
Panels and Workshop
“The Politics of
Absence: Forensic,
humanitarian and
legal challenges in
the recovery and
identification of the
disappeared”

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Working Paper ‘Caring for the Missing: Forensic, Humanitarian and Judicial Responses to Disappearance and Enforced Disappearance’

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Abstract:

Enforced disappearance in Latin America is simultaneously an ongoing reality; an emblematic crime of past authoritarian regimes, and a significant component of the human toll of internal armed conflict in some Central American and Andean countries. Recent accountability developments in Latin America and beyond have called on forensic science to trace, unearth and restore the remains of the disappeared: as part of a judicial process, or as a humanitarian imperative in its own right. Some consider that a distinctive Latin American approach to forensic work as human rights work has emerged, with experts from the region increasingly called upon to assist international tribunals or perform exhumations of mass graves. Technical-scientific forensic interventions are however only part of the story. Efforts to bring perpetrators to justice require exploration of the intersection between international legal norms, regional human rights systems, and domestic criminal justice. While Latin America was a pioneer in originating a regional Convention against Enforced Disappearance, and the Inter-American Human Rights system has been active around the issue since the 1970s, the tensions inherent in retrospective application of those principles to historic crimes have been addressed in varied ways around the region. Activists, relatives' associations, and cause lawyers have been key actors in navigating domestic impunity, reinterpreting domestic amnesty legislation, and attempting to establish individual accountability for collective, institutional criminality. Meanwhile, democratization and legal reforms have produced state structures at least theoretically more open to complying with ex officio duties in truth, justice, reparations and guarantees of non-repetition.

Prosecutions of past perpetrators, both military and civilian, have however provoked social and political controversy. The entire enterprise of seeking remains is meanwhile inimical to historical demands for '*aparición con vida*'. Some relatives' associations, and associated political groups, accordingly refuse to recognize the search for remains or certification of death, whether by state or non-state actors. The existence in some countries of a generation of appropriated children, stolen from their forcibly disappeared parents and brought up under false identities, has added weight to these refusals and produced specific scientific innovation in the use of DNA mapping to trace even indirect biological relationships. Cultural, ethnic and religious cleavages that were often at the heart of conflict dynamics of conflict moreover complicate processes of truth-telling, reparation, and even physical identification. Attempts to trace and identify the disappeared therefore give rise to conflicts between 'civic trust' and scientific certainty, compounded by a legacy of mistrust between citizens and previously collusive or directly repressive states.

This working paper collates and synthesises the results of three events stimulating dialogue between law, social science and forensic (natural) sciences around the issue of disappearance and enforced disappearance in contexts of past political violence. This dialogue, focused principally on Latin American experiences, took the form of two workshops and a set of academic panels carried out in January and April 2017, in Santiago de Chile and Lima, Peru. The events were designed, timed and targeted to contribute to ongoing policy processes in Chile and Peru, as both countries are in the process of designing national mechanisms or search plans in accordance with the terms of the 2006 International Convention

against Enforced Disappearance. They also sought to inform ongoing academic and policy debates in and about El Salvador and Sri Lanka, to provide a platform for interaction with relatives' associations - whose participation is key for successful national design processes - and to highlight the potential resource represented by key international and regional actors such as the International Committee of the Red Cross (ICRC), the Latin American Forensic Anthropology Association (ALAF), and the Inter-American Commission on Human Rights (CIDH). The events, and subsequent academic and policy publications, were supported by the Latin American Studies Association (LASA) through the LASA-Ford Special Grant 'Caring for the Missing: Respuestas Humanitarias, Jurídicas a la Desaparición de Personas', 2017;¹ and in part through the Ulster University Research Challenge Fund project 'Enforced and Involuntary Disappearance – Scoping Study' (2017).²

Related publications:

The three rapporteur documents which form the basis of this working paper are published separately, and available free, as Relatorías I, II and III of the Observatorio Justicia Transicional, Universidad Diego Portales, Santiago de Chile; from www.derechoshumanos.udp.cl, section Observatorio Justicia Transicional, folder Desaparición Forzada (Spanish only). Relatoría II is also available in a separate, illustrated, e-format from IDEHPUCP, Pontificia Universidad Católica del Perú.

- Relatoría I: 'Desaparición Forzada - Compromisos Estatales: Chile y Perú' (publ. Jan 2017)
- Relatoría II: 'Desafíos Forenses, Humanitarios y Judiciales en la Recuperación e Identificación de Personas Desaparecidas: Chile, Perú, El Salvador, Sri Lanka' (publ. June 2017).
- Relatoría III: 'La política de la ausencia: Desafíos forenses, humanitarios y jurídicos en la recuperación e identificación de las y los desaparecidos' (publ. July 2017)

Previous publications produced by the same line of research include country-by-country graphic schema depicting current search processes, and the working paper Collins (2016). 'Respuestas estatales a la desaparición forzada en Chile: aspectos forenses, policiales y jurídicos', Working Paper Serie, Observatorio Justicia Transicional, Universidad Diego Portales, Santiago de Chile; all available from www.derechoshumanos.udp.cl, section Observatorio Justicia Transicional, folder Desaparición Forzada (Spanish only). For a summarised discussion, in English, of the same issues see Collins (forthcoming) 'Transitional Justice 'From Within': Police, Forensic and Legal Actors Searching for Chile's Disappeared', *Journal of Human Rights Practice*.

Related issues about the potential of new-generation state functionaries as transitional justice operators, and about the status afforded to testimonial and scientific evidence in court proceedings, are dealt with in Collins (forthcoming) 'The Politics of Justice 'From Below': Relatives, Survivors, Human Rights Defenders and Atrocity Crime Trials in Latin America', in Garbett, Claire et. al. (eds.) *Transitional Justice beyond Blueprints*: Routledge; and in Accatino, Daniela and Cath Collins. 2016. Truth, Evidence, Truth: The Deployment of Testimony, Archives and Technical Data in Domestic Human Rights Trials. *Journal of Human Rights Practice* 8 (1): 81-100.

Specific analysis year on year of Chile's transitional justice trajectory, including (since 2015) thematic discussion of the legacy of disappearance, appears in the Truth, Justice and Memory chapter (chapter 1) of the Universidad Diego Portales's Annual Human Rights Report, available to download at www.derechoshumanos.udp.cl (Spanish only).

¹ Project awarded to Prof. Cath Collins (UDP and UU; principal researcher); with Ariel Dulitzky (Law Clinic, University of Texas, Austin, USA) and Cristian Orrego (Human Rights Center, U. Berkeley, California, USA). The project represents the continuation of a line of work begun by Cath Collins at the Observatorio de Justicia Transicional of the Universidad Diego Portales, Chile in 2015; which has previously included British Academy and British Council-supported International Mobility Grant and Newton-Picarte projects in collaboration with Chile's official state forensic service the Servicio Médico Legal (SML).

² Awarded to Cath Collins in 2017.

Event Outlines (including programmes):

Event 1, entitled “Enforced Disappearance: State Responsibilities and Current Practice in Chile and Peru” (“*Desaparición Forzada: Compromisos Estatales y Actualidad Chile y Perú*”) was held at the Universidad Diego Portales, Santiago de Chile, on 12 January 2017. Invitations targeted institutional and civil society stakeholders in the ongoing, judicially-focused, search for 1,200 victims of enforced disappearance from Chile’s 1973-90 dictatorship period. Groups and institutions represented included relatives’ associations, human rights movements, individual relatives and survivors, human rights lawyers, justice system employees, detectives from the specialised human rights brigade of the national police; staff members from the state official forensic service and national human rights institute, and a parliamentary deputy responsible for forthcoming draft legislation on enforced disappearance. Some students and academics also attended. Approximately 60 people attended over the course of the day.

Speakers included a present committee member of the UN Committee on Enforced Disappearance, a former president of the Inter-American Court of Human Rights, and international invitees from Peru who had been closely involved in designing 2016 legislation to set up a national administrative search plan for the disappeared in that country. At the time this event was conceived and carried out, Chile’s first state report to the aforementioned UN Committee was considerably overdue. The Observatorio de Justicia Transicional has been instrumental since 2013 in pushing for a national search mechanism to be set up, in part completion of Chile’s Convention responsibilities; and for other pending recommendations from a 2012 UN Working Group mission report (see below) to be complied with. To this end, some of the aforementioned key actors were also invited to a closed breakfast meeting, held the following day (13 January 2017) focused on said recommendations.³

Stated objectives for the 12 January 2017 seminar day were:

- To promote discussion of Chile’s international obligations surrounding enforced disappearance
- To stimulate exchange with neighbouring Peru regarding each country’s experience
- To facilitate national debate in Chile between relatives, justice system operators, civil society actors, public institutions, and the general public
- To press for full compliance by the Chilean state with recommendations formulated in 2013 by the UN Working Group on Enforced and Involuntary Disappearance, after an official mission to Chile in 2012
- To inform Chile’s initial report to the UN Committee on Enforced and Involuntary Disappearance, one of its obligations as a party to the respective 2006 International Convention.

Event 1 programme

Panel (i): Levels of Compliance with Chile’s International Obligations over Enforced Disappearance

Chair: Cath Collins

- Dr. Rainer Huhle, UN Committee on Enforced and Involuntary Disappearances
State responsibilities under the International Convention
- Dr. Cecilia Medina, UDP and former judge on the Inter-American Court of Human Rights
State responsibilities and the Inter-American System
- Dr. Pietro Sferrazza, Universidad Nacional Andrés Bello, Chile
Chile’s current national situation in the light of UN recommendations

Panel (ii): National Laws and Mechanisms: The Experience of Peru

Chair: Dr. Tomás Vial, Human Rights Centre, UDP

- Gisela Ortiz, Equipo Peruano de Antropología Forense, EPAF, and relative involved in bringing the ‘La Cantuta’ case (Inter-American Court of Human Rights, 2006)
- Rafael Barrantes, International Committee of the Red Cross (ICRC), Regional Office for Peru, Bolivia and Ecuador
- Prof. Cath Collins, Universidad Diego Portales and Ulster University

³ Attendees at this meeting included the Supreme Court judge responsible for human rights cases, the national heads of the aforementioned public institutions, and the country’s newly-appointed Vice-Minister for Human Rights. A rapporteur document from this meeting was also produced, but by prior agreement is not for public circulation beyond participating institutions.

Roundtable: ⁴ Comments from the National Perspective: Modes and Priorities in Search and Identification

- Dr. Magdalena Garcés, human rights lawyer
- Juan René Maureira, ‘Londres 38’ Memory Site
- Sebastián Cabezas, Vice-Ministry of Human Rights
- Daniela Jara, National Human Rights Institute (Instituto Nacional de DDHH, INDH)
- Detective William Lemus, Human Rights Brigade of the Policía de Investigaciones, PDI

A rapporteur document from the day, in Spanish, was prepared by Luis Ignacio Alvear, edited by Cath Collins, and published by the Observatorio de Justicia Transicional, UDP as detailed above.

Event 2, the roundtable and film screenings “Until We Find Them: Advances and Challenges in the Search for the Disappeared in Chile, Peru, El Salvador, and Sri Lanka” (“*¡Hasta encontrarlos! Avances y desafíos en la búsqueda de las y los desaparecidos: Experiencias comparadas – Chile, Perú, El Salvador y Sri Lanka*”) was hosted by the Institute for Democracy and Human Rights (Instituto de Democracia y Derechos Humanos, IDEHPUCP) of the Pontificia Universidad Católica del Perú, Lima, Peru, on 28 April 2017. The event was convened in collaboration with the Peruvian Forensic Anthropology Team, Equipo Peruano de Antropología Forense, EPAF, as the culmination of a day-long programme of events which began with a guided tour of memorial sites related to commemoration of Peru’s 1980-2000 internal armed conflict. The bilingual guided tour, for which printed explanatory leaflets and itineraries were produced, was open to local people, relatives’ associations, and students. It was also offered as an optional activity to international delegates arriving in Lima for the Latin American Studies Association’s annual academic conference. A total of almost 100 people took part in the memory tour, film screenings, and roundtable discussion.

Commentary and simultaneous interpretation for the memory tour were provided by EPAF staff, Cath Collins, and relatives of victims of disappearance. The documentary films screened at the afternoon session were:

- ‘Investigating Disappearance in Chile: Human Rights Case Judges and the Paine episode’ (‘*Ministros en Visita en Causas de Derechos Humanos: el Caso Paine*’), 2013, Chile, 60 mins. (used by kind permission of the Chilean judicial branch; available on Youtube, with subtitles in English.)
- ‘Te Saludan Los Cabitos’ (disappearances linked to the Cabitos military base in Ayacucho). 2015, Peru/Spain. 90 minutes. Dir. Luis Cintora (used by kind permission of Luis Cintora, close collaborator with EPAF Peru). Trailer available online, available to purchase, with subtitles in English.

Speakers at the roundtable part of the session included two prominent relatives involved in longstanding campaigning (including the landmark Inter-American Court of Human Rights case *Castillo Paez vs. Peru*); practitioners/ experts engaged with current search and ID efforts in Peru, Chile, El Salvador and Sri Lanka (including the former witness protection and research director of the Peruvian Truth Commission); Ariel Dulitzky, then-member of the UN Working Group on Enforced Disappearance, and Rainer Huhle, member of the UN Committee on the issue. Subsequent discussion in the room further drew in panellists from Spain, the US, Uruguay, Mexico, Chile and El Salvador who would be speaking at the following day’s academic conference. The goals of the event included providing a free-of-charge event where Peruvian organisation and the public could interact with visiting experts without having to register for the membership-only academic conference taking place the following day. Promoting contact between EPAF and IDEHPUCP, with a view to future academic-civil society collaboration, was also an objective.⁵

⁴ Main national relatives’ association the Agrupación de Familiares de Detenidos Desaparecidos, AFDD, was invited to take part in this session but was unable to send a representative.

⁵ The achievement of this objective was exemplified in June 2017 with the piloting of an introductory IDEHPUCP module to initiate the EPAF annual summer school on transitional justice and forensic practice in Peru.

Event 2 programme

Cineforum (i): “Te Saludan Los Cabitos” (Luis Cintora, 65 mins, Peru)

Cineforum (ii): “Ministros en Visita en Causas DDHH: El caso Paine” (Judge Roberto Contreras, 60 mins, Chile)

Roundtable: Comparative experiences of search in Chile, Peru, El Salvador and Sri Lanka

Chair: Dr. Iris Jave, IDEHPUCP, Pontificia Universidad Católica del Perú.

Participants:

- Doris Caqui, relative, human rights defender, former president of the National Relatives and Victims Association of Peru (Coordinadora Nacional de Familiares y Víctimas del Perú)
- Cromwell Castillo, relative, human rights defender, father of Ernesto Castillo, a university student forcibly disappeared during Peru’s internal armed conflict
- Prof. Cath Collins, Universidad Diego Portales, Chile and Ulster University
- Leonor Arteaga, Senior Program Officer on Impunity, Due Process of Law Foundation, USA/ El Salvador
- Eduardo González-Cuevas, transitional justice expert & consultant currently working in Sri Lanka
- Ariel Dulitzky, UN Working Group on Enforced and Involuntary Disappearances
- Dr. Rainer Huhle, UN Committee on Enforced and Involuntary Disappearances

A rapporteur summary of the roundtable part of the day was prepared by Mario R. Cépeda, researcher at IDEHPUCP, edited by Cath Collins, and published by the Observatorio de Justicia Transicional, UDP and by IDEHPUCP, as detailed above.

