

# Book of the Disappeared

## The Quest for Transnational Justice



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EDITORS

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## Latin America's Contributions to the Development of Institutional Responses to Enforced Disappearances

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Historically, many consider Hitler's "Night and Fog" (*Nacht und Nebel*) decree of December 7, 1941, which ordered the secret detention and removal of political activists and resistance leaders, as the origin of modern enforced disappearances.<sup>1</sup> In 1946, the International Military Tribunal of Nuremberg executed German Field Marshal Wilhelm Keitel for this practice and the subsequent American Military Tribunal of Nuremberg in the *Justice* case, convicted the main lawyers of the Nazi regime for, among other things, administering the Night and Fog decree.<sup>2</sup>

Today, the term "enforced disappearance" encompasses many different situations, everything from kidnappings by drug cartels in México,<sup>3</sup> to the detention in "black holes" of alleged persons involved in terrorism by the United States Central Intelligence Agency (CIA).<sup>4</sup> The term "enforced disappearances" can refer to persons detained in political prison camps in North Korea,<sup>5</sup> those who disappeared in Bosnia during the war in Former Yugoslavia,<sup>6</sup> or those abducted by the death squads in El Salvador during the civil war.<sup>7</sup> Some insist on the danger of overusing the term, highlighting the need for a definition that addresses only the cases of disappearance similar to those that took place in Latin America in the 1970s.<sup>8</sup>

Yet enforced disappearance includes diverse forms of State repression. There are distinct reasons for this criminal practice and a multiplicity of

political, economic, and psychosocial effects on the victims, as well as on the communities and societies where this technique of terror takes place.<sup>9</sup> This chapter embraces the premise that the "Latin American" definition has become a yardstick for many forms of enforced disappearance practices. Regardless of whether governments target their victims selectively and systematically, whether victims are individuals, ethnic or religious groups, or rural populations. The Latin American experience helped to create an international framework, flexible enough to travel from one continent to another, through different eras, and to adapt to diverse places, causes, and needs.

Until the tragic events of Latin America in the 1970s, the issue of disappearance was not a matter of concern, conceptualization, or national or international judicial responses.<sup>10</sup> Indeed, the term "disappeared," or *desaparecido*, to describe victims is a Latin American invention.<sup>11</sup> As Argentinean human rights defense attorney, Emilio Mignone, put it bluntly, the methodical practice of enforced disappearances in Latin America "is the maximum contribution to the history of the human cruelty."<sup>12</sup>

In 1988, The Inter-American Court of Human Rights (the Court) gave its first judgment on a case of enforced disappearance

Disappearances are not new in the history of human rights violations. However, their systematic and repeated nature and their use not only for causing certain individuals to disappear, either briefly or permanently, but also as a means of creating a general state of anguish, insecurity, and fear, is a recent phenomenon. Although this practice exists virtually worldwide, it has occurred with exceptional intensity in Latin America in the last few years.<sup>13</sup>

Thus, not surprisingly, the evolution of the very concept of enforced disappearance and the main concerns surrounding those disappearances are grounded in narratives emanating from Latin America. In the late 1970s and early 1980s, the focus of human rights advocates had been on the immediate safety of the disappeared. As victims remained unaccounted for during the next three decades, the lack of access to meaningful legal recourse became central and the emphasis on impunity and unknown truths came to define enforced disappearances.<sup>14</sup>

For better or worse, the region has always been at the forefront of the use of or combat against this policy and technique of terror.<sup>15</sup> Latin America developed the most effective responses to overcome enforced disappearances. New types of resistance and hope go hand in hand with the

demands of truth, justice, reparation, and memory. Latin American countries learned from each other<sup>16</sup> and served as models for other regions in confronting enforced disappearances.<sup>17</sup>

This chapter is not a historical, political, sociological, anthropological, or legal study about disappearances in Latin America, although it recognizes that all those approaches are needed to comprehensively study, understand, and respond to them. It summarizes the relationship between enforced disappearances and Latin America,<sup>18</sup> and speculates on the consequences of this relationship for other regions in the world.

