assistance to Victims Provided by Non-State Actors during Judicial Proceedings and the Search Process

197. Families of missing persons face numerous difficulties in the judicial proceedings and the search process which are not necessarily recognized by existing legislation. In many instances, various institutions, including NGOs, international community representatives, and associations of family members of disappeared persons, provide for such needs. The support they provide is often broadly classified as psycho-social, legal, or “technical” assistance.
198. Although numerous institutions provide some kind of psycho-social support to victims, there is no common understanding among them regarding what psycho-social support should consist of, or how the provision of such support should be coordinated and administered. In an effort to address these questions, and provide a forum for exchange of experiences, the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the International Committee for the Red Cross (ICRC) established an Inter-Institutional Roundtable on Psychosocial Support for Victims of Enforced Disappearance. The roundtable is attended by associations of families of disappeared persons, NGO representatives, state institutions, and international organizations. One of the objectives of the roundtable is to create a basic document on psychosocial support that can be used as a reference by state institutions and by NGOs that provide such support to victims.
199. Often families do not comprehend the legal procedures and thus fail in efforts to access their rights. They often have little knowledge of what to do when an act of enforced disappearance occurs. Families do not know which institution they should turn to when addressing their cases or what the existing procedures are; consequently, they are often incapable of negotiating the process without assistance. Associations of victims and NGOs have continuously provided orientation programs for victims, assisted them in collecting all documents necessary to report a disappearance, and physically accompanied them when reporting a case.¹²⁰
200. Various associations of families of victims of enforced disappearance (e.g. ASFADDES, *Madres de la Candelaria* and *Familiares Colombia*) provide both psychosocial support and assistance with legal proceedings. These associations are usually able to assist where other institutions cannot (e.g. prior to the legal registration of the disappearance, or following the final disposition of the mortal remains). Victims also have a tendency to trust other victims more than state/professional institutions that

¹¹⁹ See paragraph 81, UN Working Group on Enforced and Involuntary Disappearances, Mission to Colombia, E/CN.4/2006/56/Add.1, 17 January 2006; See Colombian Commission of Jurists, “*Bulletin 20, Extracts on the Topic of Victim’s Rights and the Implementation of Law 975*”, 3 December 2007.

¹²⁰ See e.g. the ASFADDES Guide on How to Register a Case of Enforced Disappearance; March 1994 <http://www.asfaddes.org.co/cartilla2.pdf>

provide assistance. However, given the number of cases of enforced disappearance, family associations currently do not have the resources, regional representation, or level of coordination to fully cover the provision of psychosocial assistance and legal support on the entire territory of the country.

201. The participation of victims in judicial and exhumation/identification processes often requires additional resources, including transportation and associated costs, and/or being accompanied by NGO members or technical experts, often referred to as technical assistance. The Search Commission, CNRR and other institutions (including the Peace Process Support Mission of the Organization of American States in monitoring the *versiones libres*; EQUITAS in providing second opinions to families on forensic issues)¹²¹ assist on an *ad hoc* basis.
202. The NGO sector and other institutions engaged in providing psychosocial, legal, and technical support to victims should consider enhancing the coordination of their activities. Improved coordination would allow for a better understanding of the type of assistance that non-state actors can provide, including the victim groups that should be focused on and the specific regions that should be covered. A register of non-state institutions that provide assistance should be created in order to facilitate the process for victims.¹²² It would be useful to identify how further assistance can be provided in areas in which the state already provides assistance, or areas in which no state assistance is provided. The efforts of the Inter-Institutional Roundtable on Psychosocial Support are an important step, and if built upon, could prove very useful in the creation of a unified strategy for assistance to victims during judicial proceedings and the search process. Finally, cooperation between this process and the creation of a state-led strategy for the implementation of rights of victims during the judicial and search processes are essential.¹²³

6. Social Rights

203. The problems inherent in providing individual reparation, combined with the increased vulnerability of victims, prompted Colombia to consider establishing a system of “administrative reparation.” In theory, these reparations should alleviate the problem caused by the high number of unknown perpetrators, which often renders individual reparation impossible. The administrative reparation system would provide basic support to victims, e.g. free medical insurance, monthly financial benefits, and priority in obtaining employment and access to existing social welfare structures.
204. If established along those lines, administrative reparation are not a substitute for, nor mutually exclusive to, the right of reparation as provided in the Justice and Peace Law. Such assistance is required to redress the current socio-economic situation faced by the victims as a result of the disappearance (e.g. loss of the household breadwinner). It does not, however, redress the original crime of disappearance, and thus cannot be considered individual reparation, particularly as prescribed by Article 47, paragraph 2, of the Justice and Peace Law. At most, it can be seen as reducing the day-to-day struggle of the family of the missing person, and thus mitigating the ongoing aspect of the crime of enforced disappearance as relates to the families.¹²⁴
205. Encouragingly, a consultative process between state institutions, victims’ groups, and others is ongoing

¹²¹ See paragraph 137 of this report.

¹²² CNRR and UN OCHA have worked jointly on the creation of a National Database of NGOs of/for Victims, which might be used for the creation of the Register.

¹²³ See paragraph 196 of this report.

¹²⁴ See paragraph 173 of this report; a further example includes the Law on Missing Persons of Bosnia and Herzegovina which provides similar rights to victims of enforced disappearance as the ones envisaged for the system of administrative reparation in Colombia. However, the law is clear that these rights represent assistance to the victims by the State, and not a form of reparation; See BiH Law on Missing Persons, Chapter 5, http://www.ic-mp.org/wp-content/uploads/2007/11/lawmp_en.pdf

to determine the modalities of the administrative reparation system. One proposal envisages two independent institutions: one which determines who qualifies as a victim and one which determines the form of reparation for each individual victim. The government is considering a World Bank recommendation in which the following categories of individuals are given priority for reparation: orphans, senior citizens, single mothers with no income, and handicapped persons. The seriousness of the crime(s) suffered would also be a factor.

206. The government plans to introduce the system during 2008 with the adoption of a decree that expands upon the Justice and Peace Law. However, if done in that manner, the system would only address victims defined under that law and disregard victims not covered therein. It is precisely during the establishment of the administrative reparation system that it should be extended to cover all victims. A unified system of administrative reparation could be the quickest way to overcome the division of victims, thus countering allegations of state discrimination and reconfirming recognition of all victims of the conflict regardless of the perpetrator.
207. In Colombia, victims have a right to financial support in the amount of 40 minimum salaries upon legally proclaiming their missing family member dead (judicial proclamation of death). This is a one time payment from the government under the Program for Attention to Victims of Violence. In practice it is implemented by “*Accion Social*” and tends to assist civilian victims of conflict-related crimes. Assistance is provided in cases of death, permanent disability, serious injury, kidnapping, and threats. Victims must request support within a year of the crime’s occurrence, and must provide, *inter alia*, a certificate issued by an authorized institution stating that the damage was caused as a result of terrorist activity, combat, attack, massacre, or individual killing, for political or ideological reasons, as well as a statement that there is no other person with the same or greater right of claim.¹²⁵
208. This payment is disbursed in order of application with consideration given for prioritizing vulnerable groups (individuals with handicaps, minors, orphans, single mothers-heads of families, etc.). Although such assistance is important, the mechanism in which it is provided was not designed for families of victims of enforced disappearance. As a result, they must undertake an additional, and often very complicated, procedure of legal proclamation of death, which changes the category of the missing person from disappeared to dead. Under article 11 of Law 589 of 2000, this should not affect the search for the disappeared person; however, it might affect the rights of the family and potentially prevent them from accessing rights on the basis of the enforced disappearance.