Event 3, ‘The Politics of Absence’, consisted of two academic panels and a workshop which took place on 29 April 2017 as part of the Latin American Studies Association’s 50th anniversary conference. A call for papers circulated in June 2016 (see below) invited proposals analysing legal, social-scientific, and forensic approaches to the tracing and identification of victims of disappearance. On the basis of the abstracts received, two linked panels were constructed which, firstly, placed juridical, sociological, and forensic currents in conversation with one another; and, secondly, examined the confluence of the same three currents in the real-life case study situation of Chile. Commentary across the papers and sessions was provided by Ariel Dulitzky, of the UN Working Group. The workshop session allowed the interdisciplinary discussion of general principles in the light of case study realities to be expanded to Peru and to Mexico, thanks to participants from the floor. A total of approximately 40 scholars and graduate students, additional to the scheduled paper givers, participated across the three parts of the session.

Call for papers: ‘The Politics of Absence: Forensic, humanitarian, and legal challenges in the recovery and identification of the disappeared’

Enforced disappearance is an ongoing reality, and an emblematic crime of past authoritarian regimes. Recent accountability developments have called on forensic science to trace, unearth and restore the remains of the disappeared: as part of a judicial process, or as a humanitarian imperative in its own right. Technical-scientific forensic interventions however provoke social and political controversy, while the entire enterprise of certifying death is inimical to historical demands for ‘aparición con vida’. These panels explore tensions arising from attempts to trace and identify the disappeared, discussing conflicts between ‘civic trust’ and scientific certainty, and contrasting state with civil society-led processes.

A rapporteur summary of the roundtable part of the day was prepared by Dr. Carolina Robledo, postdoctoral researcher at CIESAS, Mexico, edited by Cath Collins, and published by the Observatorio de Justicia Transicional, UDP, as detailed above.

Event 3 Programme

Panel (i): The Politics of Absence 1

Convenor: Cath Collins, Universidad Diego Portales, Chile and Ulster University

Chair: Prof. Katherine Hite, Vassar College, USA

Papers: *(title given in language of presentation)*

- Cath Collins, UDP & UU
'Bodies of Evidence': Forensics, Dignity, and Treatment of the Dead and Disappeared'
- Dr. Adam Rosenblatt, Haverford College, USA
'Aparición con vida: Disappearance and the Politics of the Counterfactual, from Argentina to Ayotzinapa'
- Prof. Paloma Aguilar, UNED Madrid, Spain
'Mass Grave Exhumations during the Spanish transition: Local memory and the "pact of silence"'
- Dr. Silvia E Dutrénit, Instituto Mora, Mexico
'Las y los antropólogos forenses en la revelación de desapariciones en México y Uruguay'

Commentator: Ariel Dulitzky, University of Texas, USA and UN Working Group

Panel (ii): The Politics of Absence 2

Convenor and chair: Cath Collins, Universidad Diego Portales y Ulster University

Papers:

- Dr. Eden Medina, Indiana University, EEUU
'A Transnational History of Identification and Error'
- Dr. Cristian J. Orrego Benavente, University of California at Berkeley, USA
'Nuevos escenarios tecnológicos en la búsqueda e identificación de personas desaparecidas'
- Dr. Daniela Accatino, Universidad Austral de Chile
'Negotiating Scientific, Legal and Social Certainties about the Disappeared'
- John Dinges, Columbia University, USA
'What's Missing in "Missing": A Critical Examination of Judicial Evidence in the Horman-Teruggi Murder Case'
- Dr. Rodrigo Lledó, Universidad Carlos III, Madrid, Spain
'The Outcomes of Judicial Investigations of Enforced Disappearance in Chile: An Overview'

Commentator: Ariel Dulitzky, University of Texas, USA and UN Working Group

Workshop:

Participants:

Silvia E Dutrénit Bielous; Eden Medina; Cristian J Orrego Benavente; John Dinges; Daniela Accatino; Adam Rosenblatt; Rodrigo Lledó; Paloma Aguilar; Carolina Robledo Silvestre

Attendees (inter alia):

Cath Collins, Carmen Rosa Cardoza (ex EPAF Perú), Aída Hernández Castillo (CIESAS-México), Aurelia Gómez de Unamuno (Haverford College, USA), Evangelina Sánchez (UACM-México), Claudia Rangel (UA Guerrero-México), Paula Cuellar, Univ. of Minnesota, USA.

Executive Summaries:*

** note that whereas the content of the full-text rapporteur documents in Spanish which provide the basis of this summary was reviewed and approved by participating speakers or authors, the present text is the responsibility of its author, Prof. Cath Collins.*

Summary Event 1 - Enforced Disappearance: State Responsibilities and Current Practice in Chile and Peru
In Panel 1, **Rainer Huhle** outlined international responsibilities that international human rights law (IHRL) sets out regarding the relatively recently developed notion of enforced disappearance (ED), a complex crime the concept of which was itself developed in reaction to the use of massive state-sponsored detention and disappearance by South American military regimes during the 1970s and 1980s. The UN Committee on Enforced and Involuntary Disappearance, known as CED, was set up in 2011 and consists of 10 independent experts whose job is to oversee States' compliance with the 2006 International Convention (signed by Chile in 2007, ratified by Chile in 2009), which has the status of treaty law. Priorities for states should include correct codification of the crime of ED in domestic criminal law, training of civil servants and members of the security forces to prevent and resolve its occurrence, and strengthening of truth and justice responses where ED has already taken place. These responses must include concern to search for the victim, to locate his or her remains where relevant and afford them dignified treatment, and provide moral reparations.

Cecilia Medina discussed the specificities of Latin American state obligations under the Inter-American human rights system (IAHRS) and Convention, both of which predate their fully internationalised equivalents (The Inter-American Convention against Enforced Disappearance dates from 1994, ratified by Chile in 2010). Nevertheless, the Convention post-dates the massive occurrences of enforced disappearance in many countries of the region from the late 1960s on. The IAHRS has therefore had to develop its position and interventions regarding ED to take account of prohibitions on retroactivity etc. The continuous (ongoing) nature of the crime, as long as neither the person nor reliable information about their fate and whereabouts are forthcoming (as explicitly recognised in Art III of the Inter-American Convention), have been relevant in landmark rulings and cases from Velasquez Rodriguez (1988) onwards, giving rise for instance to consideration of ongoing or autonomous breaches of general American Convention on Human Rights obligations (Pact of San Jose). Nonetheless, international enforcement is inescapably late in the day, usually coming ex post facto. Proactive state compliance is therefore essential: only state-level enforcement is capable of providing equality and consistency in the guarantee of rights. Even the information that enables regional systems to correctly monitor state compliance is dependent to a large extent on states' own provision of data. The Inter-American Court has come to consider domestic broad amnesty laws to be incompatible with general Convention obligations (Barrios Altos, 2001) and has ordered medical care and indemnization for relatives alongside the introduction of adequate prohibitions and sanctions in domestic criminal law (Goiburú, 2006). The Court has also acknowledged direct specific material and immaterial harm, including psychological harm, to relatives of victims of disappearance, occasioned not only by the original incident but also by subsequent state inaction or inadequacy of response (inter alia, Gomes Lund). The Court has recognised a duty to investigate and punish that derives from a right to remedy, exercisable by relatives of forcibly disappeared persons.

Pietro Sferrazza outlined the work of the UN Working Group on Enforced Disappearance (UNWG), existing in some form in the UN system since 1980 (when it was established as an emergency response to massive disappearances in Chile). Transformed into a permanent working group in 2003 to assist with the drafting of what became the 2006 International Convention, the most recent iteration of its mandate was renewed in 2014, by UN Res. A/HRC/RES/27/1. The Group's basis is AG Res 47/133, of 1992, consisting of a Declaration (rather than the treaty law basis of the Committee). Accordingly, the UNWG's mission is principally humanitarian. It can receive denunciations regarding individual cases from victims, relatives or human rights organisations and liaise with States to request information, action, and a response. It will not seek to rule on whether a State has incurred international responsibility or breached Convention obligations in a particular case. The UNWG's work could therefore be characterised as belonging to the administrative or humanitarian mode of search, more akin to the work of a truth commission than tribunals. Nonetheless in Sferrazza's view the rights that the UNWG seeks to uphold, including the recovery and return, where appropriate, of remains, are not fully encapsulated in the notion of the right

to truth. A respectful, culturally and religiously appropriate, process of restitution may enhance the probability that the right to truth can be considered to have been satisfied, but does not ensure this. Nor is it impossible to imagine a situation where the right to truth could be satisfied even though physical recovery of remains is not possible or is not achieved. Chile has alternated between an administrative/humanitarian mode of search, undertaken upon the return to electoral democracy by the Rettig truth commission and its followup body, transformed in 1996 into a state Human Rights Programme. Since 1998, when relatives' persistence led to the reopening of the criminal prosecution avenues, search has become predominantly judicial. This can be considered positive in re-establishing the right to justice alongside the search for truth.

Between 13 and 21 August 2012, the UNWG carried out a Mission to Chile, at the invitation of the Chilean government, resulting in the report, A/HRC/22/45/Add.1 (with initial observations by the Chilean state published as A/HRC/22/45/Add.4).⁶ The report named a wide range of remaining challenges for the Chilean state in all areas of truth, justice, reparations, guarantees of non-repetition, and memorialisation. Amongst them featured: relatively disappointing results in current search and location efforts (with only 155 of close to 1,200 known victims found and identified since 1990); the lack of a central register of officially acknowledged victims that can be updated to reflect the results of ongoing court cases or other sources of new information; the existence until recently of an anomalous category of persons considered victims of 'extrajudicial execution' despite the fact that their remains were either never returned or not reliably identified, and a notable lack of state protagonism behind the existing substantial caseload of criminal prosecutions for disappearance as kidnap.⁷

In Dr Sferraza's view, these challenges present the Chilean authorities with at least two major alternatives. Option one is to attempt to strengthen and/or re-purpose existing judicial investigations, to produce new finds of remains. In this respect, it was observed, the current classification of disappearance as kidnap (for the purposes of prosecution) means that the discovery of physical remains is not essential in order for a criminal conviction to be secured. On the other hand, reclassifying cases as homicide investigations – the same category utilised for extrajudicial executions – would increase pressure investigative magistrates to exhaust every possible avenue for the location of physical remains, but might imperil the possibility of any criminal sanction being imposed, if no remains could be found. Option two, the addition of a dedicated administrative agency for the purposes of search and identification, would require definition as to how such an instance could or would provide incentives to those with information; and what judicial use, if any, could or should be made of any discoveries.

In Panel 2, the recent experience of Peru in conceiving and drafting a law to allow the setting up of an administrative search agency was explored. The speakers both took part in a lengthy, self-convened civil society process that eventually proactively developed draft legislation, in concert with the country's human rights ombudsman's office. **Gisela Ortíz** participated in her dual capacity as a prominent family member of a disappeared person and human rights campaigner, on the one hand, and as the operations manager of Peru's non-state forensic anthropology team the Equipo Peruano de Antropología Forense, EPAF. The team was set up by forensic archaeologist Jose Pablo Bayrabar, known internationally for his championing of a humanitarian focus in search and identification work, and its small staff is drawn from a wide range of disciplines including social anthropology and history. Ms. Ortiz sketched the background of Peru's internal armed conflict (1980-2000), during which time armed guerrilla movements including Shining Path declared war on the state, which responded with ever more extreme 'counter-insurgency' violence. The official Truth Commission report of 2003 stated that close to 70,000 people were killed or disappeared, most of them in Ayacucho, one of the country's poorest regions. Three quarters of victims of fatal violence or disappearance were Quechua-speaking members of highland peasant communities, traditionally excluded and discriminated against.

⁶ In August 2017, both a Chilean government followup report on implementation, and a response from the UNWG, were published at www.justicia.ddhh.gov.cl

⁷ As regards identification, some of the approx. 2,000 persons acknowledged by Chile's first Truth Commission as fatal victims of the dictatorship (subjected to extrajudicial execution) were never physically returned to their relatives for burial – with only official death certificates being handed over – or were handed back in sealed coffins, or with orders that they be buried immediately and in private, with no wake or viewing of the body allowed. As regards prosecution, until 2010 practically the entirety of Chile's now numerous caseload of criminal investigation of dictatorship-era deaths, disappearance or torture was the result of private claim making, not ex officio state initiation.

One major difference with Chile is that the majority of fatalities in Peru are attributed to non-state armed actors, although the particular types and patterns of violence mean that a higher proportion of unresolved disappearances than of known killings are attributable to state forces. Both types of atrocity were ignored or denied by the state, with amnesty laws to impose impunity attempted in the mid-1990s. From 1997 onwards, the Inter-American Court brought a series of verdicts pointing to the state's responsibility to search actively for disappeared persons, also overturning amnesty in the 2001 Barrios Altos case verdict. Reopened cases were not, however, pursued with alacrity or genuine will. Lodging a criminal complaint, leading to the opening of such a case by the public prosecutor's office, nonetheless remains the only recognised way in which affected families, often unaccustomed to negotiating state bureaucracy, can attempt to recover their loved ones. A 2013 report marking the 10th anniversary of the truth commission revealed that only 62 people had been convicted in the course of that decade for their part in atrocious crimes, with the vast majority of suspects acquitted. The criminal justice route is proving a very unsatisfactory method for delivering on families' truth and justice entitlements.

It is not known for certain how many people remain unaccounted for. The Truth Commission initially documented 8,558 victims and over 4,500 clandestine burial sites, whereas present day estimates range around the 12,000 to 15,000 mark. The uncertainty makes it difficult to estimate the full costs of a serious search effort with any precision, or to create a more complete DNA reference database. Ms. Ortiz feels that moreover official efforts have never genuinely prioritised the recovery of remains, even though for families this, together with finding the truth about the disappearance, is often the most pressing need and desire. While relatives do not discount or underestimate the importance of justice, many feel that it is for the state to prioritise this aspect and to take the necessary steps. EPAF for its part sees the need for a 'parallel [search] strategy', in which criminal investigations are not discontinued but are complemented by additional measures. Where successful, these could also in the end provide useful information or evidence for prosecutions. Ms Ortiz pronounced herself hopeful that the recently promulgated search law (see below) can provide opportunities to galvanise the existing search process and to satisfy relatives' right to truth.

Rafael Barrantes was, at time of writing, the person responsible for work on Disappeared Persons for the regional delegation for Bolivia, Ecuador and Peru of the International Committee of the Red Cross (ICRC). His intervention explained the process of design, lobbying and promulgation that lay behind the recent Law on the Search for Disappeared Persons (Ley de Búsqueda de Personas Desaparecidas, Ley 30.470 of 3 June 2017).