### **The Practice of Enforced Disappearances in Latin America**

In 1983, the Latin American Federation of Associations for Relatives of the Detained Disappeared (FEDEFAM) held that there were more than ninety thousand disappeared persons. In 2010, fifty-one thousand disappeared were reported in Colombia. In México, although there is reliable official data as of 2014, the total number of missing persons or those not localized was 24,812 (not all were enforced disappearances). In 2015, cases of disappearance in Peru, according to the Single Registry of Victims, amounted to 8,661, although it is believed that the figure is actually much higher.<sup>19</sup> These disappearances in many Latin American countries were fundamentally part of a systematic practice of human rights violations as described in 1977 by the Inter-American Commission on Human Rights (IACHR):

some governments continue to refuse to provide information on the fate of persons kidnapped from their homes, places of work, ports or airports or in public thoroughfares, by non-uniformed, heavily armed individuals, traveling in unmarked vehicles and acting with such security and impunity that they are assumed to be forces invested with some authority. The truth is that until now, all the remedies provided for under domestic law, and the innumerable efforts made by family members, friends, institutions, agencies, and by this Commission itself, to find out what has happened to victims of such procedures have been fruitless.<sup>20</sup>

Indigenous peoples, community, political and union leaders, students, academics, members of religious communities, military or paramilitary agents (those suspected of collaborating with the enemy), and members of armed opposition groups<sup>21</sup> are among those forcibly disappeared.<sup>22</sup> Most of

those who disappeared were not immediately killed, but were tortured in secret detention centers, then executed. Their bodies were thrown into rivers or the sea or mutilated and discarded at roadsides, buried in unmarked graves, or cremated.<sup>23</sup> Few have ever been found.<sup>24</sup> Although the majority of those disappeared were men, a large number of women have also gone missing.<sup>25</sup> There were also disappearances in the form of the appropriation of children and changes of their biological identities.<sup>26</sup>

As José Zalaquett Daher—the Chilean lawyer renowned for his work in the defense of human rights during the *de facto* regime that governed Chile under General Augusto Pinochet (1973–1990)—writes, in most Latin American countries, enforced disappearances were part of “a carefully organized method in order to exterminate opponents considered dangerous and to avoid answering for their deeds.”<sup>27</sup> The practice was frequently a joint effort between various States, as archetypally represented by Operation Condor, in which security and intelligence forces, mainly from Chile, Argentina, Brazil, Uruguay, and Paraguay, worked together to repress, kill, and dispose of people designated as “subversive elements,” even beyond the borders of the States themselves. Operation Condor coordinated clandestine “security forces and military and intelligence services” and was supported by the CIA.<sup>28</sup>

Enforced disappearances continue to occur in high numbers in countries such as El Salvador, Colombia, and México, and in isolated incidents elsewhere, including Chile and Argentina.<sup>29</sup> In some Latin American countries, particularly in México, disappearances occur in other than political contexts, carried out by organized crime groups and drug cartels.<sup>30</sup> Among other things, these events raise the issue of whether State participation is required to qualify a disappearance as enforced.<sup>31</sup> However, there are encouraging signs. In the context of the “war against terrorism,” after the September 11, 2001 attack on the United States, the CIA’s “extraordinary rendition” program has been nothing less than the use of enforced disappearance, in which suspects are kidnapped and shipped in silence and anonymity to prisons outside the United States, such as Egypt or Afghanistan.<sup>32</sup> To date, no Latin American country has cooperated with or assisted the CIA in disappearing people through extraordinary rendition.<sup>33</sup>

Unfortunately, disappearances have become a global phenomenon. Since its inception in 1980, the Working Group on Enforced or Involuntary Disappearances has reported 59,212 cases to 110 States. The number of cases under active consideration stands at 46,490 in ninety-five States.<sup>34</sup> However, while the systematic use of enforced disappearances practiced during the Latin American dictatorships of the 1960s and 1970s and the

civil wars of the 1980s has remained in the world's collective memory, it also created a model for understanding a particular form of State violence.