¹²⁵ See *Accion Social* press release at <http://www.accionsocial.gov.co/contenido/contenido.aspx?conID=780&catID=127>

VI. CONCLUSIONS AND RECOMMENDATIONS

1. Conclusions

209. In attempting to address the issue of enforced disappearance, Colombia is faced with competing challenges. It has found itself in the difficult position of balancing the requirements of two conflicting objectives. On the one hand the state has made a commitment to searching for missing persons and providing “truth, justice and reparation” to the victims. On the other hand, the state is also committed to providing incentives for the demobilization of members of illegal armed groups.
210. While Colombia is capable of meeting the demands of locating and recovering large numbers of missing persons, it has yet to evaluate the true scale of the problem it is faced with and as a consequence it does not have appropriate mechanisms in place to fully deal with what is essentially an aberration to the norm.
211. Until recently, cases of enforced disappearance were addressed solely through regular judicial mechanisms. Technical efforts to identify missing persons are undertaken by laboratory facilities that were not designed for high throughput testing. Furthermore, there are no effective means to coordinate and efficiently track the flow of information and large numbers of biological samples between agencies.
212. The adoption of the Justice and Peace Law has resulted in a dramatic increase in the number of excavations of clandestine graves, but the pace of identifications, investigations and prosecutions lags behind, thus leaving victims groups and others to question the purpose of the rush to exhume bodies that cannot be properly stored, let alone returned to family members.
213. The low rate of identifications relative to the number of exhumed remains is a serious concern, especially given the above mentioned sub-optimal tracking of cases and the fact that provisions for storage and temporary burial sometimes leads to comingling of mortal remains and thus increases the potential for misidentifications. Such a scenario is not unique to Colombia and often happens in cases where the process of excavations is led by the demands of the courts and bodies are treated as “evidence,” rather than as the mortal remains of human beings that should be identified and returned to families. If this issue is addressed in a timely manner, Colombia may avert the serious and highly traumatic problem of having to deal with a future of misidentifications and bodies that cannot be accounted for. This is a problem that other countries have faced and it is important to take this lesson from their experience. Needless to say, in cases of enforced disappearance, the inability to resolve technical problems will have political consequences
214. Furthermore, owing to the fact that the process is led by the State Prosecutor’s office, there is a natural reluctance to share information with outside institutions. Appropriate forums for consultation and the sharing of information with all victims groups are not adequate. For this and other reasons mentioned in the report, the Search Commission is somewhat compromised in its role as high level, inter-institutional body that should be the conduit for the missing persons process between relevant ministries, state agencies and victims groups.
215. Victims of enforced disappearance receive differential treatment under the law, which is linked to the fact that victims are distinguished according to the perpetrator of the crime, rather than by the nature of the crime suffered. In addition, they, perhaps understandably, lack confidence in state institutions. This is an untenable situation that may undermine the broader objectives of the process of addressing the issue of enforced disappearance.
216. While this report and the recommendations that follow seek to assist Colombia in finding tangible solutions to the complex problems it faces, it must be reiterated that it is Colombia itself that has asked for this assessment. In this regard, Colombia has demonstrated that it is open to looking carefully at its own processes and that it is open to making changes in its system. This approach was clearly evidenced

in numerous meetings and discussions and bodes well for the future.

217. It is hoped that the report will serve as an instrument for policy discussions for those involved in the process, whether they are victims, NGOs, decision makers, judicial authorities, legislators, technical experts, or members of the international community.
218. Finally, it is impossible not to be impressed by the commitment and strength of many Colombians involved in establishing the fate of those who have disappeared. As the report notes, family members of the disappeared continue to be threatened or killed, excavation teams have been attacked, and forensic professionals murdered while attempting to exhume mass graves. Prosecutors, police, families, and forensic experts are all aware of the risks involved, and yet they are profoundly committed to resolving this issue.

2. Recommendations

2.1. General

219. The state should adopt a consistent definition of who constitutes a victim of enforced disappearance. While it is generally acknowledged that the victims of enforced disappearance include not only the disappeared persons themselves, but also their family members, this is not uniformly prescribed in current law.
220. The state should provide reliable and accurate information regarding the process of searching for missing persons. Further, the State Prosecutor's Office should fully comply with the obligation to provide routine reports to the government on any preliminary or formal investigations in cases of enforced disappearance.
221. The role of the Search Commission should be strengthened, ensuring that high ranking representatives from its member institutions regularly attend meetings and that the institutions implement the decisions of the Search Commission.
222. The state should conduct a comprehensive review to determine the magnitude of the issue of enforced disappearance, including a determination of the general characteristics of the issue, patterns of disappearance and the type of groups that are most often targeted. This includes a compilation and verification of all existing information with the relevant institutions, which should result in enhancing the search and identification efforts, as well as the provision of assistance to victims.
223. Legal provisions ensuring data protection, specifically of genetic information obtained from the families of missing persons, should be adopted and implemented.
224. It is critical that state institutions enhance coordination efforts to locate, recover and identify missing persons. Insufficient coordination and information sharing, including within the State Prosecutor's Office, results in numerous problems, such as potential loss of information crucial to making identifications.
225. It is imperative that during judicial proceedings and the search process all crimes committed in relation to the crime of enforced disappearance (e.g. torture, sexual violence, and mutilation) are properly recorded and investigated. Concurrently, the JPU prosecutors should collect all data from demobilized persons during the *versiones libres* necessary for investigations or that might assist identification of mortal remains.
226. The effective right to remedy should be strengthened. Further, the right to reparations should be implemented equally for all victims of enforced disappearance, without regard to the perpetrator of the crime.

227. In line with the National Search Plan and applicable legislation, including the Justice and Peace Law, the activities of the Ombudsman and the State Prosecutor's Office should be intensified. This should include more detailed oversight of ongoing judicial proceedings and the respect of victims' rights during those proceedings, legal assistance, and support.
228. A state strategy for addressing the rights of victims during the search process and judicial proceedings is necessary. Such strategy should clarify which state institutions are responsible to implement specific rights, establish a single standard for the entire country, as well as provide for better inter-institutional coordination on the issue.
229. The State Prosecutor's Office should assess the level of urgency for exhumation of a site. The flood of information on grave sites revealed during the Justice and Peace proceedings caused a rush to excavate sites, in some cases resulting in poorly applied forensic procedures. If there is no immediate urgency, the exhumation should be postponed until sufficient investigative information is available and planning to ensure proper application of forensic procedures completed.
230. To assist the state in relation to the issue of missing persons, the international community should consider providing coordinated and sustainable assistance to associations of families of the missing, to ensure that they are educated and engaged in addressing their rights and in raising awareness about enforced disappearances.

2.2. Specific Recommendations

2.2.1. Legislation and Institutions

i) Create a Law on Missing Persons

231. There is a clear need for the creation of legislation to holistically address the issue of enforced disappearance and the specific needs of the victims. This could be accomplished by passage of a *lex specialis* on missing persons. It is recommended that a high level inter-institutional work group is established, that includes decision-makers and legal experts, as well as representatives of the families of the disappeared, to initiate a wide consultative process to formulate such a law.¹²⁶ The process could be led by either the Search Commission, the Office of the Vice President via its Presidential Program for Human Rights and International Humanitarian Law, or another high-level institution. Critical issues which must be addressed, include:
- Clearly defining enforced disappearances in line with international law;
 - Creating a consistent definition of who constitutes a victim of enforced disappearance, including the families of the missing person, in line with the principle of non-discrimination;
 - Reaffirming the right of victims to know the truth about the circumstances of enforced disappearance and the fate of the disappeared person;
 - Reaffirming the obligation of all state institutions to exchange all available information;
 - Clarifying in precise and comprehensible language the process of registering enforced disappearances, as well as the procedures for accessing assistance for victims;
 - Establishing an effective mechanism to provide reparation for all victims of enforced disappearance, regardless of the perpetrator of the crime. This should include symbolic and collective reparation, while it may be desirable to keep individual/judicial reparation under the