Relatives of the disappeared have diverse and wide-ranging needs, but an ICRC study in Ayacucho found that the need for economic support was identified as the main priority, reflecting the fact that families were often already in a situation of extreme poverty at the time a family member disappeared, and/or found their situation dramatically worsened by such a loss: peasant families in rural areas are dramatically affected by any reduction in family income. Second place in the survey of needs was occupied by the need to know what happened to their loved ones, and be able to reclaim their remains. Third was the need to receive some kind of restitution of lost opportunities, for example, in education or health. Punishment of those responsible did not feature among the most commonly mentioned responses, although this does not necessarily mean that families do not value justice. However, the main justification for a search policy is the priority placed by families themselves on the need to recover remains.

The same survey also asked families whether they had taken action in their own right to search for their relatives. Amongst those who had not, 60% gave the reason for their inaction as fear. The fact that the only avenue open to relatives is the lodging of a criminal complaint makes families fearful that they will be left exposed to possible retaliation from other local communities, a fear that proceeds from a distinctive characteristic of the Peruvian conflict whereby perpetrators and victims who both came from peasant communities, continue to live there side by side. Another explanatory factor is the inadequacy of the available state response to address the real magnitude and complexity of the problem. As one example, once a judicial investigation has been triggered, formal sworn depositions or declarations are the only permissible format in which initial testimonies can be taken. This acts to dissuade many people who could have relevant information, but who do not want to appear before a public prosecutor for fear that they will somehow then fall under suspicion, or be regarded as possible perpetrators. Possibly valuable information is thereby lost, and does not become available either for prosecution or for humanitarian recovery efforts.

Prosecutors do not currently have a systematic strategy for investigating the 15,000 or so cases of disappearance or the areas around already identified clandestine burial sites. Instead, since there is no cohesive plan, they search in a piecemeal and reactive fashion, triggered by specific, isolated criminal complaints that are lodged on behalf of particular victims. Forensic work for these investigations is carried out by a state forensic medical institution known as the Instituto de Medicina Legal (IML), which is under-resourced across the board, and has found it difficult to establish links to the kind of technical support or additional expertise that other entities such as EPAF can offer. So although the remains of approximately 3,400 persons were recovered [by the IML] between 2002 and 2015, almost 80% belonged to so-called 'pre-identified cases', that is, victims who had been buried in haste by their own relatives, in circumstances which prevented the issuing of a death certificate in the usual way. These individuals could almost be said not to have been 'disappeared' at all, for most intents and purposes. Information is also patchy and poorly managed: there is no central mechanism for collating or cross referencing existing records (such as the truth commission's victim register and its list of clandestine burial sites). Nor is it possible therefore to say for certain which of those initially listed as disappeared have subsequently been found.

The provision of accompaniment to relatives has been a relatively recent undertaking for public health services: it was previously carried out, if at all, by NGOs with little in the way of support or formal training. Material assistance to families has, since 2012, been the responsibility of the Justice Ministry, although the ICRC continues to fund relatives' travel or transportation costs throughout the identification, restitution, and reburial process. Some local governments or councils cover the cost of providing a basic burial space or grave, but there is no settled practice or coordination in this regard. Another difficulty is that different needs are attended to by completely distinct entities. The public prosecutor's office is unique in being the only relevant actor that has the dual task of both prosecuting those responsible, and finding the disappeared. However this is not producing the results needed, hence there is marked consensus behind the idea of creating an additional, administrative, mode of search.

This consensus was marked by two significant milestones. First, a OAS General Assembly resolution of 6 June 2006 discussed assistance for family members of disappeared persons, mentioning the need for state action on prevention, truthfinding, the treatment of human remains, and support for families. The Peruvian state's response to this resolution recognised that existing responses did not amount to a concerted national policy, making reference to the need for a single steering entity to oversee coordinated action required to make the recommendations a reality. In other words, the Peruvian state finally acknowledged, after years of attrition, failures and challenges in the search for the disappeared. This recognition spurred the formation of a roundtable instance, the Mesa de Trabajo, made up of a mix of public and private groups and organisations. The Mesa, together with the Justice and Human Rights Committee of the national Congress, co-organised an event which led to the declaration of the need for a state policy allowing for the prioritisation of humanitarian objectives above judicial ones. The goal was to create a separate instance within the public prosecutor's office, one which could move ahead on search-related matters, leaving criminal prosecutions to advance if necessary at a more cautious rhythm; but also ensuring a search process designed to be reparatory in nature and to avoid causing more harm to family members.

Moving ahead in this way with a humanitarian mode of search means:

1. Organising forensic investigations so as to prioritise identification of victims over identification of possible perpetrators, designing specific strategies for the recovery of information about the whereabouts of the disappeared
2. Ensuring families receive the necessary advice, information, emotional support, and if necessary, specialised mental health attention
3. Guaranteeing families' participation in the process, providing burial spaces, coffins, etc.

This consensus led the Justice Ministry to call together a Working Group to draft legislation on a national search law. This became part of the legislative agenda, and a range of social and religious organisations campaigned in a concerted fashion for Congressional approval, finally achieving promulgation by then-President Ollanta Humala on 22 June 2016.

Cath Collins briefly remarked on points of comparison and contrast between the two settings,, and pointed out that the judicial/ humanitarian distinction, and the assumption of compatibility between the two, requires us to think hard about uncomfortable subjects including how to avoid creating a perverse incentive for the commission of disappearance (by ‘rewarding’ the holding back or hoarding of information); and what lengths – including payment – can and have been resorted to, sometimes in desperation, in order to persuade an apparently reluctant or fearful informant to give up information they claim to have.

In panel 3, representatives of national groups and institutions were invited to comment on or respond to what they had heard about international standards, and about the Peruvian experience, from the perspective of their own involvement with Chile’s process of search and identification. The first commentator was **Sebastian Cabezas**, formerly of the state Human Rights Programme and at time of writing on the staff of the newly inaugurated (January 2017) Vice Ministry of Human Rights, part of the Ministry of Justice and Human Rights (in 2017 the new vice-ministry will take over supervision and oversight of the Programme, from the latter’s previous institutional home in the Ministry of the Interior). Mr. Cabezas mentioned the Vice Ministry’s plans to press forward with a draft bill to introduce enforced disappearance into the domestic criminal code, alongside an existing draft bill which would modify the constitution to explicitly outlaw the concession of amnesty or statutes of limitation to crimes against humanity. Mr Cabezas also made reference to the fact that records and testimony from the Valech truth commission are now being released, on a case by case basis, to judicial authorities embarked on investigations. This initiative seeks to partially fill the gap left by the failure of a recent attempt to open the Commission’s archive more fully to public as well as official access, which would require the lifting of the 50-year embargo currently in place.

Human rights case lawyer **Dr Magdalena Garces** reminded the meeting that existing legal investigations came about at the instigation of relatives and survivors, rather than through state protagonism. She critiqued the ‘scattergun’ pattern of the resulting case universe, something which obscures the macrocriminality which underlies the systematicity of dictatorship-era violations including enforced disappearance. Immediate challenges include the need to channel more resources to the issue and to improve the treatment that state institutions afford to organised civil society. As one example, Dr Garces mentioned that the formation of a dedicated unit or office within the state Human Rights Programme, which has been rumoured or referred to in recent weeks as a *fait accompli*, was never discussed or officially notified to the human rights organisations and casebringers who Dr Garces represents.

Juan Rene Maureira, staff member of the Londres 38 memory site and also a relative of a victim of disappearance, raised the question of political as well as individual criminal responsibilities, and of other state entities whose actions have at different times suited the purposes of the state repressive apparatus. He insisted on the need for and importance of the ongoing ‘All the Truth, All the Justice’ campaign (‘*Toda la Verdad, Toda la Justicia*’) of which Londres is one of the sponsors. He affirmed that much of the information needed to resolve systematic, organised criminality is to be found in institutional, including military, archives and not only in individual testimony that can be coaxed or gleaned from low-level perpetrators.

Daniela Lara, from the legal unit of Chile’s official National Human Rights Institute, INDH, mentioned three cases of disappearance⁸ occurring within the more recent, post-dictatorship, period since 1990, making the point that while enforced disappearance is no longer a systematic or widespread practice it does still occur. This is part of the reason it is so imperative to move ahead with the introduction of the figure into the criminal code, and with prevention measures.

Detective William Lemus of the national investigative police (Policia de Investigaciones) Human Rights Brigade explained that the brigade works with each of the special investigative magistrates currently

⁸ The cases of victims Jose Huenante, disappeared since 2005; Hugo Arispe, disappeared since 2001, and Jose Vergara, disappeared since 2015. Uniformed police officers (‘Carabineros’ are suspects in all three cases.

assigned to human rights cases, and also works with the new⁹ Public Prosecutor service (Ministerio Público) and military court prosecutors (on cases other than dictatorship-era crimes). Detectives need therefore to be versatile, able to work effectively within three distinct prosecutorial frames (old and new ordinary criminal courts, plus military courts). As regards enforced disappearance cases specifically, the Brigade works under the instruction of a senior judge (the investigating magistrate), and alongside personnel from the state forensic service (SML) and Civil Registry. Civil society organisations can also contribute to investigations, within the parameters necessary to respect protocols and preserve necessary confidentiality. However, for example, such groups can provide information that suggests lines of investigation or witnesses that can be followed up on. This can be important for establishing to the satisfaction of all parties that every possible lead or avenue has been attempted, something which can acquire particular significance when, for example, a case for disappearance leads to convictions, but unfortunately victims' remains are not recovered.

Summary Event 2 – “Hasta Encontrarlos!” (‘Until We Find Them’): Advances and Challenges in the Search for the Disappeared in Chile, Peru, El Salvador, and Sri Lanka

The film screenings and discussion gave rise to unfavourable comparisons, from the Peruvian relatives present, between the justice situation in their own country and the one portrayed in the judicial branch documentary about the Paine case in Chile. Although the Chilean prosecution scenario undoubtedly has weaknesses, and cases including the Paine one have still not been concluded after more than 40 years, it is true that the film depicts a relatively promising scenario where numerous auxiliary institutions and state employees are now actively committed to the search for the disappeared, and for justice. The existence of a specialised, dedicated human rights police unit was particularly remarked upon.

The roundtable opened with comments from two Peruvian relatives and campaigners, about the current national situation. **Doris Caqui** situated disappearance as a region-wide practice with the active collaboration of the US, using the School of the Americas to train and equip Latin America militaries to carry out repressive crimes and to demonise political opponents or dissidents, including union leaders and students. Doris highlighted the history of her own disappeared partner Teofilo Rimac, an active social movement leader and trades unionist, as typical of this profile of targeted repression. Like the relatives of many other members of ANFASEP, Peru’s national association of the detained and disappeared, Teofilo has still not been found. Doris wondered how far the new 2016 search law, Law 30470, would really be able to satisfy the expectations of individual families, despite its humanitarian aspirations, when everything indicates that some victims will likely never be found.

However she criticised the criminal justice system route for its slowness and for obliging relatives to interact with those who tortured and killed their relatives, questioning whether the Justice Ministry is really capable of demanding information from the Defence Ministry where, Doris believes, the answers are to be found. The state has a moral obligation to create structures that allow relatives take part actively in the recovery of their disappeared relatives. Organised relatives’ associations have become weakened, and should in Doris’s view return to the streets to make their demands visible, as well as cooperating with other civil society organisations and institutions. Our disappeared persons were fellow citizens, not just numbers in a register, and we need to consider how their absence continues to harm us all.

Cromwell Castillo, the father of student Ernesto Castillo Paez, disappeared in 1990, highlighted the importance of dialogues such as the present one, and thanked the international academics and experts for their interest in Peru’s situation. “Disappeared persons are citizens, who deserve truth and justice”, and it is vital to share experiences and make joint commitments. Our family continues to seek justice: even after the Inter-American Court found against Peru in our son’s case. The pages of the official record about the disappeared are still blank, and had it not been for eyewitnesses coming forward, and the work of national NGOs such as the Instituto de Defensa Legal, IDL, Ernesto’s case would never have been reopened after the fall of the Fujimori dictatorship [in 2000]. The sentences given to those convicted were

⁹ Chile switched from a judge-led to a prosecutor-led criminal prosecution in a phased manner from the mid-1990s. Human rights violations occurring before the system change, which include all cases related to dictatorship-era enforced disappearance, are however investigated and prosecuted under the pre-reform system.

risible compared to the seriousness of the crime, especially when you consider that the criminals refused to reveal the location of Ernesto's remains. To add insult to injury, they have all now been granted early release, which adds to our sense of injustice and means that Ernesto's disappearance is always present for us. All of this makes me profoundly uncertain whether the new law will help. I want to underline that for families it's vital to find the remains of our missing loved ones, to bring our search to a conclusion and find some peace.

Three other countries' experiences of search were briefly described and discussed. For **Chile**, **Cath Collins** summed up the work of the Observatorio de Justicia Transicional, based in a Chilean university, which seeks to act as a bridge between the public and the authorities, providing information and ideas needed to properly debate truth and justice needs and actions. The Observatorio's focus is on the grave human rights violations committed by the 1973-1990 military dictatorship, which include the killing or forcible disappearance of 3,200 people – of whom over 1,000 are still missing - and the politically-motivated imprisonment and torture of at least 40,000 more. One immediate contrast with Peru's internal armed conflict is that in Chile these grave crimes were committed almost entirely by state forces. Another is that, at least in recent years Chile has developed what seem to be more robust and more sincere official efforts to prosecute perpetrators. The search for the disappeared is as urgent in both places, and in both, relatives have been unceasing in their efforts to push the state to provide truth and justice. In Chile the revival of formal prosecution as a mode for action over disappearance was itself carried out by relatives, who brought the criminal complaints (*querrelas*) that restarted justice activity from 1998.

Relatives feel that this new scenario, while an improvement over the complete impunity of the past, is still impossibly slow and patchy, with the persistence of powerful interests resisting accountability. Sentences are felt to be lenient, and sentence reductions (early release) have become a major issue in recent years. All of this perpetuates or accentuates lack of faith in the present-day state and its capacity for justice across the board. Two problems specific to the prosecutorial mode of search that is presently the only one actively being pursued in Chile are, firstly, that criminal cases have begun to be concluded with convictions but without necessarily discovering the whereabouts of remains; and secondly, that a series of errors were made in official identification. In 2006, it came to light that some official forensic identifications made in the 1990s, of remains found in the 'Patio 29' section of the Santiago general cemetery, had been inaccurate. Remains that had been returned and reburied, had to be exhumed once again and people felt that their loved ones had been disappeared for a second time by the state. The paradox that the same state that perpetrated the original crimes is now investigating and resolving them is keenly felt in circumstances such as this one, and makes it difficult to construct or rebuild trust between families, survivors and the State.