### **Latin America's Role in the International Response to Enforced Disappearances**

Until the events in Latin America, enforced disappearances were not properly or even minimally considered or conceptualized. The first international reactions date from the mid-1970s, largely because of the work of Latin Americans in response to the region's needs.<sup>35</sup>

The reactions of the Organization of American States (OAS) and the United Nations to Latin American disappearances laid the groundwork for the international response. While the IACHR denounced disappearances as early as 1974, undoubtedly, its most important contributions are its visit to Argentina and the subsequent report in 1979 and 1980.<sup>36</sup> The Commission's report was the first comprehensive intergovernmental description and understanding of enforced disappearances. Although it was not the first to address the issue of disappearance, in 1983, the OAS General Assembly became the first regional international institution to declare that the practice of enforced disappearances constitutes a crime against humanity.<sup>37</sup>

The Latin American situation motivated the UN to start dealing with the issue.<sup>38</sup> The first reactions occurred in 1978 with a statement of the UN General Assembly proposed by Colombia.<sup>39</sup> In 1979, the General Assembly entrusted the Commission on Human Rights to consider enforced disappearances. A Working Group on Chile made an unprecedented mission to the country in 1978. In 1979, after dissolving the Working Group, the Commission on Human Rights appointed two experts to study the fates of disappeared persons in Chile.<sup>40</sup>

Latin America's influence on the international response to disappearance continued with the establishment in 1980 of the Working Group on Enforced or Involuntary Disappearance (Working Group), the first specialized human rights mechanism within the UN. The Working Group was created largely in response to disappearances in Argentina and Chile, thanks to the work of mainly Latin American victims, despite fierce resistance from the Argentine dictator, General Jorge Rafael Videla (r. 1976–1981) and his government.<sup>41</sup> Not surprisingly, out of thirteen countries considered during the Working Group's first year, eight were Latin American—Argentina, Bolivia, Brazil, El Salvador, Guatemala, México,

Nicaragua, Peru, and Uruguay. The Working Group's first two visits were to Latin America (Bolivia in 1984 and Peru in 1985).<sup>42</sup>

### Contributions to the Development of International Law

In the 1970s and early 1980s, the international community lacked a universally accepted definition to distinguish enforced disappearances from other violations. Influenced and (sometimes) led by Latin Americans, Amnesty International, the Working Group and the IACHR carried out essential analysis, which also concentrated on establishing legal principles to prevent, investigate, and punish those responsible, as well as to frame the rights of disappeared persons and their family members.<sup>43</sup>

Latin American organizations and countries have driven the progressive development of international law in the fight against enforced disappearances.<sup>44</sup> Since the early 1980s, FEDEFAM and other Latin American organizations have promoted the adoption of legal instruments to deal with this crime.<sup>45</sup> In 1992, the UN General Assembly adopted the Declaration on the Protection of All Persons from Enforced Disappearance.<sup>46</sup> In 1994, the OAS adopted the Inter-American Convention on Forced Disappearance of Persons, the first international legally binding document on this topic.<sup>47</sup> The region was also at the forefront of the process leading to the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the UN in 2006.<sup>48</sup> In addition, Latin American initiatives led to the inclusion in the Declaration, the Inter-American Convention, the International Convention, and the Convention on the Child of specific rules on disappeared and abducted children and the right to identity.<sup>49</sup>

Latin American countries and civil society organizations also contributed to the creation in 1998 of the International Criminal Court<sup>50</sup> and pushed for the inclusion of enforced disappearance as one of the international crimes over which the court has jurisdiction and for the specific content of the elements of the crime of enforced disappearances.<sup>51</sup> The Court has opened an investigation into Venezuela and Colombia, including cases of disappearances, and several organizations have requested an investigation into disappearances in México.<sup>52</sup> While not all these international norms coincide with the definition of enforced disappearance, the rights of the victims and the individual or State responsibilities, all those instruments respond to the Latin American model or where the results of leading Latin American efforts.