¹²⁶ One example of the creation of a special law through consultation with victims groups is found in Bosnia and Herzegovina where, based on the initiative of families of disappeared persons, the Ministry for Human Rights and Refugees took the lead in creating a Law on Missing Persons. This approach gives credence not only to the law that is eventually adopted, but as importantly, by including victims groups, provides a forum for trust-building between victims and the state.

auspices of the judiciary. In doing so, the limitations of the Fund for Reparations created by the Justice and Peace Law and the overly complex proceedings for obtaining judicial reparation should be addressed;

- Effectively structuring mechanisms to implement other rights of victims of enforced disappearance. Specific responses to address intersecting vulnerabilities of these victims (e.g. single female heads of households, indigenous, rural, afro-colombian populations) must be taken into consideration;
- Providing for the protection of clandestine graves, and other places of illicit disposal of mortal remains of disappeared persons, in part to reduce the need for hastily planned exhumations, which have negative consequences on investigations of enforced disappearances;
- Ensuring the protection of personal data, specifically genetic information used for identification of missing persons, including limitations on what purposes the data can be used for, and establishing appropriate controls and safeguards. Such data should not, without the consent of family members concerned, be used for purposes other than the identification of the missing person;
- Reaffirming that the National Search Plan is the official strategy to locate, recover and identify persons missing as a consequence of enforced disappearance, and concurrently strengthening the role of the Search Commission and amending its structure such that it reflects the post-Justice and Peace Law reality.

ii) Enhance the role of the Virtual Identification Center (Virtual Center)

232. The Virtual Center should be financially and administratively independent from both the Human Rights and International Humanitarian Law Unit and the Justice and Peace Unit of the State Prosecutor's Office.¹²⁷
233. The Virtual Center should be charged with coordinating logistical operations (including recovery, examination and identification of mortal remains), as well as the flow of information and the management of biological samples and associated evidence collected and distributed to the forensic laboratories.
234. The Virtual Center should be responsible for entering all relevant data into the SIRDEC on behalf of the State Prosecutor's Office.
235. It is proposed that the State Prosecutor establish a working group to define the scope of work and strategy for implementing the Virtual Center. This can be done by better defining functions of the Virtual Center, assessing the problems inherent in the existing mechanisms, and clarifying the role of each institution in relation to the Virtual Center and the process. The working group should be chaired by the State Prosecutor, and include the following potential members: Human Rights and International Humanitarian Law Unit, the Justice and Peace Unit, the Regional and Special Prosecutors, CTI, INMLCF, DIJIN, DAS, the Search Commission, and CNRR.
236. The working group should propose policies, including best practices and standard operating procedures, to the State Prosecutor's Office for adoption. These policies should be uniformly adhered to during the recovery and identification of victims of enforced disappearance.
237. The Virtual Center should include case workers, delegated from the institutions that conduct the forensic examination of mortal remains and who would be responsible for coordinating with forensic pathologists to provide information to families of the missing concerning the status of their cases, or to collect additional information from them if necessary.

¹²⁷ See Annex 1 to this report, *Slide 4 – Recommended Enhancements to the Institutional Structure* for graphic representation of the recommended changes to the institutional structure and further details.

238. The Virtual Center should give specific consideration to the existing backlog of temporarily buried and processed, but unidentified mortal remains. The increase in available genetic reference samples and the existence of a viable comparative mechanism through matching software could dramatically increase the potential for posterior identifications. The Virtual Center should establish the scope of the problem and create a strategy for systematic re-exhumations, re-examinations (as needed), re-sampling and/or retesting, and subsequent storage or reburial.

iii) Ensure that the National Register of Missing Persons and the SIRDEC are fully functional

239. The National Register should be used as the single, central database to house all information relevant to locating, recovering and identifying missing persons. When launching an investigation, the prosecutor should ensure that available information concerning the victim of enforced disappearance is incorporated into the National Register.

240. In order to ensure that the SIRDEC is accessible and functioning properly, end-users should submit bi-annual reviews of the system to the INMLCF, including recommendations for improvement.

241. It is recommended that the Search Commission leads in the creation of an inter-institutional plan for information to be entered and/or transferred into the National Registry and be verified by relevant institutions. The possibility of incorporating data collected and maintained by associations of family members of missing persons and other NGOs into the National Register, in line with security concerns, should be explored.

242. The Search Commission should issue periodic public reports on the compliance of state institutions in transfer and verification process.

243. The government should provide sustainable funding to institutions responsible for incorporating data into the SIRDEC. This will enable them to handle the increase in information that needs to be incorporated in the system, as well as the transfer of the existing backlog of information registered in hard copies, or their internal databases.

244. The SIRDEC should be expanded to allow optimal coordination of activities, and to reflect the requirements for data recording and information tracking in line with existing legislation, as well as the requirements of the judicial process and the Search Plan. In this regard, the following modules should be incorporated into the SIRDEC:

- Tracking (based on a country-wide integrated coding system) of all exhumed remains, associated evidence and samples at all times;
- Cross-referencing and matching of information, including automated matching between ante-mortem data and results of post-mortem examinations;
- Storage of genetic profiles extracted from recovered mortal remains and collected families referent samples;
- Registration of supplemental data necessary for case processing;
- A module tracking the capacities of the institutions for exhumations, examination, genetic processing, as well as, storage in real time;
- A module to assist in recognizing patterns and trends in disappearances.

iv) Strengthen and enhance the role of the National Search Commission for Disappeared Persons

245. It is critical to the functioning of the Search Commission that high-ranking representatives of its member institutions participate in its work. Despite best efforts, current representatives are unable to

make decisions on behalf of their institutions and cannot implement the decisions of the Search Commission within their own institutions.

246. The Search Commission should engage in all processes related to the issue of enforced disappearance, including those regulated by the Justice and Peace Law. The recent decision to include a representative of the Justice and Peace Unit in the work of the Search Commission is a positive step; however, it is imperative that broader provisions for cooperation are created. Optimally, a representative of the Virtual Center should be included in the work of the Search Commission, which should allow for a reliable circular flow of information from the State Prosecutor's Office and the investigative/forensic institutions to the Search Commission.
247. The Search Commission should provide for the participation of all victims' groups in its work, including those with cases under the Justice and Peace Law. Given the terms of reference of the Search Commission, one possible avenue for inclusion of additional victims' groups is through the creation of working groups within the Search Commission, on specific cases or regions, as was done during the Casanare pilot project.
248. It is imperative that the Search Commission and the CNRR cooperate and coordinate joint efforts. The Search Commission and the CNRR could exchange experiences on dealing with victims, as well as consider the inclusion of the CNRR in some of the working groups created by the Search Commission.

v) Full Implementation of the National Search Plan

249. The Search Commission should initiate the creation of an implementation strategy for every stage of the National Search Plan, including all the member institutions of the Search Commission and other institutions mentioned in the National Search Plan. This strategy should provide better coordination, clarifying institutional obligations at each stage of the search plan, as well as reaffirming the obligation to exchange information. Further, it should aim at providing better information, attention and assistance to victims during every stage of the National Search Plan.
250. The Search Commission should issue regular public reports on the implementation of the National Search Plan. Such reports should note non-compliance with the plan and recommendations for future steps.

vi) Proper Use of the National Form

251. It is crucial that the National Form is systematically used as the central tool for collecting information on all cases of enforced disappearance that should be subsequently transferred into the SIRDEC. The form contains various categories, including ante mortem data, which require special knowledge on the behalf of those collecting the information. Only institutions with qualified and properly trained staff should collect information using the National Form.
252. The instructions page of the National Form should be improved to provide better guidance on how the form should be used. In addition, it is imperative that the form includes a glossary that defines the terms used, in order to ensure collection of accurate and useful information.
253. The categories within the National Form should be revisited, especially those relevant to ante-mortem data. Inclusion of additional categories is recommended, including a category for registration of other crimes which might have occurred in relation to the crime of enforced disappearance, as well as a category on collected biological reference samples.