That said, it has proved possible to cultivate alliances including across state-society lines, with dedicated individuals, including judges, but also with specific entities such as the state 'Human Rights Programme', which began life as the continuation of the first Truth Commission but is now responsible for state efforts to prosecute perpetrators of execution and disappearance. What makes it possible to create trust despite the circumstances is the sense of a genuinely shared goal, in that all concerned now really do want to find the disappeared. It is important also that it should be the state that fulfils this role: the harm done by disappearance is broad and deep, and is not limited only to relatives. The InterAmerican Human Rights System has affirmed, for instance, that the right to truth is a collective, societal right as well as a right of victims or their relatives.

The difficulties of using a judicial mode for search, already mentioned, are compounded by the fact that there was also a systematic operation of clandestine exhumation and reburial ('remoción'), carried out around 1978 and again to some extent in the late 1980s. The resulting compartmentalisation means that agents who took part in initial disappearances may no longer know where the remains of a victim are; or conversely, that someone who took part in secret reburials may not know the identities of the people whose remains they were sent to recover and destroy or hide. This is the sense in which Chile may need to think about whether it could learn any useful lessons from the experiences of Peru and other countries in setting up programmes with a humanitarian emphasis, seeking primarily to trace and locate remains. Other attempted solutions, including the suggestion that that concessions or immunity should be given to existing prisoners or those currently charged in return for information, are controversial. They also do not take sufficient account of the fact that the decision to disappear and eliminate opponents was not taken by individuals but institutionally; placing the spotlight on military institutions, which have never acknowledged that they hold records or information.

Leonor Arteaga, for the Due Process of Law Foundation, talked about **El Salvador**, where the government has recently announced its willingness to set up a new search mechanism or office for (adult) victims of disappearance during the 1980-1991 internal armed conflict. Estimates are that between 5,000 and 9,000 people disappeared over the course of the conflict, with many thousands more known to have been killed. In El Salvador as in Peru and elsewhere, women bore the brunt of the domestic consequences of disappearance for the families left behind, and also were the primary movers in organising to search for their relatives, even when they faced rejection, intimidation or further violence as a result. El Salvador shares with Argentina the phenomenon of the abduction or forcible or irregular ‘adoption’ of children taken or separated from their families during the period of violence. After an Inter-American Court verdict in 2009, in the Serrano sisters case, the Salvadoran state did set up an official mechanism (Commission) to trace children abducted or lost as a consequence of the war. The Commission had to be set up by presidential decree, as there was opposition in the legislature to its very existence. It has had some success in resolving around 300 of an estimated (at least) 900 cases of the practice, but there has never, until now, been a similar effort on behalf of adult victims, considered an even more politically sensitive issue. In Ms Arteaga’s professional opinion this sensitivity is principally because in regard to adult victims it would be more necessary than in the case of children to acknowledge that state forces used enforced disappearance as a deliberate strategy to target political activists, community leaders, and actual or suspected members of the FMLN guerrilla.

Faced with this defensiveness, and the continuation for the first decade of post-peace agreement government of a right-wing administration associated with the same forces that prosecuted the aggressive 1980s ‘counterinsurgency war’, some relatives lost impetus or strength to continue organising and making demands. This helps explain why today, a quarter of a century on from the signing of the peace accords, the commitment made in the text of the agreement to search for the disappeared has still not been fulfilled with any comprehensive plan or policy to deal with the issue in its full dimensions: “El Salvador still has no national search policy”.

This helps to explain why a recent significant impetus came primarily from outside the country. The US was a key player in the internal armed conflict, and during the 1980s openly and covertly funded, trained and supported various Central American military and paramilitary forces responsible for major atrocities and systematic human rights violations. Due to its relative geographical proximity, the US also became a major destination for migrants and refugees fleeing the conflict or its consequences. Today there is a sizeable Salvadoran community in various US urban centres. Against this backdrop survivors, relatives and activists who are part of the Salvadoran diaspora have made use of inter and transnational networking to press the Salvadoran state on a range of issues, including the need for creating a mechanism to search for adult victims of disappearance. In late 2016 and early 2017, the sea change triggered by the Salvadoran Supreme Court’s declaration of unconstitutionality in regard to the country’s blanket amnesty law produced the first signs of greater official receptivity to these demands on the part of the country’s present [centre-left] administration. Accordingly there is currently a dialogue going on to design and create such a mechanism. This is an occasion of hope and expectation for relatives, though there are serious question marks about resource capacity and genuine will on the part of the state, in the broader context of high levels of violence and citizen insecurity. The Armed Forces also continue to deny that they possess information about the disappeared, another factor that seems to be common to the country situations discussed at this meeting.

Transitional justice consultant and former Peruvian truth commission staffer **Eduardo González-Cuevas** reported on the situation of **Sri Lanka**, where he is currently working. This relatively small island nation of around 20 million inhabitants is estimated to have anything up to 100,000 disappeared persons as a result of an internal armed conflict between left-wing guerrilla forces and the state, culminating in the military defeat of the guerrilla. An additional focus of conflict was the existence of separatist movements to the north of the island. These overlapping conflicts unleashed military responses that caused alarm in the international community due to high levels of civilian casualties. The mass disappearances that took place all occurred under technically or formally democratic, or at least elected, governments: this problem is not limited to authoritarian or dictatorial settings. Any type of regime can find it convenient to use the pretext of needing to militarily defeat an internal enemy, something which often leads, as in the cases of Peru and Colombia, to the spread of corrupt practices and conflict-related distortion of elections and political parties.

From 2015, the new administration in Sri Lanka ordered the suspension of its anti-terror law and promised the UN Human Rights Council that it would set up transitional justice mechanisms including a reparations plan and a unit to trace disappeared persons. Consultative processes were to be carried out in order to prepare and design these mechanisms: during those consultations, political forces from the conflict era managed to regroup and to call human rights discourses into question, in ways that again are familiar from the other settings we are hearing about today. Although a law on search for the disappeared, including a budget designation, was approved in 2016, a legal technicality has to date been allowed to prevent its promulgation. The process is therefore at a standstill, producing uncertainty among relatives and further fragmentation of public opinion about the peace process. Mr Gonzalez's view is that the extent to which disappearance is an issue affecting the whole nation, rather than just direct family members of victims, is not fully recognised or appreciated. It is important that the full dimensions and effects of the issue be made known, in order to generate a coherent response to the humanitarian tragedy that has ensued: "one direct effect of disappearances has been the complete destruction, de-articulation, of society".

Three common or almost universal features observed in countries around the world that have suffered disappearance are:

- The use of enforced disappearance by state agents as a perverse strategy of war, intensifying conflict and exercising violence that does not end even with the death of the 'enemy' but continues to be perpetrated against his or her body and memory
- Families' suffering has no end point in sight; it remains active and present at every stage, due to memory and to the frustration of their struggles: "time itself is abolished"
- Enforced disappearance destroys or weakens social leadership and collective action, demonstrating as it does that the state has the power to abolish or refuse to recognise the very existence of its citizens. It is here that the image, the family photo comes to acquire so much significance, as tangible proof of the existence of disappeared loved ones

A final perverse twist comes when the same state that perpetrated or tolerated violations then seeks to pardon those responsible through amnesties or some other version of 'turning the page' rhetoric. Disappearance is the most profound example of the existence of notions of radical inequality such that certain people can be disregarded even to the extreme of denying their very existence.

Ariel Dulitzky presented a personal reflection around the life of an **Argentine** union leader named 'Tili', who was disappeared by state agents in 1977 after campaigning for the creation of nursery facilities in her workplace. The case shows how disappearance is sometimes designed to directly attack social structures, particularly structures that have been (self-)created to promote change in the face of injustice. The story of Tili is replicated among social leaders all over the world: it has echoes in what Doris has told us about her husband Teofilo. The story of Tili also brings up, however, the invisible centrality of women in relation to enforced disappearance. Firstly because the fact that women themselves become direct targets and victims is sometimes overlooked, leading also to silence about the atrocious, gender-specific sexual violence to which women victims are often subjected (such as in the case of numerous Argentine female victims who were kept alive, after being disappeared while pregnant, solely for the purpose of appropriating their new-born babies). Secondly, because it should be recalled that women are usually the front line of resistance to the practice of disappearance – something which itself exposes them to the danger of being directly targeted. Thus women are subjected to retaliatory sexual violence, or are themselves disappeared, when they visit barracks, army bases and detention centres seeking their missing relatives. Search mechanisms and public policy must attend to this centrality of the role of women.

Other kinds of exclusion are also visible, and are reproduced, in the spaces of struggle for truth and justice. Taking the UN Working Group itself as an example, the logic of its makeup (with representatives drawn from five continents) bears no relation to current geopolitical realities. It also obscures what is actually a relative lack of diversity: looking beyond nationality of origin, four of the five current members are in fact long-term residents of the US or Canada; while the Committee had no female member until as recently as 2004. The internal makeup and dynamics of these international organisms is significant because they owe their existence to global citizens and should seek truth and justice in all areas, including in their own internal working practices. This particular working group was created in 1980 to serve as a link between victims' representatives and the UN system. Over the course of its existence

the Group has registered more than 43,000 individual cases worldwide. This demonstrates the global reach and impact of the scourge of disappearance, which is not restricted to certain areas or time periods. In a sense every case that remains unresolved represents a failure of the entire international system as well as of the states to which the disappeared persons belong. The Group keeps every unresolved case on its books open, pressing national governments to continue to search. Success can only really be measured if people are located and cases resolved: it is not enough to consider the passing of a law or the creation of a national office or policy. Inertia is not an acceptable response: the mass graves must be opened if wounds are to be healed.

Working every day on these issues and accompanying families takes a toll on human rights defenders, experts, and activists: hearing testimony reminds us of the deep and present nature of the wounds that are caused, as well as the ever-present hope of return.

Rainer Hühle, of the UN Committee against enforced disappearances, began by paying tribute to Ariel Dulitzky's contribution to the Working Group, as his period of office draws to a close (he will leave the Group in May 2017). Dr Huhle reminded the meeting that beyond the attention that is rightly paid to mass disappearances in times of conflict and dictatorial regimes, it is important to keep in view ongoing and recent occurrences of disappearance, where families are equally affected and where it is moreover more probable that some victims can be traced alive. The Committee deals every day with both situations, but there have been fewer breakthroughs in recent times in ways to deal with more recent cases, when compared to all the forensic innovation that has so changed the prospects for activity in cases where the death of the disappeared person is more likely, to the point where it can sometimes be presumed.

The mere introduction of laws, whether to introduce the specific offence of enforced disappearance or to promote search, is not sufficient if the laws do not match actual implementation or if their terms are deficient: "many laws are in effect a demonstration of lack of respect for families". We need new methods to continue to search. There may not be a single best or universal method, but it is important to look for a range of models that are effective for particular types of situation, while keeping in view the need for justice. The International Convention has strengths, among them, the broad range of rights that it acknowledges for relatives to continue to search. The Committee exists in part to assist families to adequately exercise those rights. The struggles of relatives and activists are recognised and enshrined in the international legal order and should therefore be protected and promoted by the relevant institutions.

Q&A

Q: How we should we proceed in contexts where it is very probable that remains cannot and will not be found? (for instance because deliberate techniques were used to obliterate remains, eg the cremations carried out at the Los Cabitos base in Ayacucho)

Rainer: those are very difficult situations, although it's relatively rare for there to be absolutely no possibility of finding someone...

Ariel: the state's duty is to "exhaust all reasonable avenues", carrying out whatever investigations are needed to establish the highest possible levels of certainty. This may include for example turning the spotlight on state bureaucracy and scrutiny of official records.

Member of Public: No response will ever be adequate if it doesn't seek to involve relatives and leave them satisfied that everything possible can be done.

Member of Public: Relatives in Peru are concerned about the lack of clarity around implementation of the new law and the assignment of a budget to it. The capacity of the current state to respond to the full magnitude of the problem is in doubt. The state also has duties that go beyond solely the search for remains: the social fabric urgently needs restoring and strengthening, and social movements are an essential part of that. We need a national meeting of relatives to plan ways forward would be useful: this law isn't going to fix the problem, it's just one more tool, in the same way that forensic techniques are. There's a need to establish spaces for dialogue, priority setting and collaboration within and alongside the new National Plan.

Q: What will happen to cases that have already been judicialized, in the process of handing over to the new institution with its humanitarian focus? Families are worried about this, and are unclear how it's going to work. We need to share experiences. There are entire communities in the central jungle region (Selva Central) who were kidnapped [by Shining Path], and there's still no clarity over how many people were taken, or their identities. Some of them were subsequently 'rescued' by the army only to fall under suspicion of being terrorists. Many children and young people grew up far from their families, after being taken by Shining Path, and to date there is no clear recovery and rehabilitation strategy for them.

Eduardo: We have to be aware of the perils of fetishizing DNA, which is often presented as a 'technical solution to a technical problem'. Search is above all a social and political challenge, not just a technical one. Eduardo also questioned the conceding of sentencing benefits and early release to perpetrators, and the lack of information about the final destination of victims. What can we do about this?

Leonor: Perhaps the most emblematic country with ongoing recent cases is Mexico, which has a mixture of models in use, from direct search by relatives to the use of legal and political instruments. Colombia also has a range of developments going on... It's important to learn from what other countries are going through and doing. Another question and issue, relevant for both Mexico and Colombia, is how far the UN or anyone else has got in working out how to deal with situations where state involvement or responsibility is unclear.

Cromwell: Peru will need a very strong organisation to overcome vigorous resistance from perpetrators, of the sort we see when criminal investigations are prolonged eternally because the Armed Forces refuse to provide official information. The new law won't overcome those problems, they don't want the truth about their crimes to come out. The slow progress of sentences, and the possibility that Fujimori may get released, are partly down to relatives, we've allowed our efforts to get diluted.

Rainer: Peru has an official review of its Report to the Committee pending, and the issue of sentencing benefits definitely should be addressed in that. We have to bear in mind the distinction that's drawn in the Convention between enforced disappearance – which has state involvement – and other kinds of disappearance. We have to apply humanitarian principles to each type.

Ariel: The question of psychosocial support is rarely addressed. A search process begins with the initial disappearance of a person and potentially continues right through to a set of ossified remains discovered and returned. In Peru, relatives are often bereft of support: search, exhumation and identification can perpetuate pain rather than relieve it, if families aren't appropriately involved, consulted, and accompanied. When military officials refuse information, or give false information, they are actively committing the crime of enforced disappearance [as the ongoing denial of information by the state is a constitutive part of this complex crime].

Doris: State authorities need to be more present. Small gestures can make families feel less abandoned, and that state representatives share their pain and understand their need.

The panel drew to a close with thanks to the IDEHPUCP and all those present, especially those who had taken part in the whole day from the morning's Memory Route onwards.