The original development of international jurisprudence on enforced disappearances also rested almost exclusively on Latin American cases. The first case decided by the UN Human Rights Committee (the Committee) regarded the disappearance of an Uruguayan, Eduardo Bleier, and the rights of his family.<sup>53</sup> The Committee on Enforced Disappearances (CED) issued its decisions on the urgency procedure (article 30 of the Convention) and conducted its first visit to México. The first individual case decided by CED was on Argentina.<sup>54</sup> Moreover, case law on the disappearance and abduction of children developed almost exclusively around Latin American cases.<sup>55</sup>

The conceptualization of enforced disappearances as a complex form of human rights violations and correlative State duties are due largely to the Inter-American Court.<sup>56</sup> Since its first three cases, the Court has developed a comprehensive, progressive doctrine on enforced disappearances.<sup>57</sup> It contributed to

- the understanding of the continuous nature of the crime;
- the right to know the truth about the fate or whereabouts of the victim;
- the right to know the scope and beneficiaries of reparations;
- the right to justice and the inapplicability of amnesty laws and statutes of limitations;
- the concept of "victim," encompassing the disappeared person and family members;
- presumptions of violations of rights in cases of enforced disappearances;
- specific evidentiary standards and the shifting of the burden of proof; and
- the understanding that the prohibition of enforced disappearance is an *erga omnes* (opposable to all) norm.<sup>58</sup>

These essential contributions made by the Inter-American system to respond to disappearances in Latin America had worldwide influence and were crucial in developing international case law around enforced disappearances while enforced disappearances also influenced the nature of the Inter-American system.<sup>59</sup>

## National Latin American Responses to Enforced Disappearances

Uneven domestic efforts to develop policies dealing with enforced disappearances accompanied the international responses. Although most measures adopted have been clearly insufficient—Latin America led the effort and laid the foundation.<sup>60</sup>

### The Legislative Response

Several Latin American constitutions specifically refer to enforced disappearance, thus leading the way to adopting national legislation against it.<sup>61</sup> A number of criminal codes include an autonomous crime of enforced disappearance.<sup>62</sup> Nevertheless, the inclusion of such a crime does not necessarily mean that its definition is compatible with international instruments or that it is required or has contributed to the punishment of those responsible for the crime.<sup>63</sup> In 2017, México approved the first law in the world to regulate all aspects related to enforced disappearances.<sup>64</sup>

Given the legal uncertainty that remains for the disappeared and his or her family members, Latin American countries, almost exclusively, have adopted a specific declaration of absence due to enforced disappearance.<sup>65</sup> Very few countries in other regions in the world have such legislative and constitutional frameworks to deal with and refer to enforced disappearances. An important exception is the Philippines Republic Act of 2012, a very comprehensive law. Other relevant exceptions could be the law establishing the Office of Missing Persons in Sri Lanka, the Laws on Missing Persons from Kosovo, Bosnia and Herzegovina, and Croatia. However, most of these laws are about “missing persons” and not enforced disappearances.<sup>66</sup> These legal provisions are important as recent studies demonstrate that the existence of a national law against crimes against humanity (including enforced disappearances) double the likelihood of initiating prosecution and increase the chances of successful convictions.<sup>67</sup>

### The Response in Terms of Justice

Latin America is the one region where significant numbers of countries have made inroads into prosecuting officials for enforced disappearances and other acts that constitute international crimes in national courts. The number of indictments and trials is impressive. Across the region, convictions include five former heads of state and a number of high-ranking military, police, and civilian officials. No other region in the world can match Latin America’s progress in this area.<sup>68</sup>

Argentina and Chile are the vanguard, with hundreds processed and convicted.<sup>69</sup> Other impressive advances include court-convicted heads of state, such as Alberto Fujimori (r. 1990–2000) in Peru and Juan María Bordaberry (r. 1973–1976) in Uruguay, in part for their responsibilities for enforced disappearances.<sup>70</sup> In Guatemala, courts tried and convicted Efraín Ríos Montt (r. 1982–1983) for genocide, including enforced disappearances, although his conviction was later partially annulled. In Colombia, though there are pockets of impunity and sometimes grave relapses, there have nevertheless been a few important advances.<sup>71</sup> All these efforts have created a rich, unique Latin American case law on enforced disappearances.<sup>72</sup> The advances have not been easy and have provoked strong political, ethical, and legal debates on the viability of justice and the proper balance between truth and justice.<sup>73</sup> Yet there is still a long way to go in countries like México, Brazil, Honduras, or Paraguay.<sup>74</sup>