2.2.2. Technical Recommendations

i) Specific resources and funding should be dedicated to enforced disappearances casework

254. To avoid competing priorities within the various agencies, adequate funding, as well as physical and personnel resources should be allocated to laboratories specifically for missing persons work. The laboratories should be relieved from a situation where application of effort in one area detracts from effort in another. Funding, resources, and goals in the different areas should be independent and non-competitive at the level of the laboratory.
255. The number of exhumation teams should be augmented to meet the rise in field activities. As forensic anthropologists are vital to both the exhumation and examination process, provisions should be made to compensate for the draw on personnel from laboratories. This can be facilitated by hiring additional anthropologists and/or including well-managed lower-level staff. An increase in staff will require an increase in equipment and supplies, which should be constantly available in light of the high turnover of sites and limited preparation time.

ii) Revision and standardization of field activities and examinations

256. Existing protocols, report formats and methods of documentation relevant to the recovery and post mortem examination of mortal remains should be reviewed and standardized.
257. Exhumations should be postponed until sufficient investigative information on the potential identity of the victims is available, and/or until logistical and operational conditions allow for best exhumation practices to be followed, in line with provisions of protections of graves/sites.
258. Continuous and reliable security with adequate and comprehensive procedures for assessing and ensuring site safety with regard to unexploded ordinance and landmines must be provided for the exhumation teams. The practice of exhuming sites near areas of on-going hostilities should be reconsidered.
259. Despite the emphasis on recovery of human remains, it is imperative that all sites are treated as crime scenes, and as such are fully investigated and documented. The sites should be reliably secured 24 hours a day during the recovery.
260. The routine implementation of stratigraphic archaeological approaches to exhumation and evidence recovery, and the use of 3D topographic site surveys for evidentiary documentation should be considered.
261. Detection and investigation of perimortem and postmortem trauma, with an emphasis on documentation of torture, should be strengthened and consistently applied.
262. Chain of custody requirements must be consistently adhered to during the entire process, from the recovery to final burial.

iii) Standardization of protocols, DNA testing kits, population databases, and development/validation across DNA laboratories

263. It is imperative that a single multiplex STR system to be used by all laboratories is established. Appropriate industry standards include the ABI IdentiFiler kit, and the Promega PowerPlex16 kit. One of these should selected and used consistently.
264. Each of the DNA laboratories is working to optimize existing or implement new methods, in an attempt to increase throughput and/or success. It is highly recommended that the laboratories proceed in a coordinated manner. A division of labor should be agreed, with different laboratories evaluating

particular candidate protocols, new instrumentation, or technical improvements. When improved techniques are identified through a systematic process, a single selected laboratory should conduct and document the requisite formal developmental validation. The new protocols can then be established in all laboratories, with minimal modifications for lab-specific Standard Operating Procedures (SOPs) and a greatly reduced set of experiments to establish internal validation. Application of such a process will establish much greater uniformity between the laboratories.

iv) Improvement of the DNA laboratory throughput by revision of process flow

265. A revised approach to work flow should be considered by the various DNA laboratories. The current model of sample processing falls far short of the capacity of the facilities, and the labs should evaluate how they can turn to a modular approach or otherwise modify their work flow. For example, the ICMP DNA laboratory is a single molecular biology lab, supported by a separate, smaller laboratory which concentrates on bone cleaning and grinding. The combined ICMP staff totals 26 (e.g. technicians, analysts, team leaders) which is a little over half of the DNA laboratory resources represented by the combined laboratories in Bogota alone. Since 2002, the ICMP laboratory has generated 85,853 family reference DNA profiles, 25,458 bone/tooth DNA profiles, and generated 23,073 DNA match reports representing 15,023 individuals. The high output of ICMP's laboratory is based on a modular work flow, where particular teams work exclusively on one segment of the DNA typing process, which permits each team to focus on effective processing of a high volume of samples, with an overall flow through the system averaging approximately 65 bone samples per day. The DNA laboratories in Colombia should evaluate how their approach to case processing can be improved, possibly by incorporating a modular work flow. The current approach greatly underutilizes the technical capacity of the laboratories.

v) Implementation of appropriate DNA matching and kinship analysis software

266. The Colombian DNA laboratories require a means to perform automated comparison of DNA profiles for matching between victim and family references, and the ability to calculate proper statistics of relatedness taking into account all family profiles from any type of family pedigree. One commercially available solution is the program DNA-View, capable of performing database searches for potential matches between relatives, as well as calculating final kinship statistics on any complex pedigree. A far more costly program is marketed by Gene Codes called M-FISYS, that has matching and sophisticated DNA data management and display functions, and provides for mtDNA and Y-chromosomal DNA matching. A new version of CODIS (Version 6.0) is presently under development that provides missing persons matching and statistics, but this would be available in early-mid 2009. ICMP has developed its own matching software package that is flexible and easy to use (with final kinship statistics calculated by DNA-View), and this could be made available immediately for use in Colombia.

vi) Consideration of a DNA-led approach to casework and identification

267. The establishment of an effective DNA matching capability, and a more effective system of coordination and information exchange through the Virtual Identification Center, will permit Colombia to make use of a "DNA-led" identification approach. It is recommended that Colombia develop this capability in a strategic manner to facilitate the process of identification. A DNA-led process means using DNA matches from genetic database comparisons as a primary means of establishing unequivocal hypotheses of identity, even in the absence of any other presumptive hypothesis. A DNA-led approach can be utilized at any scale, and has strengths that are applicable to the specifics of the situation in Colombia. It would likely be inefficient for Colombia to immediately institute a country-wide DNA led approach, with a massive generalized program for collecting family reference samples.¹²⁸ However, it is strongly recommended that wherever possible, circumscribed events or

¹²⁸ A DNA-led approach can be both time and cost-effective on a very large scale. In its region-wide system of identification in the former Yugoslavia when dealing with a number of 30,000 missing persons, the ICMP uses a model similar to the Virtual Identification Center. The "ICD" is a central link for uniform accessioning and distribution of

regions follow the DNA-led approach.¹²⁹

268. The strength of a centralized DNA-led approach is that a general operational mechanism is established that functions effectively at any point over time. This mechanism would stand as a powerful antidote to the current system which is dependent on the need to establish hypotheses of identity, and then collect specific reference samples and send them to a particular laboratory, which also types the remains samples for directed case by case comparison. However, presumptive information, when it exists, can easily be used to prioritize the processing of samples through the laboratories, with a homogenous, centralized matching process immediately providing results at any point when the matching profiles are uploaded to the databases. Moreover, whenever family reference samples can be collected, a DNA-led approach permits resolution even in the many instances when reliable, highly informative antemortem or investigative information is impossible to obtain. Likewise, a DNA-led approach permits the identification and reassociation of fragmentary remains for which a distinctive biological profile cannot be established.

viii) Regional approach to address the issue

269. Colombia should consider adopting a regional approach to large scale identification in addition to the current country-wide approach. There are regions of the country in which security has improved in recent years. Such regions should be the focus for large scale ante-mortem and biological reference samples collections, which should then be included in the centralized system.
270. Work with victims (including education, training, psycho-social and other support) should be intensified in safer regions, and specific regional strategies for dealing with victims (in line with a national strategy) should be created, reflecting the diverse nature of victims groups in different regions. In addition, a regional approach would allow for good planning and preparation of recovery activities, as well as more efficient application of existing forensic and other capacities.

ix) Establishment of Policies and Procedures Regarding Transport and Storage of Human Remains