Summary Event 3 – The Politics of Absence: Forensic, humanitarian and legal challenges in the recovery and identification of the disappeared

Cath Collins opened panel one with preliminary remarks anticipating some of the central preoccupations explored by the subsequent papers:

- The distinction between post-authoritarian and post-conflict settings, useful for understanding many other transitional justice dynamics and trajectories in Latin America
- In Southern Cone settings plus Brazil, disappearances are principally enforced disappearances (ie state perpetrated), carried out in encapsulated historical periods, and searches are today mainly judicial (ie take place in the context of criminal investigations). Relatives' associations in this subregion traditionally focused on mobilising against official impunity and campaigning for the return, alive, of their relatives (under variants of the motto or demand 'aparición con vida').
- In the post-conflict settings of El Salvador and Guatemala (and, incipiently, Colombia), plus the hybrid setting of Peru, a higher proportion of disappearances involved large scale rural massacres in peasant or indigenous communities. In some, notably Peru and Colombia, both enforced disappearance and non-state perpetrated disappearance occurred. This produced mass graves whose existence and sometimes even location is known (whereas in the Southern Cone, more disappearances were individual, and final destinations were completely unknowable for families).
- In post-conflict contexts more horizontal as well as vertical violence was exercised and victims and perpetrators continue to live alongside one another in neighbouring or even the same small communities. Perpetrators include local residents who were encouraged or obliged to become members of civil defence patrols or self-defence patrols, organised and equipped by regular state forces. In these settings, the desire for formal justice, while not completely absent, can be qualified or is sometimes seen as a remote prospect, or even a prospect that is likely to be hostile for families, communities or witnesses.
- Mexico and Spain offer examples of quite particular problems. In Spain a formal criminal justice response aimed at individual perpetrators seems almost anachronistic as regards mass killings - today characterised as enforced disappearance - took place during the Civil War period. The Spanish state has chosen not to engage with its responsibilities in justice or other areas, preferring to allow local or regional initiatives by relatives' associations to emerge, tolerating or legitimating even citizen-driven exhumations but refusing to actively provide state resources or support.
- Mexico has seen similar state disengagement and 'privatisation' of search and identification in the hands of relatives and NGOs, but for quite different reasons: 'citizen forensics', as it is called, has come about in the face of state responses that lack legitimacy and credibility, given a state that is an active, ongoing perpetrator or seen as impotent, indifferent, or collusive with significant levels of non-state perpetrated disappearance.

Threads running through all these experiences include the differing role of the state; the effect of different temporalities (past, recent and/or ongoing disappearances); the sources of doubt and certainty that exist and that are believed in each place, and the range of interest groups, actors and epistemic communities that are involved and are able to make their demands heard. Major questions that are raised include:

- Who 'owns' the disappeared? To whom do they belong? 'Patrimonialization' of the disappeared occurs, by local and international human rights communities; biological relatives; the scientific community; the state; national communities; age and political cohorts.
- Where and why does disappearance become an emblematic crime or issue? How and on what grounds is it differentiated from mass killings, or extrajudicial executions? What range of levels of certainty and uncertainty actually surround the universe of victims of disappearance in a particular place: is it still technically/ biologically possible or likely that survivors can be found or traced; is there tacit or explicit recognition, at least by some actors, that the search is for remains rather than living victims; does the centrality of disappearance make other grave violations invisible or lead to their being treated with less seriousness; is the visibility of disappearances also utilized by perpetrators of other types of violation to distract from their own crimes/ place the emphasis on the perfidiousness of the 'other'?

- How is disappearance treated judicially?
As (enforced) disappearance or kidnap; using international or domestic criminal code categories; differently when committed by nonstate actors; with what penalties; are statutes of limitation or amnesty admitted; do perpetrators utilize or try to utilize their knowledge of the whereabouts of victims to gain advantage; is the danger of creating or perpetuation a perverse incentive to commit disappearance rather than murder recognised and managed in truth and justice policy?
- When and on what grounds is a disappearance considered to have ended?
Legally, morally, psychologically... are victims who are found alive (especially appropriated children) still 'counted' among victims of disappearance; is information about the final destiny of a person considered sufficient, and believed, even if remains are not found or cannot be recovered; does the crime of denial of information continue to be committed even when victims are located through means other than state revelation?
- When do we consider that someone has been 'found'?
Is it enough to know in general terms what happened to them; must recovery and identification always be individual and individualising (eg separating commingled remains in mass graves); what does this mean for the treatment of the remains not so identified, or for fragmented remains? Must recovery be complete? On the basis of what proportion of remains can a victim be classed as found?
- How do relatives live the 'post-return' phase?
How necessary, how possible is it, to have to construct yet another identity and 'life project', having already seen one project truncated through disappearance of a loved one, and now potentially having to let go of the identity created around being the mother/ father/ partner/ child of a disappeared person? (eg the Chilean mother, a longtime member of the relatives' association, who declared herself at a loss the day after her son's funeral: 'Who am I now? I can't go back to the Association now I've found him')
- Is it true, and is it always true, that "we must find them"?
Why, for what, for whose benefit? Who is the "we" that is addressed? What specific harms are caused, in different belief systems, by (a) uncertainty (b) the lack of funeral rites? Are disappeared persons themselves conceived of as a potential source of disruption or even harm, moral hazard, to their families, and communities, whether political or geographic? Does such transformation of the absent victim into a source of pain represent a prolongation or accentuation of the destructive power of the perpetrator? Why and when should biological families be ceded exclusive moral or decisionmaking control over what should be done with, and in regard to, the disappeared? What happens when families disagree, or when their preferences conflict with the obligation to create an accurate truth record, or to prosecute grave mass crimes? What about the societal right to truth, or the obligations of states under international law?
- What type(s) of challenge does disappearance actually present?
Technical, informational, political, police/ investigative?
- What is the issue around state involvement?
Historical blame (direct perpetration, in the past); ongoing perpetration; real or perceived inaction, collusion, toleration, or the withholding of information; errors or incapacity; lack of 'civic confidence' in the state as an agent of justice or identification.
- Where does (a) authority (b) authoritativeness reside?
Who is believed, and on what grounds? What techniques are validated by the relevant anthropological/ archaeological/ forensic community (eg is validity considered to be assured through neutrality and distance, or through engagement and understanding?). What are the thresholds and techniques of identification that prevail? (DNA 99.99%, other: certainty,

probability, 'narrowing the margins of acceptable uncertainty'); should 'samples' that cannot presently be tested be retained indefinitely, anticipating future improvements in scientific technique, or returned for reburial; should samples or remains be retained for evidentiary purposes or returned to families

- What is the actual value of alternative 'bureaucracies of death', or identification practices? Do families eventually need states to recognise, acknowledge, validate such efforts for civic or criminal purposes? Does this call into question the wisdom of reliance on nonstate forensics even when their scientific credentials, and treatment of relatives, are clearly superior? (eg El Mozote).

Paradoxes that present themselves include:

- (1) The state is regarded with suspicion, an 'unreliable' producer or custodian of truth (Dorfman), yet is indispensable, as an object of claim making, the subject of valid proclamations; guarantor or validator of truths produced by others (eg often the only accepted certifier of death)
- (2) 'Families' are almost universally invoked, but not always believed (by science, by the courts). They are not always reliable guides or witnesses, may have contradictory positions or desires.
- (3) Uncertainty is not always resolved by search; its resolution may not be welcome, or sufficient. Judicial search can produce sentences without final destination or remains; humanitarian search can produce remains without full truth or justice; remains found may be only partial or fragmentary; finding survivors alive can produce family conflicts and breakdown; return can produce new ambivalence, including about relatives' identity and life goals; accompaniment of the 'post-return' phase has been largely absent

Adam Rosenblatt's paper looks into the meaning of the demand 'we want them back alive' (*aparicion con vida*) in two specific settings: Argentina (focused on Madres de la Plaza de Mayo) and Mexico (the Ayotzinapa case). What is the meaning of this counterfactual demand in contexts where families know that many of the disappeared are likely to have been killed?

Beyond their many differences, Mexico and Argentina share the importance of the role of expert forensic teams. Given that these teams are fundamentally dedicated to the investigation of deaths, their place in a context where return alive is demanded is uncomfortable. While Madres in Argentina campaigned for their relatives' return, US medic Clyde Snow and the recently-created Argentine Forensic Anthropology Team offered them assistance in the form of a search and identification plan modelling a 'forensic epistemic community' centred on families. The demand of return, alive, of survivors, has been a continual counterpart to the work of forensic teams: while in Argentina, Madres came to oppose exhumations, in Mexico, relatives have been a major support to the team, whose work has helped them create a counternarrative to state theories which lack evidentiary and scientific rigour.

The demand of return alive can appear to be a floating signifier, inexplicable, untethered from other concrete demands. Forensic scientists often involve themselves in human rights work seeking an antidote to the lies of violent regimes and official truth narratives. Their counter-narrative is based on the notion that bones and other evidence can speak. The demand of return alive is, however, another counter-narrative: one that can contradict both state and scientific paradigms, since it is not based on established certainties.

Forensic investigation needs to understand not only the 'politics of cadavers', but also this denial of death, in which bodies are reimagined as alive. Understanding this points us to issues that are central to humanitarianism, such as the history of the dominance of Western thinking and forms. The demand of return alive is a way in which relatives can send signals to scientific, legal and political authorities who all seem to be more interested in death than life.

This is a demand whose force rests on the hearer. More than actually expecting or demanding the return, alive, of loved ones, it may seek to question authorities and in so doing, reject whatever version of historical truth the state is seeking to offer. This demand, in other words, does not speak in the language of science nor does it pretend to install itself as the voice of truth. Rather, it seeks to point to the illegitimacy of state versions and/or the state's inability to do what its obligations require. It is a demand that cannot even be assimilated to the 'right to truth', as it considers that it is not really possible to obtain truth from the state.

Return alive is a demand that calls for a radical revision of notions of what is at stake in the struggle over enforced disappearance. It contains a kernel of something that should be present anywhere the state has committed enforced disappearances: a critical attitude towards forms of government, and a call for transformation that does not proceed from trauma or irrationality but rather from the awareness of the state's inescapable illegitimacy.

Paloma Aguilar's paper reviews the first cycle of exhumations that took place in Spain at the beginning of political transition. In this little-known phase, families of Republicans shot by *Franquista* forces exhumed and re-interred their loved ones according to their own levels of knowledge and cultural practices. This took place around the country, but particularly in three regions: Extremadura, La Navarra, and La Rioja. The first cycle, between 1975 and 1999, is interesting in raising questions about the relative proportions of silence and forgetting in the Spanish transition. Local dynamics seem to have been quite different from national ones: scholars of memory politics and democratisation should pay more attention to often neglected subnational dynamics. The high point of the cycle was between 1978 and 1980, with a clear peak in 1979. It seems likely that the 1981 coup attempt had a dissuasive effect in some regions: for whatever reason, the rhythm of these interventions declined after 1980.

The protagonists of these interventions were people who had very limited organisational resources, reminiscent of the model of 'family-based social activism' explored by Verberg (2006) and others, although not completely fitting this model. These were citizen initiatives without judicial or institutional support. In the face of an inoperative state, families sought support from their peers and in some cases from receptive local mayors and Catholic clergy. What relatives wanted at that time was to restore some dignity to victims who had been 'thrown like dogs' into unmarked graves; typically through a commemorative ceremony comprising a religious ceremony and a funeral cortege to the cemetery, followed by a respectful burial. This also made the remains visible, giving the lie to the dictatorship's refusal to acknowledge its crimes. These could be classed as humanitarian exhumations, which had some truth-producing aim and function but did not aim to trigger prosecution of perpetrators. Some of were done with the assistance of agricultural workers, who used their tools and knowhow to excavate clandestine graves. Although exhumations were sometimes clandestine and illegal, permission was often sought and granted. This type of exhumation did not draw on the individualising logic now prevalent after the so-called 'forensic turn': reburials were usually collective, in the belief that those who had been killed together, should be buried together. This approach also facilitated the carrying out of community commemorations and paying of respects.

Relatives were usually the prime movers, but strategic allies included, in Navarro and La Rioja, a group of progressive parish priests, often themselves descendants of victims. In Extremadura, the main allies were left-wing mayors and local councillors, again often themselves related to victims. Reburials often became veritable political acts, with visible presence of political and party insignia. New memory sites were created: pantheons in cemeteries, with inscriptions paying tribute to the victims of the Franco regime. Inherited official symbols from the period were eliminated. Families who did not encounter such alliances had to face daunting bureaucratic procedures, and far right threats, alone, which explains why many did not dare take action until many years later.

Spain's second cycle of exhumations, which began in 2000, is a clear contrast, firstly because forensic specialists were involved to give scientific legitimacy, and second because search and identification was carried out within the framing of international human rights discourse. When the history of the Spanish transition is told, these local experiences are often overlooked. But they are extremely important for understanding the possibilities for transformation and continuing limitations that persist side by side in post-authoritarian settings.

Silvia Dutrenit proposed a somewhat daring comparison of how Mexico and Uruguay have dealt with enforced disappearances that took place during the Cold War: in particular, of the strategies adopted by a range of actors. While recent disappearances in Mexico are not directly considered, the history of previous treatment of disappearance is clearly relevant to what is happening today. During the Cold War, Mexico and Uruguay suffered similar kinds of state-sponsored repression including torture, disappearance, execution, 'death flights' and clandestine prisons. There were differences of scale, and in the types of groups and territory affected, but there are also points of contact. One of these has to do with the levels of expectation produced among human rights organisations by changes in official discourse, signalling various levels of recognition of state responsibility. In spite of this, both countries are

far from achieving a 'structural' truth narrative about past human rights violations. Inter-American Court verdicts against each country, for example, have gone largely unattended (despite some degree of attention to the reparation measures demanded in each sentence: respectively, *Radilla Pacheco v. Mexico*, 2009 and *Gelman v. Uruguay*, 2011). Compliance has been affected by a range of interest groups, negotiations, short and long term political calculations, and complicated institutional understandings, which have largely negatively affected the truth-producing demand associated with each verdict.

Forensic teams and groups have played a role here. In Uruguay, they were important in the early years but have seen the space for their work limited in recent years, by politicisation of the administrative body that can allow or obstruct their involvement. In Mexico, they have been kept at the margin by state instances. Archaeology and anthropology have supported truth and justice efforts in Uruguay, despite perpetrator efforts to hide the traces of their crimes including, it is alleged, by removal and secondary reburial of bodies of the disappeared (in a secret military operation known as 'Operation Zanahoria'). In Mexico, where independent forensic teams have faced greater difficulties, this 'double disappearance' also exists in the form of 'death flights'. In both places, the challenges presented by these situations add to the limited reach of independent nonstate forensic groups and their precariousness. In such circumstances, the resort to outside (international) teams has sometimes been seen as a possible solution where state actions have no credibility. Dependence on outside expertise can nonetheless be to the continued detriment of the strengthening of national capacity

In comments to these papers, **Ariel Dulitzky** observed a fundamental difference in how we understand the terms disappearance and enforced disappearance, and whether, when we use them, we are actually referring to the same phenomena. In Spain, for example, we are talking about victims of mass execution, whose fate and even resting place is known, but whose remains have not been recovered and individually identified. In Chile, there is a 'crossover' category of people whose execution is accepted even though their remains were never returned. In Peru, most identifications carried out to date by the state, are actually of victims of extrajudicial execution. What all of this tells us is that certain narratives have been constructed around these issues, that don't respond to the applicable legal categories. We also have to take into account how the passage of time changes strategies of struggle and brings other actors into the arena. Other fundamental issues affecting organisation and campaigning by relatives need to be thought about carefully, including something as basic as unpicking what we mean by the 'family', which most agree is the most common origin of opposition to and mobilisation around disappearance. The international conventions tend to consider anyone who has demonstrably been harmed by enforced disappearance as a victim, in which case we need to think about how to widen the circle beyond 'the family' or 'family members' when we think about who can legitimately demand the truth, justice and reparation. Entire communities and nations suffer the social, political and organisational impact of enforced disappearance. So for example in Chile the political organisation MAPU, influential in the 1960s and 1970s, was hugely affected by state repression. In Mexico, one would have to pay attention to what remains of the Atoyac movement, or to those who have inherited the mantle of the political demands of Guerrero.