On a parallel yet somehow contradictory track, in the past, the region has adopted laws providing amnesty for those who commit enforced disappearance (or laws with similar effects). In a first wave, most national courts ratified the constitutionality of such laws.<sup>75</sup> In response, Latin American organizations turned to international bodies and the Inter-American system led to the development of jurisprudence, ruling that amnesty laws were not acceptable in enforced disappearance cases.<sup>76</sup> Additional steps were taken to keep judicial proceedings open in spite of amnesty laws, this time through Latin American judges, who developed extremely important jurisprudential theories, such as the continuous nature of the crime of enforced disappearance, to avoid the application of statutes of limitation or to overcome some of the effects of amnesty laws.<sup>77</sup>

Until recently, in many Latin American countries—with exceptions such as Brazil—the discussion has moved from the idea of total impunity to the issue of how to prosecute criminals in enforced disappearance cases. The new issues ranged from prosecuting increasingly complex and sensitive kinds of crimes to organizing trials involving multiple defendants and victims, to reaching behind the triggermen to arrive at the high-ranking military and civilian official, as well as financial and political figures who were complicit.<sup>78</sup> One Argentinian court convicted a priest for his participation in enforced disappearances and another convicted several judges for their complicity in such cases.<sup>79</sup> Additionally, a final set of issues arises from post-conviction dilemmas related to alternatives to imprisonment and the role of sentencing.<sup>80</sup> However, today the region is seeing some setbacks such as the reinstatement of the pardon of former Peruvian President Alberto Fujimori.<sup>81</sup>

Alongside these efforts, Latin America also pursued justice for victims

in foreign courts. Examples range from the use of the Alien Torts Claim Act in the United States to the invocation of universal jurisdiction in the famous case of former Chilean President Augusto Pinochet (r. 1974–1990) and the conviction of former Argentine naval officer, Adolfo Scilingo, both in Spain.<sup>82</sup> Latin American lawyers led some of these efforts, contributing to the development of case law on universal jurisdiction and the State's responsibility in prosecuting enforced disappearances in third countries (e.g., Scilingo was tried in Spain for the disappearances he committed in Argentina). Lawyers included Carlos Slepoy, an Argentinian attorney residing in Madrid, and others with strong connections to Latin America, such as Manuel Olle, Joan Garces, Ana María Chávez de Seropaj, and Gregorio Dionis.<sup>83</sup> As in Spain, courts in Italy, Sweden, France, Switzerland, Belgium, and Germany also heard cases of enforced disappearances in Latin America.<sup>84</sup>

These generated or consolidated the cascade effect, also called the Pinochet Effect, that is, the opening and reopening of human rights trials.<sup>85</sup> Nevertheless, these trials abroad cannot obscure the processes that already existed in Latin America.<sup>86</sup> In a parallel process, some Latin American judges support the efforts to obtain justice in cases of enforced disappearances that occurred in other countries and are exercising universal jurisdiction for grave human rights violations including enforced disappearances.<sup>87</sup> Of particular importance are the decisions of the Mexican Supreme Court authorizing the extradition of Argentinian ex-naval officer Ricardo Miguel Cavallo to Spain and the Chilean Supreme Court's authorization for the extradition of Fujimori back to Peru. By contrast, however, in 2007, the Constitutional Court of Guatemala rejected the request for arrest and extradition of Guatemalan military including Rios Montt accused of genocide before the Spanish courts.<sup>88</sup>

All these efforts for justice and responses at national, transnational, and international levels transformed the view that many Latin Americans had of judges. During the dictatorships and civil wars, judges sided with the government perpetrators of disappearances, methodically rejecting attempts to find justice through habeas corpus.<sup>89</sup> Now, however, as executive and legislative branches collaborate with political parties, ignoring the demands of victims, judges often confront political powers that question their decisions. Judges, lawyers, and victims are taking leading roles in dismantling these political alliances.<sup>90</sup> This new situation creates fresh doubts and tensions.