271. In line with the creation of the Virtual Center; coordination of field activities, policies and uniform SOPs should be devised and implemented consistently across all agencies regulating the handling, transport, and storage of human remains. Proper chain of custody procedures must be assured, as well as ensuring proper recording of remains reburied as unidentified.
272. All examined non-identified remains, or identified but not claimed remains must be properly tracked within SIRDEC.
273. All temporary burials must be performed in such manner that mortal remains are individually marked

samples entering the DNA laboratory system, and for matching of DNA profiles between bone/tooth samples and family references, regardless of the origin of samples. Bone/tooth or family reference samples with appropriate documentation are sent to ICD from field sites, mortuary facilities, mobile blood collection teams, and partner governmental institutions or other agencies charged with addressing missing persons cases. The samples are accessioned and entered into a central database, each given a unique bar-code, and are then forwarded to ICMP's DNA laboratories. After DNA typing, the resultant DNA profiles are submitted back to ICD, where they are uploaded to a central database. ICMP's DNA matching software is used to find matches, and DNA-View is used to calculate final probability statistics based on the full pedigree of family members. DNA match reports are then generated and sent back to ICMP's DNA laboratories for final review. Subsequently, the final DNA matching reports are submitted to forensic pathologists, who, based on the available antemortem data, post-mortem examinations, and the DNA matching report, legally identify the remains.

¹²⁹ For example, in an area where multiple exhumations have given rise to cases reburied as unidentified, and security conditions permit, an open campaign for family reference samples could be launched at the same time as DNA typing from the remains cases are systematically completed. Systematic collection of family reference samples would also give sharp purpose to further exhumations in the area.

and buried, and can be easily re-exhumed when needed.

x) Training for Institutions Engaged in the Process

274. The size of Colombia and the initial indications of the scale of the problem make it essential that there be a high degree of uniformity in the application of procedures by those involved in the process. In this regard, the following training should be considered:
- For prosecutors - on collection of information during the *versiones libres* specific to help locate and recover mortal remains, determine the potential identity of the victims, and obtain precise information on clandestine graves;
 - For prosecutors and those collecting information using the National Form - on how to interact with the victims and optimize information collection from them This also extends to communications with witnesses;
 - For all institutions interacting with victims, especially those collecting information using the National Form or collecting biological reference samples – on approaching and interacting with victims, explaining procedures, and ensuring that victims are aware of who they can follow up with. This should be developed in conjunction with associations of families;
 - For all institutions collecting data to be entered into the SIRDEC, especially those conducting recovery operations and post-mortem examinations - on uniform and adequate collection of information relevant to locating, recovering, and identifying missing persons;
 - For staff responsible for data entry into the SIRDEC – on use of the SIRDEC, including proper entry, storage, and access to information therein;
 - For prosecutors, staff of the Search Commission, and other SIRDEC users - on how to operate SIRDEC and optimally access information therein;
 - For forensic experts – multi-disciplinary forensic training and health and safety training.¹³⁰

2.2.3. Rights and Assistance to Victims

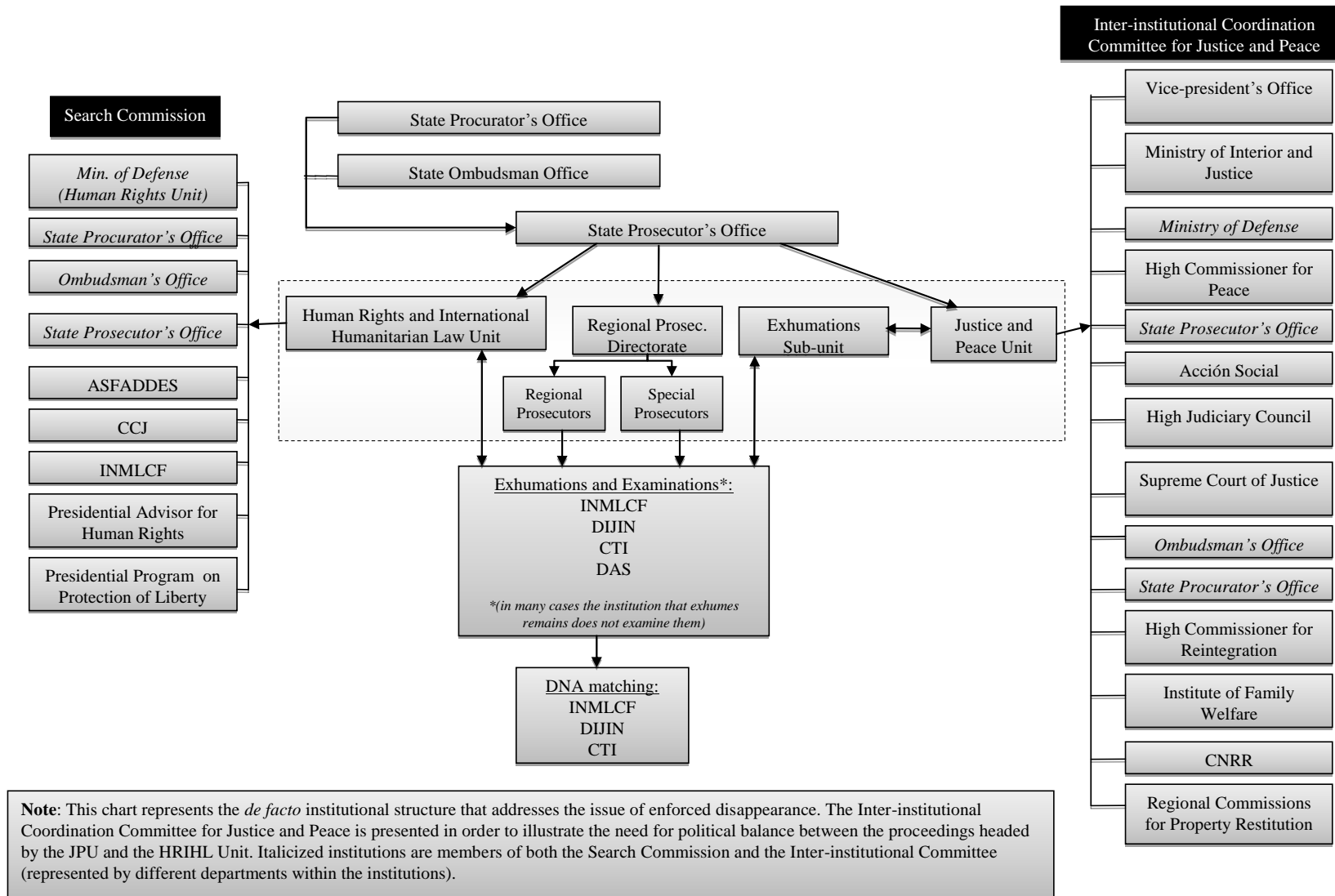
275. The state should provide effective protection for victims, including their families, and witnesses. While protection programs exist, they are not coordinated between institutions, or provided systematically in relation to the judicial proceedings and the search process. Further, it is imperative that the state institute measures to reduce the incidence of re-victimization.
276. The current system of “administrative reparation” is designed to provide basic support to victims, in addition to reparation. This system should be extended to cover all victims of enforced disappearance. Further, the mechanisms for its implementation, as well as the application procedure for support should be simplified to allow victims to more easily access the system.
277. The process for victims of enforced disappearance to apply for the financial support of 40 minimal salaries should be made easier. Further, other rights stemming from their status as a victim should not be restricted solely because their missing relative was proclaimed legally dead in order to access this financial support.
278. Visible public recognition of all victims of enforced disappearance should be provided. This can

¹³⁰ Currently a forensic archaeology training program is provided by ICITAP, called the “Dig School.” In addition, the Finnish Government has indicated that it could help with training programs in the future.