Another issue we have to think closely about is the state in all its particularities. What distinguishes enforced disappearance from other classes of violation is not that the state is responsible: this is a defining characteristic of all types of human rights violations. Rather, the edifice of state silence, active coverup, and lies built around disappearance are the key. At the same time, structures and entities belonging to the same state are charged with searching for the disappeared, which helps explain not only the inherent contradictions between state coverup and real or genuine state search efforts, but also the range of demands that relatives and other civil society organisations make. The state has been key in enforced disappearances in Latin America, something that movements in the Southern Cone, especially Argentina and Chile, have been clear in denouncing. But in newer contexts types of repression, and other sources of violence, have to be taken into account: for instance, disappearances perpetrated by organised criminal groups in Mexico. We need to look more closely at localised forms of disappearance and how they are conditioned by national and even subnational situations.

The Catholic Church emerges as a key actor, including its part in the spiritual and religious dimensions of search and demands in particular places. Beyond the fact that, as we have heard for Spain, certain Church figures can be important in assisting or impeding relatives in their struggles, it is important to explore the relationship between law, religion, and science as this crossover is where many of the relationships that sustain the struggle against enforced disappearance are forged (such as when the

insistence on the need to recover bodies in order to bury the dead according to the dictates of religious belief). We should also bear in mind the importance of the Inter-American Human Rights System (Commission and Court), even though it has not advanced as much as perhaps it should in this issue of search for the disappeared: there is a juridical and jurisprudential underdevelopment that should be addressed.

Q&A Panel 1:

Carolina Robledo asks Adam Rosenblatt how considering cultural differences can help us understand the demand of 'return alive' coming from the families of the 43 students disappeared in Ayotzinapa in 2014, above all so that we can better appreciate how demands come about because of conditions in a particular place and time. The cultural component that is perhaps most relevant in that case is the recognition that most of the parents affected by this incident are indigenous peasant residents of one of the poorest, most excluded regions of Mexico, also one of the most affected by violence. How does the demand of return alive reflect this particular reality, and what can it tell us about the cosmovisions of those who make the demand? How do we understand the fact that the same relatives have themselves gone out in search of mass graves?

Adam: The incorporation of that demand into the families' repertoire in part reflects a transnational exchange between those demands and particular life experiences in time. In Mexico that demand has at least two sources of origin: one, a historical one, which can be traced back to the 1960s disappearances that Silvia has reminded us of; and another, more transnational, origin in the exchange with other situations in the region, both historical and contemporaneous.

Carmen Rosa Cardozo, formerly of the Peruvian forensic anthropology team, EPAF, commented that Peruvian law and the Peruvian state do not allow EPAF to carry out independent searches. So EPAF is forced to assist exhumation processes carried out by the state. The advantage is that there is a broader transitional justice trajectory that this process is built upon, so there are some minimal bases for constructing judicial responses to past crimes, unlike in Mexico. The most important thing about this process is to recover the dignity of people who were buried in a clandestine fashion, giving them a burial that accords with the traditions and needs of families.

Cath Collins questions the mention of human dignity that has recurred throughout the conversation, asking whether we are thinking of restoring dignity to the dead/ disappeared, and/or to their living relatives. A social construction that places the dignity of the dead in a privileged place can also 'privatise' the recovery process, making it something that should happen only if, and in the way and to the extent, that families wish it. This seems to suggest that 'dignity' is (re)defined as a quality that is largely to be found in or confined to the domestic or intimate sphere. The tendency to use the immediate family circle as a trump card to resolve clashes or tensions between legal, political and forensic logics can be too simplistic and even counterproductive. We should discuss the counterproductive aspects of this relegation of the issue to a purportedly private sphere.

Paloma Aguilar picks up Ariel's question about the applicability of the term enforced disappearance to the cases of those who were shot en masse during and after the Spanish civil war. She acknowledges that she shares doubts on the matter, which has also given rise to debates among Spanish jurists including Javier Chinchón and Lydia Vicente, from Rights International Spain, on the one hand, and Alicia Gil and other experts in international criminal law, on the other. The former have interpreted the notion expansively to argue that while remains are still not located and perpetrators do not reveal what they did, victims are still 'disappeared' and the crime of enforced disappearance is still being committed. In this interpretation, states still have an obligation to search for and return remains, and individual perpetrators continue to have ongoing criminal responsibility. Gil and others however consider that the crime is in essence to do with a deprivation of liberty that places a (live) person at risk of torture or death because they are outside the protection of the law. For these experts, though the crime is ongoing while the detention persists, it does not continue beyond that, eg until remains are found. Rather, they consider that the crime becomes one of murder, with the possible aggravating factor of hiding the body. Given that in the Spanish case it is known that many victims were illegally detained by state forces and subsequently shot, international criminal law experts tend at most to consider their situation as extrajudicial execution.

This is the interpretation that was favoured by the Supreme Court in the case over the actions of judge Baltasar Garzon. The Court recognised that there was illegal detention, but held that declaring that crime to be ongoing, or considering that the relevant statute of limitations has still not expired, would require supposing that victims are still being held in detention, or that they were in detention up until the point, 20 years ago, when it is generally accepted that many were shot, even though remains have not been found.

Spanish memory associations, in particular the ARMH (Asociación para la Recuperación de la Memoria Histórica), have argued that the situation of Spanish victims of execution whose whereabouts are not known can be encapsulated in the human rights law framing surrounding disappearance. As a result, to date the UN has acknowledged three cases of enforced disappearance in Spain (it should be noted that the low level of the figure responds in part to the fact that the UN has declined to pronounce on situations occurring before the UN itself came into existence). This has given the Spanish situation an international visibility that it did not previously enjoy, and today, Spanish memory groups, human rights organisations, and media sources have taken to describing Spain as the country with the world's second highest numbers of victims of enforced disappearance after Cambodia, citing a figure of around 114,000. On the other hand, respected historian of the period Julian Casanova is insistent that many victims are recognised as deceased in official records of the time, albeit with many inaccuracies and omissions as to their real cause of death. He considers that no more than 30,000 victims are to date unregistered.

Regarding the mention of religion, **Silvia Dutrenit** mentioned that even in Uruguay, a highly secular society by Latin American standards, there is a particular and strong connection between the left and progressive religion in relation to disappearance. Paloma Aguilar adds that in Spain it was usually women who took the initiative in the first phase of exhumations, and that her interviews with these protagonists clearly shows that they combine left wing views with strong religious belief.

Panel 2 explores the interplay between legal, scientific and social logics in one single national context (Chile), bringing together interdisciplinary views from jurists, a journalist, a historian of science, and a forensic geneticist all of whom have direct and longstanding involvement with the Chilean setting.

Eden Medina asked how a history of science approach can help us understand how certain forms and sources of knowledge acquire legitimacy at particular times. She proceeded by analysing the case of Patio 29, as portrayed in the documentary film 'Fernando ha Vuelto', Silvio Caiozzi, 1998. The film depicts two female forensic professionals, working for the state Medical Legal Service, SML, whose job involves identification of remains belonging to recovered victims of the Pinochet-era dictatorship (1973-1990). The professionals demonstrate and explain the techniques used in a recently concluded case in which the remains of a male victim, recovered from the Patio 29 section of the capital's General Cemetery in the early 1990s, is apparently identified as belonging to 27-year-old Fernando Olivares Mori, disappeared since 5 October 1973. After four years of work, the presumed identity is established and Fernando's widow is notified. The first technique described is craniofacial superimposition, a technique whose form of operation allows the viewer the sensation of observing the visible unfolding of the truth. While we now know that dozens of the remains from Patio 29 identified using this and similar non-DNA techniques were inaccurate or unreliable, at the time the film was made, there was no way of anticipating that the results whose delivery it portrays would later be disproved.

The paper discussed here explores the relationship between scientific technology and scientific error surrounding enforced disappearance, focusing on (i) how science and technology interact in the relationships between the various actors; (ii) the impact of socio-political context on the creation of databases; (iii) scientific decisionmaking, (iv) how scientific practices travel from one place to another, via transnational networks of authority.

Understanding the context of the SML's work requires appreciating that many bodies of people executed, and subsequently categorised as disappeared, were taken to the SML's central morgue at the time of the initial crime. Some could not be identified due to the condition of the bodies, and many were buried in haste after incomplete or inadequate autopsies, whether due to direct political pressure or the prevailing atmosphere. The result was mass interment of remains in the General Cemetery, often in

unmarked or shared graves. Some were subsequently disturbed, and the remains removed and reburied, by the armed forces seeking to hide the traces of their crimes.

The first existing dataset therefore comes from reports of autopsies carried out in 1973, only some of which contain information such as fingerprints, injuries, or cause of death. Few contained the names of victims and the destination of remains. The second dataset about Patio 29 comes from exhumation work done in 1991 over two weeks by a small group of anthropologists, the Grupo de Antropología Forense, GAF. This non-state group of young professionals worked in collaboration with the SML, extracting basic information from study of skeletised remains. The GAF later became completely independent from the SML [the GAF no longer exists].

In 1995, the Chilean government formed a Forensic Identification Unit, UIF, within the existing SML. This team, which still exists today in a slightly different configuration, extracted information from bones, such as age, stature, sex, signs of past illness, fractures, and analysis of dentition. This work was done within the limitations of forensic capacity at the time, and was also made more difficult by the mixing and disarticulation of remains occasioned by the initial irregular inhumations and exhumations.

The set of information provided by exhumations, analysis of bones, and autopsies had to be cross referenced against anthropomorphic data collected from relatives from interviews, photographs, X-rays, dental records, and medical histories. The connections between these latter kinds of information and the osteology and pathology records can be difficult to make because it depends in large measure on the quality and quantity of information available. These difficulties led scientists to decide to use craniofacial superimposition, a technique whose use in mainstream criminology has been widely criticised, but which promised to offer a direct connection between remains recovered by exhumation and photographs supplied by relatives. The decision to adopt the technique within the SML can be traced through the professional, training, and personal history of Patricia Hernández, one of the two Chilean forensic professionals portrayed in the film. This case in particular, and the history of adoption of identification techniques and ideas in other spaces including museums and university centres illustrates the existence of transnational networks, which diffuse certain scientific practices, positioning them as legitimated knowledge, at different points in time.

Some of the results of craniofacial identifications carried out by the Chilean SML were subsequently sent to the University of Glasgow, UK for independent confirmation. The results, which called some of the initial results into question, were not acted upon by the relevant Chilean authorities. Alongside the UK and Chile, China also features in this transnational history of scientific expertise, an extremely fluid and dynamic field where socio-political contexts clearly shape the development of techniques, and their acceptance as legitimate.

The case of Patio 29 reveals the problematic nature of scientific and judicial investigations [the SML's results are always notified first to a judge, who in the Chilean legal system is the only authority that can officially declare identification. In other episodes of subsequently retracted identification, pressure placed by relatives, political authorities and human rights lawyers on judges who were reluctant to definitively identify on the basis of extant SML reports played a role. Editor's note]. The promise of truth is inextricable from the risk of error. The faith that we deposit in the power of science and technology to uncover truths deliberately falsified, distorted or hidden by repressive regimes has the power in itself to change lives and the course of historical processes. States and civil society organisations each mobilise science, technology, and expertise as an integral part of the struggle for historical memory, justice, and reparation. Study of the uses of technology in the field of human rights throw light on these disputes and the complex forms in which we seek evidence of mass crimes.

Cristián Orrego discussed new technologies in search and identification, which enrich but also complicate the relationships between science and the other social, legal, political, and cultural universes which surround enforced disappearance. The deployment of one particular technology rather than another has immediate consequences in the identification that can be done, the lives of those who are searching, judicial system decisions, and reparations. Two fields of science where major developments have occurred in recent years are forensic genetics and satellite imaging. However, these technologies are not being deployed in the search for the disappeared to the extent that we might wish, particularly in Latin America, where an enormous number of mass graves and individual remains lie undiscovered. In the field of genetics, one immediate and urgent need is to incorporate the DNA profiles of known perpetrators alongside those of relatives of victims. Another is to widen DNA databases to transnational reach, to account for issues such as the disappearance of migrants. Genetic studies advance rapidly, making it

possible to recover information from ever smaller fragments of biological material. The main stumbling block with remains today is not that the DNA has been destroyed but that it is not recoverable, because the available fragments fall below the current minimum size threshold below which current techniques are able to identify.

Next Generation Sequencing, NGS, also known as Massive Parallel Sequencing, is one of the most relevant advances in this field and is already being used for forensic purposes. NGS allows typing of smaller fragments than current techniques can deal with. Another notable development, being overseen by the Max Planck Institute, allows genetic information to be recovered not only from fragmentary human remains deposited in an archaeological site, but also from the traces left by that fragment in the earth during its decomposition process. While this offers infinite possibilities for identification, it also complicates the response to a question that has already been raised this morning, about identifying and returning remains on the basis of fragments: we are moving from working with fragmented remains to working with almost virtual materials of identification. Of course this offers great possibilities for overcoming repressive coverup techniques that sought to destroy traces through subsequent removal of remains, such as the 'Operation Retiro de Televisores' in Chile: this new technology can map and study sites that were at one time used as mass graves, even if these were later emptied. Massive parallel sequencing can recover sequences belonging to human beings from earth that may have been used for clandestine burial, and can relate it to genetic information from relatives of detainees or disappeared persons. Another extremely important fact is that the technique can identify the presence of traces of perpetrators who took part in the burials, and this is why it is important to include genetic information from perpetrators in DNA registers, in order to track their involvement in different crimes.

In relation to satellite imaging, the anthropologist Sarah Parcak has specialised in archaeology from space, using information from satellites.

Daniela Accatino presented on how judges and forensic experts interact in the construction of legal truths/ juridical certainties around enforced disappearance and extrajudicial execution. What we see is that a certain view of the work of forensic experts has become prevalent, one which counterposes two goals that can be, but are not always, in tension: judicial goals (criminal prosecution), and humanitarian goals (identification). Identification is an institutional action, whose administrative dimension has been neglected in comparison to its forensic and social aspects. We tend to forget that the restitution of identity to remains, or to survivors, is done by authorities – by a judge, in the case of Chile – and is above all an act of law, either because discoveries are made in the context of a criminal investigation, or because remains are dealt with within a process that may be criminal or administrative, but is formally overseen by a judge. Identification, as an institutional act, is based on evidence. When a forensic expert presents proof of identification, they are producing evidence; which is therefore subject to prevailing legal system standards and scrutiny as to its evidentiary validity and viability.