### The Response Regarding the Truth

The Latin American experience has shaped an understanding about the victimization of the families of the disappeared and as holders of the right to know the truth, as well as the legal, ethical, moral, and political reasons for seeking the truth. The Inter-American system made key contributions to the legal meaning of this right and duty.<sup>91</sup> Latin American courts and tribunals have expressly reaffirmed the right to the truth in cases of enforced disappearances.<sup>92</sup>

Other countries and regions, such as South Africa, copied, transformed, and adopted the initiatives taken since the 1980s. Latin America's methods appealed to truth commissions to underscore the practice of enforced disappearances. Truth commissions as strategies for accountability came to international attention in the 1980s and early 1990s, and, since then, almost all countries in the region have formed truth commissions to explore enforced disappearances.<sup>93</sup>

To uncover and identify the disappeared, strong search techniques and genetic capabilities were established with forensic teams like those in Argentina, Peru, and Guatemala or, as in Chile, formed specialized services for forensic medicine.<sup>94</sup> Those forensic teams led the search for the remains of the disappeared in Latin America and in other parts of the world. Africa and Asia have been slower to initiate large-scale missing persons projects and they still lack strong capacity in forensic science and the array practiced is limited.<sup>95</sup> Forensics were not used at all prior to Latin America's initiation. Those efforts came with ethical, legal, social, and political challenges, such as the protection of privacy, the idea that searching for the disappeared would reopen past wounds, the tensions between the needs of criminal investigations and the humanitarian approaches to the identification of remains, to mention a few.<sup>96</sup>

Latin America, more than any other region, also adopted national search plans, national commissions for search and/or identity of disappeared persons.<sup>97</sup> In recovery and identification of the missing, the Western Balkans probably made more progress with the disappeared than Latin America. The International Commission on Missing Persons indicates that a successful combination of civil society engagement, institutional development, and scientific innovation has made it possible to account for more than 70 percent of the missing from the conflict in Bosnia and Herzegovina.<sup>98</sup>

The laws of access to information that proliferated in Latin America stipulate that information on human rights violations, including enforced

disappearances, cannot be restricted.<sup>99</sup> Some Latin American countries enlisted regulators, such as Guatemala's Human Rights Ombudsman, to search for the disappeared.<sup>100</sup>

In Argentina there were *juicios por la verdad* (trials for the truth) whose purpose was "not judgement and condemnation of criminals accused of serious human rights violations, but, rather, via establishment and clarification of facts, knowledge of the victim's fate, coupled with legal recognition of the factual truth."<sup>101</sup>

These efforts, particularly those of the Latin American truth commissions, have been essential to avoid denial or revisionist theories and to dismiss such theories.<sup>102</sup> However, despite all these initiatives, most forcibly disappeared bodies are never found, and their fates never revealed.<sup>103</sup>

### The Response on Reparations and Memory

Latin America also made enormous contributions on the right and scope of reparations for victims of enforced disappearances. The Court has advanced impressive and innovative jurisprudence on the subject. Several countries, such as Argentina, Brazil, Chile, Peru, Guatemala, and Colombia, to a greater or lesser extent, granted reparations or designed plans for reparations with varying degrees of implementation and success. Reparations ordered by the Court have not always produced the desired results and have not been free of implementation problems.<sup>104</sup> This process brought debates about a broader perspective of reparations beyond financial aspects, mostly initiated in Latin America, then expanded to other regions. Some discussions include

- gender approaches;
- the possibilities of administrative reparations programs;
- the non-applicability of statutes of limitation on reparations;
- memory as part of reparations;
- the distinctions between reparations and university public social spending policies;
- individual and collective reparations; and
- reparations from a cultural perspective.<sup>105</sup>

The region also pioneered development of important programs and standards for mental health care for the relatives of the disappeared.<sup>106</sup> Latin America also made significant contributions to State and civil society initiatives related to memory. There has been important work in the field

of museums and memory spaces in recovering places symbolic to the disappearances and the construction of memorials. There is also remarkable production on the theme of memory in cinema, literature, and photography, among other art forms.<sup>107</sup> There are also important Latin American steps in the systemization, declassification, access, digitization, and reconstruction of archives with documents on disappearances.<sup>108</sup> There is also progress in developing a legal right to memory. Here, the Court (although with many theoretical and practical gaps) is also contributing to the understanding of memory for enforced disappearances.<sup>109</sup>