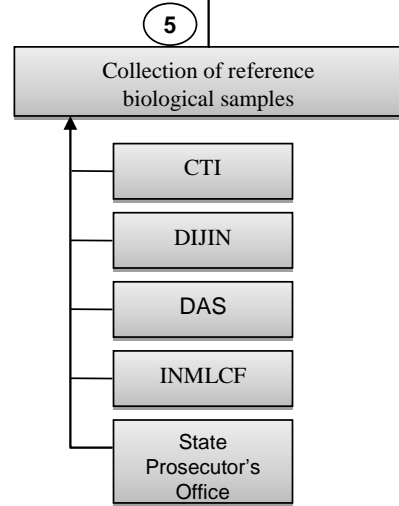
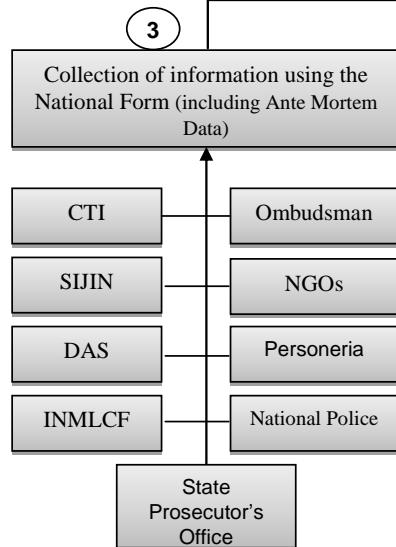
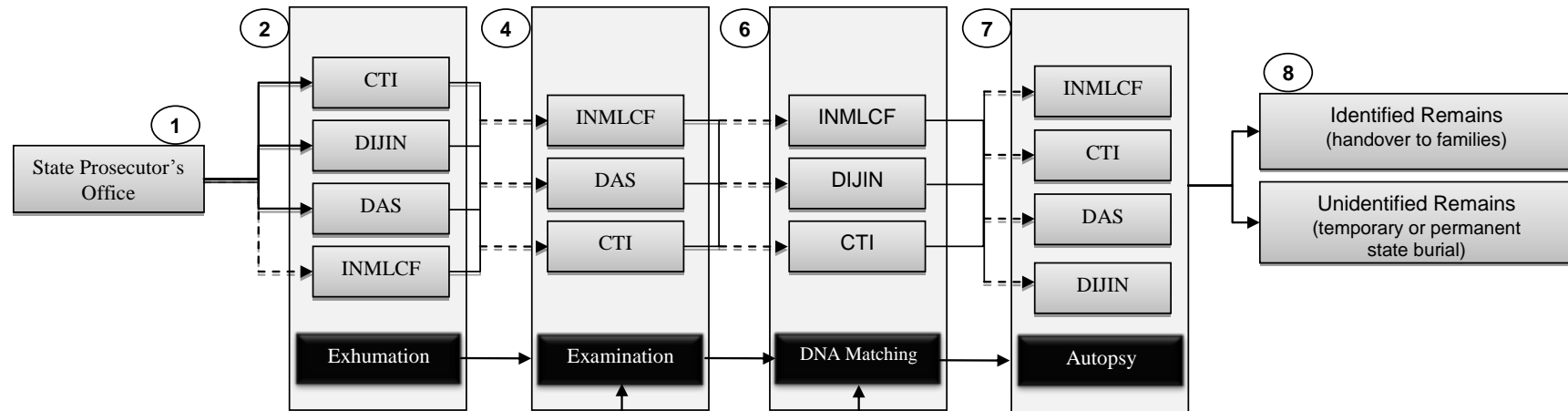
include commemorations (e.g. the International Day of the Missing – 30 August), creation of memorials and commemorative plaques, etc. Any efforts in this regard should be conducted in consultation with the victims.

279. A brief and easily comprehensible guide for victims of enforced disappearance should be created. The guide could be used to describe the search process, explain how to register and follow up on a disappearance, and provide an overview of the mandates of institutions engaged in the process. In parallel, education/awareness training should be provided for public officials within the different institutions that deal with victims of enforced disappearance regarding the rights of these victims and how to deal with them. In this sense, the UN OHCHR guide for public officials on the issue of enforced disappearance and subsequent awareness efforts are a positive step in the right direction.
280. The state should consider developing an education program for the victims of enforced disappearance that includes:
- How to register a case of enforced disappearance with the relevant state institutions;
 - How the judicial and search process works, including a description of which institutions are involved, what their responsibilities are, and how to approach them;
 - What their rights as victims of enforced disappearance are, including their rights during judicial proceedings and the search process;
 - How data collected from them is protected and what it will be used for;
 - How the technical process of locating, recovering and identifying persons works;
 - How DNA works in making identifications and the importance of providing a reference sample.
281. It is imperative that families of the missing are fully engaged in the process. A strategy for inclusion and support to victims prior, during, and following the exhumation and identification process should be elaborated between the relevant institutions. At the same time, this necessitates building their capacity for constructive involvement. Family members and their associations require development assistance to define their aims, as well as to secure sustainable resources to conduct their work, which should address:
- How to advocate for their rights;
 - How to gain access to the media;
 - How to approach state institutions and officials involved in the missing persons process;
 - How to develop institutional capacity, including how to write proposals to seek funds for specific projects of importance to them.
282. Possibilities for improved cooperation between associations of victims of enforced disappearance and state institutions (primarily the Search Commission and the CNRR) should be explored. This should also include the possibility of family associations acting as independent implementation partners of state institutions for various projects related to the issue of enforced disappearance.