To illustrate this point we can reconstruct the role of judges in the history of errors and rectification of identification of human remains in the Patio 29 case [see above, paper by Eden Medina]. The first identifications made were rejected by the presiding judge: two months after receiving the report from the state forensic service (SML) that asserted positive identification, the judge had not formally made the identifications. Pamela Pereira, a human rights lawyer [acting in the case], and herself the daughter of a victim who it was suspected could be amongst those buried in the Patio, made a formal request for the issue to be expedited. The initial resolution refused the request, adducing remaining doubt. Pereira however successfully appealed, forcing the judge to proceed with the identification [which later proved unreliable]. The incident shows how hierarchical authority, in this case of the Court of Appeal, was invoked to force identification; while on the other hand a deliberative space, under the remit of the investigating magistrate, submits scientific results to a process of scrutiny according to rules of evidence setting out what level of force a putative proof must have in order for the judge to be able to make a final decision on its basis.

The subsequent evolution of Patio 29 is interesting for what it reveals about this institutional deliberative space in which standards of proof are central. In this kind of space the judge has the ability to rule on the reliability of forensic evidence, deciding whether it is sufficiently grounded. But this is complex when the judge's epistemic competence is in doubt, and he or she is in effect left in a situation of dependence on the expertise of the forensic agent. A first challenge is in the dialogue between the judge and forensic experts. After Patio 29, changes can be seen, including the introduction of the use of panels of experts, and the creation of forums in which judges participate alongside lawyers, human rights

defenders, and forensic experts, promoting ongoing dialogue between science and law. Another significant change has been in the channels of communication, with dialogue leading to the reaching of agreements about identification, which are then expressed in the final technical report. This opens the possibility that what was previously the judge's oversight prerogative can become a space of deliberation. One other learning point from Patio 29 has to do with the way identifications are being carried out. The SML only announces on its website identifications which have been done or reconfirmed using genetic techniques with a probability threshold of 99.9% or higher, and judicial resolutions [in cases involving disappeared persons] that are available for scrutiny make exclusive mention of this genetic proof as the standard used for identification. What happens in those cases where this standard is not met? Is the uncertainty affecting relatives made worse? What margin of error is acceptable? At the same time as celebrating advances in genetic sciences, we need to also acknowledge their limits.

John Dinges presented the case of Charles Horman, a US citizen disappeared in Chile in the immediate aftermath of the coup, whose story was told in the 1982 film 'Missing'. The resulting criminal case is an example of the dilemmas that arise when differing and even diametrically opposed truths are subscribed to by relatives, judges, and other actors, including journalists, who take part in producing information. John has carried out his own 'investigation of the investigation' into the enforced disappearance of Charles Horman: the corresponding criminal investigation culminated in 2016, after running for 15 years. The objective is to establish to what extent judicial truth was produced about the role of US actors in the disappearance and subsequent death of this young US citizen, and on what grounds, given that his family was insistent from the beginning that the US government had some level of direct responsibility. In the aforementioned film, for example, Jack Lemmon, playing Horman's father, says: "I do not think the military would dare to do that unless an American official co-signed a kill order".

John's methodology was to verify available data, applying journalistic best practice techniques which seek to bring to light issues that may be hidden beneath what to the general observer would appear to be "truths". The main sources used were official case documents, which revealed a considerable number of errors and falsifications within the Horman case. Two Chilean judges were responsible for the case at different points over the course of over 15 years, interviewing hundreds of witnesses. In January 2015, judge Jorge Zepeda Arancibia published a 300-page written verdict, in which retired Chilean army colonel Pedro Espinoza was sentenced to 15 years' imprisonment for his command responsibility in the killing of Charles Horman. Army intelligence operative Rafael González was sentenced to parole (reduced from three years) as an accomplice. The case's initial findings were widely publicised in the Chilean and international press. The court seemed to confirm some of the more spectacular narrative presented in the film 'Missing', by laying charges against US Navy captain Ray Davis, commander of a military delegation attached to the US Embassy in Chile at the time of the deaths of Horman and another young US citizen, Frank Teruggi.

In the film, Davis is represented by a character known as 'Captain Tower', who harshly announces to Horman senior: 'I don't know what happened to your son, Ed, but I gather he was a bit of a snoop; went poking his nose where it didn't belong: if you play with fire, you get burned'. However, John Dinges's findings suggest that the judge's conclusions about the role of the US are not based on the evidence, meaning that the Horman-Teruggi case verdict ratified by the Chilean Supreme Court is not as rigorous as legal proof ought to be. John's examination of specific declarations cited in the verdict as established truths, subjected these to tests of common sense and exactitude such as a reasonable person would use in everyday life. The study was limited to those aspects of the verdict that related to allegations about the role of US personnel. The Chilean truth commission came to the conclusion that Charles Horman and Frank Teruggi were detained by military or uniformed police agents, and extrajudicially executed while they were in the custody of state agents. Dinges's investigation affirms the Truth Commission's findings, but questions the Court's further assertion that the Chilean agents acted on information provided by United States intelligence and military personnel, and that those US agents knew and approved of the decision to kill Horman and Teruggi. Dinges set out to identify the evidence provided by the court to support those charges. He found that the evidence was either totally absent or was defective or misconstrued.

One example among many is the following:

The verdict makes reference to the existence of a US spying programme which had supposedly been watching Horman and Teruggi for months; and claims the US embassy in Chile knew about their detention on 17 September, the same day it occurred, but took no action. However the relevant US embassy cable, cited as proof of this knowledge, was sent a week later, on 25 September, which directly contradicts and undermines the Court's assertion. The cable itself makes reference to a consular official enquiring at the National Stadium [where Horman and Teruggi were detained] on 19 September, which again shows that the cable must have been drafted some days after Horman's arrest. The court nonetheless used the document in its verdict as proof that the US Embassy supposedly knew immediately about the detentions. Dinges demonstrates that the judge's conclusions about US involvement bear strong resemblance to the version presented in 'Missing', which is not designed to represent judicial truth, but is based on the impassioned denunciations made by Horman's aggrieved father, who is insistent that the US government must have known and approved of what was done to his son.

The Chilean courts made enormous efforts, over the course of a 15-year investigation of the case. Hundreds of person hours were invested, and witnesses were brought from the US at Chilean public expense. Nonetheless it appears that there was no systematic attempt to unify threads into a coherent argument about the probability of military collaboration between Chile and the US around the crime. Defective or incomplete judicial work of this sort is socially costly, as it distorts the facts. The verdict in this case does not reach the 'beyond reasonable doubt' standard that should obtain in all criminal trials. The careless nature of the judicial investigation has been counterproductive: the Court's focus on US participation in repression displaced other potentially more fruitful avenues of investigation. In this sense the course taken by the case is doubly frustrating: the accusations against US actors are not proven, and the opportunity to produce new information about the guilt of Chilean actors, and their motives for the only two killings of US citizens that took place in the immediate aftermath of the coup, was missed.

Societies have the right to demand that judicial sentences are truthful, since the judicial truth that they produce is treated as speaking for society. The cost of cases with so many errors include loss of credibility for the court system. If the courts lie, who can we trust? If a case that was made the object of 15 years of careful investigation is not solid, what does that say about other cases? The likelihood of reaching the truth in other investigations has been weakened.

Rodrigo Lledó, former legal director of the Chilean state Human Rights Programme that today pushes forward criminal prosecutions in dictatorship-era human rights cases, presented part of a larger research project into evidentiary standards in final verdicts in these cases, which is being carried out at the Universidad Austral de Chile under the direction of Daniela Accatino. The project looks at the evidentiary standards that the courts are applying. This presentation focuses on the success or otherwise of these criminal investigations in generating finds of the remains of the disappeared.

The total number of officially (state) recognised victims of enforced disappearance that the project works with is 1,161 individuals, of whom the remains of 291 have been identified, since the end of the dictatorship, using a variety of techniques. On this basis we might say that the current judicial mode of investigation is 25% effective as a method of finding and identifying victims of disappearance.¹⁰ The project whose interim results are discussed here has so far closely studied the following cases for disappearance (denominated, charged and sentenced as kidnap):

- Plan Condor: with five victims found
- The Paine case
- The 'case of the five': an investigation into the last-known cases of enforced disappearance to be committed before the end of the dictatorship, of five left-wing armed opposition activists, in 1987.

¹⁰ Editor's notes: officially-recognised figures have varied slightly over the years, with 30 cases added and around a dozen removed from official lists since the mid-1990s; and it is clear from forensic work that a number of victims are still-unrecognised. The SML website gives a slightly lower total of individuals identified, because since 2006 they only include in that total, those who have been identified using DNA techniques. Although Chile's current mode of search is predominantly judicial, in previous times (1990-1998) it has been administrative. It could also be argued that judicial activity is not primarily designed to locate and identify, but to establish criminal responsibility of perpetrators.

Cases still under active study include the clandestine detention centre ‘Londres 38’, where cases have been concluded, with sentences, for kidnap and relatives have subsequently lodged new criminal complaints for illegal burial, hoping to stimulate renewed judicial action this time focused on search and recovery. Project interviews with key actors have included the Supreme Court judge with responsibility for human rights cases, and the head of the special forensic investigation and identification unit of the SML.¹¹

Chilean dictatorship-era repression can be divided into three phases in terms of the prevalence of disappearance and the victim profile. The first is 1973, where incidence was highest and victims of execution, as well as disappearance, were thrown into rivers, abandoned in the street, buried in clandestine graves etc. The following three years, 1974 to 1977, saw more selectivity where disappearance was individually targeted and state agents were clandestine and in civilian clothes. The final period, from 1978, was the era of orchestrated coverups where disappearances happened in public but official versions, backed up by tame press and television, blamed the victims. In 1989 and 1990, after democratic elections, Pinochet began to withdraw from the de facto presidency but retained a presence in public life: as commander in chief of the army and later, from 1998, as an honorary senator. However by 1998 criminal cases against former regime figures had got under way at the insistence of relatives and pro bono human rights lawyers. It was not until 2009 that the state Human Rights Programme [a truth commission followup body that had been in operation since 1996, and had begun to involve itself in a secondary capacity with privately-driven cases after 1998] acquired a legal mandate allowing it to proactively create a strategy of initiating case by case prosecution.

Today, the majority of criminal cases over disappearance/ kidnap have concluded or are close to conclusion. Most of the sentences handed down to date have been against the higher echelons of dictatorship-era repressive state security apparatuses. But even where direct as well as intellectual authors have been found guilty, the question of where victims’ remains are, has not necessarily been resolved. Bodies are often not found in the course of the investigation, nor do many of the cases continue the search for remains once they have successfully established criminal responsibilities and sentences for kidnap. Accordingly we suspect that the case universe overall will demonstrate relatively low levels of discoveries of remains as a proportion of victims involved. The UN Working Group on Enforced and Involuntary Disappearances was invited by the Chilean state to carry out a mission to Chile in 2012. Its report, published in 2013, recommends the introduction of a national search plan. This is a call that has long been made at national level by Chile’s main national relatives association for family members of the disappeared, the AFDD, and is shared by many individual families who have launched cases, given that despite the present active case universe,¹² no new finds of remains have come about in over a decade (since 2006).

Questions that arise include why some cases have produced finds of remains, while others not; and what the objectives of criminal investigations have been or should be: search for victims? Criminal prosecution of immediate perpetrators? Both? What information exists or is turned up in the investigative process that could assist searches? Typically, much more information is collected than is strictly necessary for determining the criminal responsibility of individuals: this information could provide signposts for positive searches, whether in the form of criminal investigations or through some other channel.

Cases have led to the discovery of:

- i) the existence of established secret burial sites, which were re-used several times for the burial of remains from different incidents and episodes
- ii) traces of secondary removal and reburial, known as ‘remoción’, most systematically and notoriously in the coordinated clandestine military operation codenamed ‘Retiro de Televisores’ of 1978, in which the dictatorship excavated existing hidden burial sites and removed the remains buried there to unknown secondary locations, effecting a second disappearance.

¹¹ Editor’s note: Chile’s legal system for investigating dictatorship-era human rights violations is judge-driven and inquisitorial. The public prosecutor’s office (Ministerio Público) does exist, but does not act in these cases.

¹² Just over 1,300 criminal investigations were ongoing as of September 2017, with 300 cases at some stage of completion (with appeals pending) Around 1,000 of the ongoing cases involved either disappearance or execution, or both. Editor’s note.

- iii) the existence of a clandestine ‘extermination centre’ – distinguished from the previously-known clandestine detention centre circuit by the complete absence of known survivors – which functioned in Santiago until, it is now thought, as late as 1987.
- iv) a number of disappeared persons whose fate can be established but whose remains will probably never be recovered, since they were thrown into the sea by the perpetrators.

Factors that have impeded the tracing of disappeared persons include:

- i) the ‘Retiro de Televisores’ operation mentioned above, which means either remains are not found at all, or are only fragments, left behind in primary burial sites
- ii) the Armed Forces refusing information or giving false information
- iii) lack of rigour in the conduction of some investigations

Factors that have assisted:

- i) thorough preliminary investigation before sites are intervened or excavated
- ii) the recovery of information from witnesses, especially the military, ie perpetrators. In this aspect there is a difficult conversation, still waiting to be had, about incentives that could or should be offered to military figures to obtain collaboration with investigations
- iii) coordination between institutions is a key figure. This is not only about collaboration between judges, but also involves detectives, the SML, case lawyers, human rights organisations, and, of course, relatives.

Ariel Dulitzky, commenting on these presentations, observed that it is easy to become dispirited when working in and thinking about enforced disappearance and facing the complexities of the harm it causes, leading us to feel that we have no certainty about anything. Each of these presenters mentioned different kinds and sources of certainty. We see, for example, that judicial certainties can differ from scientific ones; or as science evolves, what passed for certainty in a previous era may be placed into question or even plunged into crisis by new paradigm shifts. Journalism is another field or source where knowledge and doubt can both be produced. It becomes increasingly important therefore to ask what we mean by, and can do about, relatives’ and societies’ right to truth, and where families’ own assertions of certainty fit. We saw for example how the family’s version, portrayed in the film ‘Missing’, was based on a *sui generis* theory: families can decide not to believe any of the other scientific, judicial, social or journalistic truths that come to light about their case.

In contrast with panel one, where the positive aspects of the role of families as a locus of political agency was emphasised, in this panel we see that the relationship of families to science, and to the judicial system, is not uncomplicated. In the case of Patio 29 we saw how pressure from at least some relatives forced a judicial decision leading to perhaps premature identification. Where do families stand in relation to science, and in decisionmaking about exhumations? Which families should be listened to about exhumations: (only) those who it is supposed may be related to the people whose remains are likely to be recovered, or all those who are yet to find someone? What if the two groups, or indeed any two families, diametrically disagree? As for example in the Algodonera case in Ciudad Juarez, Mexico, where one family opposed an exhumation, on the assumption that their daughter was buried in a place that they therefore did not want disturbed; whereas other families did want the exhumation to go ahead in the belief that the remains of their own loved ones might be found.