Sadly, these efforts have not been applied in some other areas of the world. A Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka expressed concern that there is no government supported memorial built for the victims of enforced disappearances and the Working Group's report on its mission in Turkey indicated that, in light of political reluctance to come to terms with past enforced disappearances, as those perpetrated against Kurds in the 1990s, it is not unexpected to note the absence of official memorial sites or remembrance places.<sup>110</sup>

### Latin American contribution to the Human Rights Movement

Latin America has forged the work of human rights at national, regional, and international levels based on its reaction to enforced disappearances. Investigation, reform, and mobilizations have had an impact on international organizations and human rights movements in other countries.<sup>111</sup>

The famous *Madres de la Plaza de Mayo* (Mothers and Grandmothers of the Plaza de Mayo) in Buenos Aires, the Vicariate of Solidarity in Chile, FEDEFAM—the first international federation of families of disappeared persons—and many organizations in every country have created new strategies on disappearances.<sup>112</sup> Their work serves as models in other parts of the world (not only about issues of enforced disappearances). At least two decades later, multiple organizations in other regions, where disappearances had existed long before, are now following the Latin American human rights example. These include the Euro-Méditerranéenne Fédération Contre Les Disparitions Forcées, the Asian Federation against Disappearances, and the International Coalition against Enforced Disappearances, newly established in 2000.<sup>113</sup> The Saturday Mothers in Istanbul who hold their vigils each week at noon, fashioned themselves after the Mothers of the Plaza de Mayo, who began their protests in 1977.<sup>114</sup>

Indeed, it is impossible to conceive of the human rights movement today without analyzing its origins and consolidation during the 1970s, 1980s, and 1990s in Latin America, mainly in response to enforced disappearances.<sup>115</sup> Latin American women play a leading, central, and crucial role at the forefront of the struggle for justice. Azucena Villaflor, whose son disappeared in 1976, was one of the founders of the Mothers of the Plaza de Mayo and was herself disappeared in 1977. In México, Rosario Ibarra de Piedra, whose son disappeared in 1975, is the director of *Comité Eureka*. Mamá Angelica Mendoza, whose son was kidnapped and disappeared in 1983, joined other women to form the National Association of Families of the Kidnapped, Detained and Disappeared of Peru. She was its leader until her death in 2017. In Colombia, Yanette Bautista, whose sister disappeared in 1987, is director of the Nydia Erika Bautista Foundation. In Chile, Sola Sierra Henríquez, whose husband disappeared in 1976, was the first president of the *Agrupación de Familiares de Detenidos Desaparecidos*. Bertha Oliva de Nativi, whose husband disappeared in 1981, founded the *Comité de Familiares de Desaparecidos de Honduras*. Aura Elena Farfán, whose brother disappeared in 1984, directs the Association of Relatives of Detained and Disappeared of Guatemala.<sup>116</sup>

#### Is the Latin American Model Valid for Other Regions?

Latin America influenced the development of enforced disappearances as an international concern and a specific complex human rights violation as well as the responses. Thus, there is an obvious question: does this model provide an appropriate global and universal framework for addressing State violence that in Latin America is called enforced disappearance? The answer is yes.

One of the main lessons from Latin America is that the model is flexible and comprehensive enough to accommodate differences in the practice of enforced disappearances and the responses to it.<sup>117</sup> Despite many commonalities, enforced disappearances are contextualized forms of violence.<sup>118</sup> The model allows for looking at enforced disappearances in its many forms, such as those carried out predominantly in urban areas against middle-class professionals, as happened in Argentina; or those which occurred on a massive scale in rural areas and during authoritarian regimes such as Fujimori's in Peru; or against Indigenous people in Guatemala; or those that occurred within civil wars as in El Salvador; or under military dictatorships like that of Uruguay.<sup>119</sup> The model has also allowed dealing with isolated enforced disappearances in democratic contexts.

The framework is broad, encompassing disappearances carried out exclusively or mainly by the armed forces (such as in the Southern Cone of Argentina and Chile in the 1970s) to those practiced by private or non-State actors with the cooperation, tolerance, or acquiescence of the State (like many that happened in Colombia and currently occur in México). In addition, the framework is sufficiently flexible to understand enforced disappearances in the context of the doctrine of national security, the fight against terrorism, and combating drug trafficking or organized crime. It also allows for the inclusion of enforced disappearances practiced as part of systematic plans and crimes against humanity (such as those conducted by Operation Condor), as acts within a practice of genocide (as in Guatemala) or as mere isolated incidents (such as disappearances in the Dominican Republic).