EXISTING INSTITUTIONAL STRUCTURE



TECHNICAL PROCESS OF LOCATING, RECOVERING, AND IDENTIFYING MISSING PERSONS

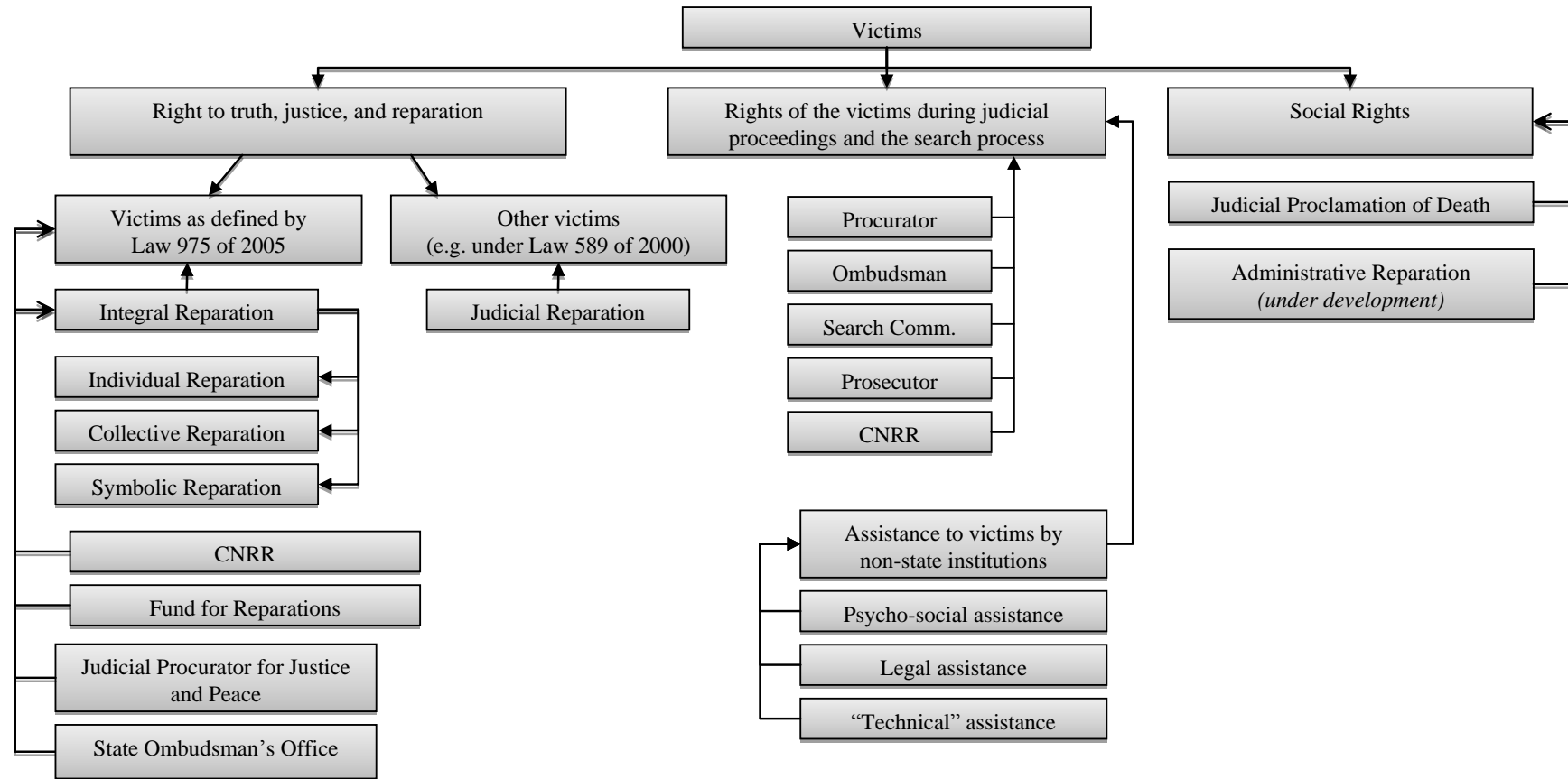


Note: This chart presents the current *de facto* process of exhumation and identification of mortal remains, and illustrates areas where information is potentially lost. Dotted lines indicate possible inclusion of institutions in the process, or possible transfer of remains from one institution to another between different stages of the process.

Points where information is or might be lost:

- (1) Insufficient collection of information which might assist forensic experts (a) with proper preparation for exhumations or (b) to identify the remains;
- (2) Hurried or sub-optimally prepared exhumations conducted in situations of uncertain security can result in poor collection of information from the graves which might assist in determining patterns of violence and identification of victims;
- (3) Sub-optimal collection of ante mortem data due to (a) lack of proper training and (b) imprecise categories in the National Form. In addition, collection is not conducted in a systematic manner;
- (4) The high number of exhumed remains renders current capacity for post-mortem examination insufficient. Cases where not all available information is recorded (e.g. patterns of torture, dismemberment) have been noted and will increase in the future;
- (5) Biological reference samples are not collected in a systematic manner (e.g. during the same collection effort blood, saliva or hair samples may be collected from different relatives);
- (6) No joint genetic database exists; there is no automated manner for inter-institutional exchange of genetic information;
- (7) As all prior stages of the process may be undertaken by different institutions, during the autopsy stage, cases have been registered where incomplete bodies and/or documentation have been submitted for final autopsy;
- (8) Unidentified and identified remains which the families have refused to take over are submitted for state burial. There were no systematized records for these burials until 2006, i.e. until the establishment of the SIRDEC.

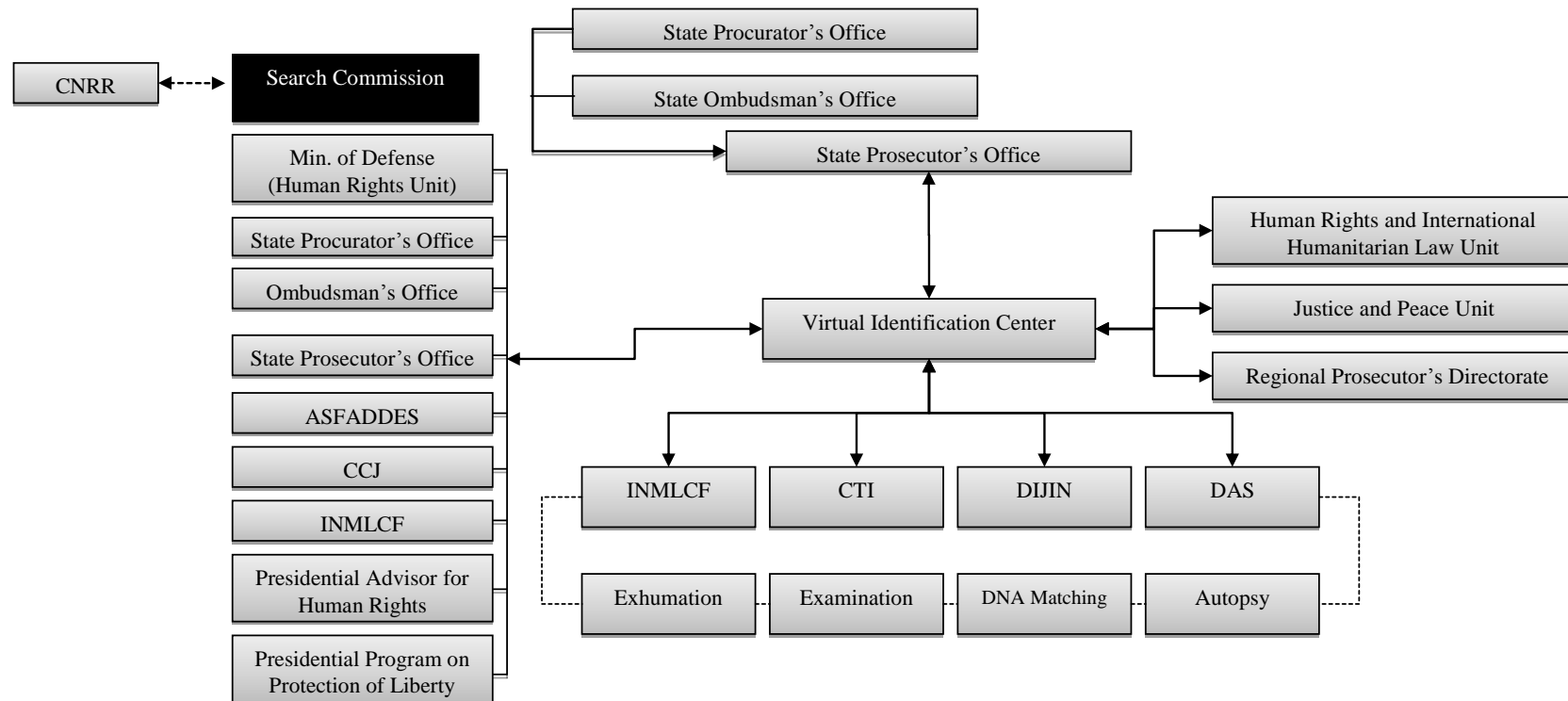
RIGHTS OF VICTIMS OF ENFORCED DISAPPEARANCE



Note:

- (1) Right to truth, justice, and reparation – are provided to all citizens through the regular legal/constitutional structure of the country. However, for victims as defined under the Justice and Peace Law, there are specific implementation mechanisms in addition to the regular structures. For victims outside the Justice and Peace Law, these rights are accessible solely through the regular legal structures.
- (2) Rights of victims during judicial proceedings and the search process – in line with the Justice and Peace Law these include the right to participate in the process, the right to present evidence, the guarantee of security of victims, their family, and witnesses, and the right to information. These rights are either explicitly stated or extrapolated from the right to truth, justice and reparation. Currently these rights are not fully implemented; there is no inter-institutional strategy on how these rights should be fulfilled. In addition, different non-state institutions provide assistance to victims during judicial proceedings and the search process.
- (3) Social Rights – assistance provided by the state to the victims. These two programs are not designed specifically for victims of enforced disappearance, and thus are not completely appropriate to address their needs (e.g. the judicial proclamation of death changes the character of the crime from “enforced disappearance” to “murder”, thus preventing the exercise of other rights based on disappearance; administrative reparation can assist victims with current needs, but not address the original crime).