Q&A Panel 2:

Rodrigo Lledó was asked about how information can be obtained from the armed forces. Is it going to be necessary to wait for generational replacement, and an accompanying cultural change?

Rodrigo observed that before any career soldier was persuaded to talk, some conscripts had already done so. These people, who were forced to serve in the military without necessarily being invested in it, may have genuinely been forced to witness or take part in atrocities, or may have observed secret reburials. Some ex conscript groups consider themselves victims of the dictatorship. It could be possible [and in fact, has been done – editor’s note] to concede lower levels of responsibility, or recognition of attenuating factors, to such people if they provide information about the whereabouts of remains. The delicate balancing act that has to be achieved is that of avoiding trading impunity for information, something to which organised relatives’ groups are vocally opposed [Editor’s note: many groups believe that a roundtable dialogue carried out in the year 2000, which did offer immunity and confidentiality for

informants, fell into this trap. They are therefore extremely suspicious of any similar or apparently similar proposal, having boycotted the roundtable instance].

Carmen Rosa Cardozo mentioned the example of Kosovo, where the goal of location, exhumation, and restitution of remains, with full scientific rigour, was prioritised. Results were then handed to the courts, recovering the material that was constitutive of evidence. So it is important to consider how humanitarian search can be balanced with judicially-motivated search.

Member of the public: how accurate are databases of missing persons, and how can we measure states' capacity to actually produce them, given the numerous sources of uncertainty to which the panellists have alluded.

Eden Medina responds that scientists are certainly discovering that some of the margin of error in their work owes something to inexactitude in the databases on which analyses are based.

Cristián Orrego revived the discussion about certainty: every form of truth-telling contains inherent limits, and it is wise to think in terms of narrowing parameters of probability, rather than establishing immovable certainty. So one can think of the challenge for the justice system in terms of strengthening the grade of certainty of its decisions by maximising the probability parameters of each part of the chain of evidence.

Daniela Accatino mentioned that to define identification as an institutional act generates paradoxes around families' expectations. There can also be identifications that are acceptable to, and accepted by, families, but are not considered to meet the minimum scientific and legal norms that have been established – in part, to meet families' own demands and expectations.

John Dinges asks what we can do when families persist in error or even flat out lie, which does happen but is rarely acknowledged or talked about. There is a reluctance to look into the activities of the disappeared person, and a corresponding tendency on the part of relatives to portray all victims as unfailingly Gandhian in their commitment to nonviolent change: this is sometimes very far from accurate. What happens when an investigation uncovers a different version of reality? How can this be incorporated into recognised, validated versions? There are risks involved in treating judicial, scientific, and families' truths as interchangeable.

The workshop session that followed the panels reflected on the questions of:

- the notion of 'ownership' of the disappeared
- the tensions between truth and justice in search processes
- the corresponding tensions that can arise between and among families, the state, civil society organisations, forensic scientists and other key actors
- the role of different actors in promoting successful search, where this has occurred
- the epistemological and conceptual challenges presented by catastrophic contemporary mass disappearance contexts including Mexico

Ariel Dulitzky invited those present to think about the 'possession' of disappeared persons: who do disappeared people belong to? And who should be involved in, or excluded from, decisions about search, exhumation, the right to truth, and access to justice: families? The state? Although the state may be the principal perpetrator, it is also the entity which in the last analysis most often uncovers the final destination, or at least is called upon to acknowledge and formalise finds and restore juridical identities. What happens where the situation is still one of generalised impunity, and the state continues to neglect these duties? In such cases the role of national and international society in activating search strategies is particularly important, and knowing who these actors are and how they network is fundamental.

Rodrigo Lledó mentioned examples where taking state duties to prosecute seriously may involve pressing ahead with establishing criminal responsibilities even when families may not want to bring a case. In Chile, the state shifted from a reactive to a proactive stance and submitted criminal complaints on behalf of all acknowledged victims: this was not always a smooth process, and occasionally families would even request that investigations be closed or abandoned as they preferred to grieve in peace.

Silvia Dutrenit observed that these dilemmas challenge our notion of family: we should not suppose that views on what to do about a particular victim of disappearance are shared even by all members of a nuclear family. Families can be divided, and some of this is due to the dynamics of reparations. In some settings the notion of family shades into that of community. In Atoyac, Mexico the community, rather than the direct biological family, seeks justice for a massacre that was committed not against individuals but against the indigenous population. Should this group therefore be understood as a collective victim?

Ariel Dulitzky still questions, however, what should happen when a family or other group clearly states that it does not want any action to be taken: in these cases it is acceptable or even imperative for the state to overrule?

Carolina Robledo offered a viewpoint from the perspective of search organisations: when they say “we are not only searching for our children, but for all the children”, this opens up a horizon of collective ‘ownership’ of the disappeared person. Their destiny does not rest only on the decision of a single family unit but on that of a collectivity which refers to itself as a ‘large family’. This family takes collective decisions that accord with its political project, which in turn affect the decisions of other families. In searches in Mexico this effect has clear practical implications: searchers for mass graves become part of the decisionmaking about what to do with human remains that are found. Many families are not in agreement with the exhumation of mass graves because they do not want their relatives to suffer the fate that many of these exhumed remains suffer, which is to be transported to depositories, storerooms, or laboratories with no guarantee that they will be identified. Who do those remains belong to, in practice? It is also important to understand the temporary nature of decisions taken by relatives and organisations, as none of these is permanent. For example, a woman from Sinaloa found her daughter, after an eight-month search, and oversaw her reburial; but now wants her exhumed: the initial discovery was not enough to complete her process of grieving.

Aída Hernández continues this point, emphasising that situations of vulnerability inevitably surround any decisions with instability and even with danger. We cannot forget that in Mexico the perpetrators are to be found amongst, and intertwined with, the authorities from whom families demand justice. So decisions are conditioned by what is considered impossible or unlikely, as much as by what is desired.

Cath Collins suggested that thinking of disappearance as a loss or truncation of identity, and search as a process that seeks to restore it, indirectly hands relatives the principal role in reconstructing and drawing attention to missing persons’ identities and individuality on the world stage (due not least to state negligence, indifference, and worse). This can amount to a reassertion of the importance of family lineage and ‘bloodline’, something which in the abstract has quite conservative, traditional, and patriarchal overtones. Is this notion that the disappeared person properly belongs to his or her family universal? And/or is it perhaps exacerbated by contexts of impunity where the state has abandoned or denied the person’s belonging to the national citizen community?

Daniela Accatino referred to the Chilean setting to think about the decision for the state to finally open criminal cases as a political, rather than a judicial, act: so much so, that this obligation has of course existed ever since the disappearances took place, but has only recently been acted upon. This inoperativity is not simple incompetence: it has a history which includes the dictation of an amnesty law and is part of a political project. None of this would have changed had it not been for the action of relatives, who galvanised a paralysed political apparatus into action.

Ariel Dulitzky suggested that while the state has an obligation to ex officio investigate all serious crimes of which it becomes cognisant, enforced disappearance is different because relatives have additional rights and can play a complementary role to that of the public prosecutor or equivalent. This partly

explains why relatives have a particularly prominent role in disappearance investigations in Latin America, something which Cath Collins considers paradoxical or at least double-edged, inasmuch as it opens the way for the state to act or not according to how much relevance and notoriety families are able to create around particular cases. Nonetheless, as Cristián Orrego observes, states are in theory duty bound to investigate all incidences.

Carmen Rosa Cardozo suggested that one common factor to realities from the Balkans to Latin America is the importance that the recovery of remains has for families, irrespective of their location or religious tradition. Her own experience of accompanying forensic work in various parts of the world suggests that the questions that mothers have are the same the world over; that absence is felt and lived in similar ways, and that the main need is to find the person who is absent.

Cath Collins however sounded a note of caution or dissent: if we rely on graveside conversations or encounters, we are almost by definition talking only or mainly to those who are invested in search and exhumation. Forensic intervenors who are brought in internationally for short periods are often of course very well prepared or briefed, and may have or may acquire a sense of broader politics including controversies, but usually only have the opportunity to interact with a limited cross section of families and other key actors. It may be defensible to argue as a blanket view that families should determine what is to be done with remains once recovered, but the process of truth and justice is much longer and broader than that.

Ariel Dulitzky stated that in any case it is important to identify what elements promote or dissuade family participation in search and identification; and more broadly, what elements make for a successful search. Because it is a fact that most searches, whether with or without family involvement, are unsuccessful: in Mexico, in Thailand, in any number of settings.

Carmen Rosa Cardozo proposed that the role of the state is central in answering this concern, drawing attention to the example of Argentina, where present advances would have been impossible without political will. Peru suffers from the opposite situation: the state has the responsibility for searching, but has neither the required competences nor the trust of families. For Argentina one should also of course remember that the non-state team the EAAF has been an additional element pushing for improvements in the state's response.

Paloma Aguilar agreed with the contention that the state is responsible for identification, and for offering reasonable reparations to families. In Spain there is an ongoing debate not only about statutes of limitation, but also about who should take responsibility for recovery and identification of the remains currently lying in mass graves. In recent years, some of Spain's autonomous regions have moreover developed their own legislation to compensate for perceived deficiencies of the 2007 national Law of Historical Memory.

Ariel Dulitzky observed that many of the models presented to date focus on families as a central force. It is also important to think about the multiple possible positions taken by states, which can oppose (or not) relatives' wishes to exhume. Is the polarization that can occur among and between relatives on this point functional to impunity? What about the role of human rights organisations? The case of the recent Law on enforced disappearance in Mexico is revealing: relatives met separately from civil society technical experts, and even this relationship is at times tense. These tensions and differences are reflected in the detail of the response of each group to the official, state-sponsored bill.

It may seem that the state is at one extreme and relatives are at the other: but, as Cath Collins pointed out, if it is an empirical fact that conflicting and diverse interests and positions exist around this issue, basic democratic theory would suggest that the state is charged with reconciling such interests, or at least taking them into account, but then making a decision that is in the overall common interest. However, around this issue the state seems to be more often treated as inescapably a malefactor which is opposed to relatives' interests and is never interested in, or capable of, acting in their interests or even in a legitimate general or public interest. If the truth is a social or collective right, the state is one of the entities that is charged with discerning or arbitrating the collective interest.

Rodrigo Lledó returned to a criminal justice perspective, in which each stage requires the participation of different actors. Identification, for instance, may rightly be a more family-oriented, private moment in which the state has less of a right or role to arbitrate. The decision to prosecute, on the other hand, may be within the state's purview. So each stage of the process may require slightly different answers. For example, a case in Chile revolved around two victims, classified as victims of political execution, who had been returned to their families at the time, in sealed caskets, for burial. To dispel lingering doubts about the initial identifications (certified only by the dictatorship), the remains were exhumed and DNA tests were carried out. In one case, it was possible to establish a strong match. In the other, it was not possible to establish nor to rule out. What do we do in a case like this one where the more reliable test – the more recent one – is inconclusive? In this particular case, the wife of the victim was of the view that the remains had always been signalled to her as belonging to her husband, and that she was not prepared to entertain doubt based on this second inconclusive test. She petitioned the judge to return the remains for reburial, and the judge acceded.

Cath Collins asked whether we should differentiate between identification, which is a public administrative act implying recognition of the civic status of the remains. Restitution, however, is a more complex act which involves state responses to relatives and their process of grieving.

Carmen Rosa Cardozo mentioned that in Peru, more than two decades after the end of the violence, it is less common to talk about searching for the 'dead', as this is a very strong word for relatives to assimilate. New forms of living with grief are being sought, ie the distance from crimes allows for some things to change.

Aurelia Gómez, who has studied the so-called 'dirty war' period in Mexico, mentioned a range of strategies employed by family associations in present-day Mexico. The Ayotzinapa families have used a different repertoire from that of other groups which decided to directly search for mass graves. These organisations make use of the state but do not trust it; in fact they are quite clear that the state is the major obstacle to establishing the truth.

Evangelina Sánchez, also in reference to Mexico, made allusion to the feminist principle of the personal being political, suggesting that disappearance and enforced disappearance are an issue for the whole of society. Moreover the entire notion of the state needs unpacking: in Mexico, the state is so interpenetrated with narco trafficking, many analytical frameworks are of limited applicability and the models in international treaties as to how disappearance, and enforced disappearance, are defined are called into question.

Claudia Rangel believes it is still necessary to think about enforced disappearance as a distinctive state practice. Some regions of Mexico are basically presided over by narcostate, in which case disappearances are carried out with the acquiescence and at the behest of both traffickers and the state, who are both therefore responsible. But if we try to enter into the issue of restitution of remains of victims from the past, we are embroiled in the 'war on drugs' problem. **Paula Cuellar** referred back to the matter of truth as an individual, or a social, right: which **Ariel Dulitzky** indicated has not been resolved in international law. The UN Working Group, for instance, posits an absolute right of relatives to know the resting place of their loved ones and what happened to them; but holds that the collective right to accede to the truth about perpetrators' names, for example, can be relative.

The classification of situations, as enforced disappearance or not, is relevant not only in narrow legal terms but also as an element that transforms access to truth and justice. **Paloma Aguilar** used the example of Spain, where the notion of enforced disappearance was taken up in a context quite different from its common usage. Initially, all relatives asked from the state was to be allowed to search, bury their relatives from cemeteries, and place plaques on their graves or mausoleums. Today, however, relatives' demands are much more expansive, having adopted the language of international human rights – as Francisco Ferrándiz explains – including appealing to the notion of enforced disappearance to refer to victims of the Franco era whose resting place is not known.

Ariel Dulitzky considered how far state acquiescence, for example to the disappearances perpetrated by the Zetas, could qualify it as perpetrating enforced disappearance. **Rodrigo Lledó** posited that the notion of acquiescence invokes volition or will, whether active or passive. A state that permits or collaborates is clearly a co-perpetrator, and in a case such as that one it is even more apparent that no single or universal search strategy can be recommended. A central question to ask is whether the state fails to act through incompetence or because it is a perpetrator.

Cath Collins warned against allowing scientific messianism which may unseat the state, or the judicial system, only to enthrone a new set of unequal power relations in which both state and relatives become secondary or subservient.

Cristián Orrego signalled that we are faced with enormous challenges including incapable or criminal states. Thousands of families need to stand up to this state and get involved in exhumation processes in their own right. We need an investigation process that can be homogenous, with agreed core procedures and standards, one that supports local strategies and can be applied in all contexts where the state has shown itself incapable of adopting best practice. While this universal system is under construction, families need burial sites to be protected against intervention. The system should also take address the phenomenon of disappearance of migrants, creating transnational databases that allow a greater number of identifications.

Claudia Rangel made a counterproposal to construct local responses, centred on families who she believes are the best barometer of socio-political realities.

Full texts in Spanish

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