RECOMMENDED ENHANCEMENTS TO THE INSTITUTIONAL STRUCTURE



Note: The creation of the Virtual Identification Center that coordinates exhumation and identification efforts for the units of the State Prosecutor's Office should improve communication and increase coordination: (1) between the units of the State Prosecutor's Office; (2) between the investigative/forensic institutions; (3) between the investigative/forensic institutions and the State Prosecutor's Office; and (4) between the State Prosecutor's Office and the investigative/forensic institutions on one side and the Search Commission on the other. Further, this will assist in the inclusion of the victims with cases under the Justice and Peace Unit in the work of the Search Commission. Finally, the Virtual Identification Center should use the SIRDEC as the central database for its operations, thus increasing the use and input of information into the SIRDEC.

Annex 2: SOURCES

1 – Colombian Legal Documents

Political Constitution of Colombia of 1991

Colombian Civil Code

Law 418 of 1997 (*establishes instruments for the pursuit of coexistence, effectiveness of justice and other purposes*)

Law 522 of 1999 (*Military Criminal Code*)

Law 589 of 2000 (*criminalizes genocide, enforced disappearance, enforced displacement and torture*)

Law 599 of 2000 (*Colombian Criminal Code*)

Law 684 of 2001 (*issues rules on the organization and operation of security and national defense*)

Law 782 of 2002 (*extends the application of Law 418 of 1997, including the modifications made by Law 548 of 1999*)

Law 906 of 2004 (*Colombian Criminal Procedure Code*)

Law 971 of 2005 (*regulates the Urgent Search Mechanism*)

Law 975 of 2005 (*Justice and Peace Law*)

Decree 391 of 1991 (*regulates the procedure for registration and obtaining a Sanitary License for funeral and mortuary agencies*)

Decree 3974 of 2005 (*promulgates the Inter-American Convention on Forced Disappearance of Persons*)

Decree 4218 of 2005 (*regulates the National Register of Missing Persons*)

Decree 4760 of 2005 (*partially regulates the Justice and Peace Law and includes provisions on reparations of victims*)

Decree 3391 of 2006 (*partially regulates the Justice and Peace Law*)

Decree 929 of 2007 (*regulates the Search Commission on Missing Persons established by Law 589 of 2000*)

Decree 3570 of 2007 (*partially regulates the Justice and Peace Law and establishes the Inter-institutional Coordination Committee for Justice and Peace*)

Resolution 0-0174 of 2008 of the State Prosecutor's Office (*establishes the administrative process for maintaining statistics relevant to kidnappings*)

Resolution 0-0694 of 2005 of the State Prosecutor's Office (*issues the CTI Manual of Protocols in the Area of Criminalistics*)

Resolution 438 of 2007 of the Ombudsman's Office (*establishes proceedings for orientation and attention to victims based on Law 975 of 2005*)

Constitutional Court Decision C-370 of 2006

Legislative Act 03 of 2002 (*reforms the Constitution and establishes an accusatory system*)

National Search Plan

Agreement 0102 of 2007 (*establishes the Virtual Identification Center*)

2 – International Legal Documents

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UN General Assembly. *International Covenant on Civil and Political Rights*. 16 December 1961.

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Human Rights Commission. *Quinteros Alemdia v. Uruguay*. Communication No. 107/1981, final views of 21 July 1983.

3 – Interviews

ICMP conducted extensive interviews and meetings, during December 2007 and March 2008, with representatives of the following institutions:

National Institutions:

- Administrative Department for Security (DAS)
- Colombia Congressmen
- Human Rights and International Humanitarian Law Unit of the State Prosecutor's Office
- Institute of Legal Medicine and Forensic Sciences

- Judicial Police Directorate (DIJIN)
- Justice and Peace Unit of the State Prosecutor's Office
- Ministry for Social Protection
- Ministry of Defense
- Ministry of Interior and Justice
- National Commission for Reparation and Reconciliation (CNRR)
- National Planning Department (DNP)
- National Search Commission
- Office of the Vice President of the Republic of Colombia
- Presidential Agency for Social Action (Accion Social)
- Technical Investigation Body (CTI)

NGOs including associations of victims:

- Association of Relatives of Detained/Disappeared (ASFADDES)
- Colombian Commission of Jurists
- Colombian Red Cross Society
- EQUITAS
- Familiares Colombia
- Foundation AFFIC
- Foundation Dos Mundos
- Madres de la Candelaria
- Management Sciences for Development (MSD)
- Movement of Victims of Crimes of the State

Representatives of the international community:

- British Embassy in Colombia
- Delegation of the European Commission to Colombia and Ecuador
- Embassy of Finland
- International Center for Transitional Justice (ICTJ)
- International Committee of the Red Cross (ICRC)
- International Criminal Investigative Training Assistance Program (ICITAP)
- International Organization for Migration (IOM)
- Organization of American States (OAS)
- Spanish Agency for International Cooperation for Development (AECID)
- The Royal Netherlands Embassy
- UN Office of the High Commissioner for Human Rights (OHCHR)
- United Nations Development Programme (UNDP)
- United States Agency for International Development (USAID)

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challenge

In societies confronting political transition or post-conflict reconciliation and rebuilding, uncertainty about the fate of missing persons often obstructs peace processes, the full implementation of the rule of law and weakens confidence in democratic and political institutions. Resolving the fate of missing persons is a crucial political concern that is integral to the development of effective, accountable and just institutions.

mandate

ICMP endeavors to secure the co-operation of governments and other authorities in locating and identifying persons missing as a result of armed conflicts, other hostilities or violations of human rights and to assist them in doing so. ICMP also supports the work of other organizations in their efforts, encourages public involvement in its activities and contributes to the development of appropriate expressions of commemoration and tribute to the missing.

worldwide

Currently based in Sarajevo, Bosnia and Herzegovina, ICMP is engaged in the Western Balkans and the Middle East, as well as on an *ad hoc* basis in areas affected by natural disasters, such as tsunami affected regions of South Asia and the U.S. State of Louisiana following Hurricane Katrina. ICMP also contributes to national preparedness and response plans for terrorist attacks.

technical assistance

ICMP provides governments with technical assistance in locating and identifying missing persons, including the use of high- throughput capacity DNA analysis and forensic support in the fields of archeology and anthropology. ICMP technical assistance is provided on the basis of agreements that ICMP concludes with host governments or organizations that may seek ICMP's support. ICMP's success in developing an integrated scientific approach to addressing the problem of missing persons has made it a leader in advancing forensic sciences in the service of truth and justice. ICMP has made over 13,000 DNA assisted identifications since November 2001.

capacity building

ICMP assists governments in meeting their legal obligations regarding missing persons and contributes to building institutional capacity. ICMP contributes to transitional justice, provides legislative support, and enhances the capacity of specialized ad hoc bodies, as well

as justice sector institutions, including prosecutors, judges, police, and forensic specialists. ICMP also supports the development of networks of civil society organizations which advocate for truth, justice, and the rights of family members of missing persons.

assistance to courts

ICMP responds to requests for documentation and expert reports from international and domestic courts on matters related to war crimes, crimes against humanity, genocide and other crimes under international law, in line with data protection and other safeguards under ICMP policy.

history

ICMP was established at the initiative of U.S. President Clinton in 1996 following the G-7 summit in Lyon, France. ICMP was originally chaired by former U.S. Secretary of State, Cyrus Vance, who was succeeded by U.S. Senator Bob Dole. ICMP's current Chairman is James V. Kimsey.

commissioners

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