Latin American experiences demonstrate the validity of the basic principles of truth, justice, reparations, memory, and guarantees of non-repetition, while taking a contextualized perspective that suits local needs and realities, from international truth commissions as in El Salvador, mixed national and international commissions as in Guatemala, or purely national ones in the rest of the region to truth commissions limited to dealing exclusively with enforced disappearances (as in Argentina) or commissions with broad mandates (as in Peru). In Asia, for example, Sri Lanka so far has chosen to create inquiry commissions rather than truth commissions.<sup>120</sup>

The responses to enforced disappearances need to pay attention to global and universal principles, as well as to local realities on the ground and to local and micro perspectives and needs. The phenomenon of disappearances finds its roots in the political structure of the society in which they occur.<sup>121</sup> Thus, it is important to be attentive to the different contexts, manifestations, spatial, and temporal patterns, as well as to local and regional dynamics of enforced disappearances in different parts of the world.<sup>122</sup> In terms of justice, the paths, progress, and setbacks have been different throughout Latin America.<sup>123</sup>

Anthropologists such as Sally E. Merry and Richard Wilson insist on the processes of domestication or the explanation of local uses and resignifications of university human rights concepts, in our case enforced disappearances. Merry and Wilson explain the dynamics and diversity of social actors participating in the translations from global or universal practices and perceptions to the local spaces. In these processes, attention should be paid to the victims' subjectivity, perpetrators, origins, causes, and consequences of violence, its meaning, and the social mobilization generated.<sup>124</sup> That is precisely this article's application. As Francisco Ferrandiz explains, there is a process of "legal download" in the use of the concept of enforced disap-

pearance in the Spanish context. This refers to the many ways, modalities, and channels international law is transferred and translated to national or local contexts.<sup>125</sup> Ferrandiz describes the need to understand the historical, sociological, legal, or even symbolic differences and parallels of particular forms of repression and the type of violence they generate, the bureaucracies of silence and death they trigger. However, it is perfectly legitimate to integrate these historical experiences, with all their particularities, with the international legal concept of enforced disappearance. The opposite would be to argue that the only legitimate possibility of applying the concept of enforced disappearances is to the social context in which it took the first steps of its classification and jurisprudence. That is the Latin American context. Of course, that means that one must recognize the historical and political contexts and short-, medium-, and long-term social, legal, and political responses that each disappearance generates.<sup>126</sup> As Adam Rosenblatt explained in relation to the use of the terms "disappearances" and "missing persons," both are

context-dependent and often highly unstable in nature. . . . In colloquial English usage, "missing person" conjures up associations of runaways, kidnappings, and others unfortunately affected by everyday incidents, whether criminal or not. . . . "The disappeared" . . . calls to mind authoritarian regimes, political programs of extermination, and the language of human rights reports. In practice, however, these two kinds of events can occur simultaneously in one geographical setting. For example, people living under oppressive regimes can go missing for ordinary reasons, and those same regimes can try to cover up their programs of disappearance by claiming that their victims have actually run off with lovers or gone into involuntary exile, and so on. However, at the end of the day, a distinction between missing and disappeared exists and the contexts in which disappearances take place influences those distinctions with missing persons.<sup>127</sup>

This article proposes to understand the Latin American model and influence on enforced disappearances as a normative transnational/international framework that operates under unique cultural and political logics, necessarily conditioned by local particularities and meanings. It recognizes how national or even regional processes absorb and influence international human rights approaches.<sup>128</sup> Socioeconomic, political, cultural, and even religious conditions determine the ways in which repressive practices

develop and how people respond to them. For example, the power held by perpetrators during political transitions or victims' profiles or their ability to mobilize are essential for understanding the dynamics in transitional justice processes. The same is true whether disappearances occur within the same country when the victims are remote, isolated, or marginalized, or whether, conversely, they reside in urban centers or are middle class.<sup>129</sup> However, the approach insists that the rights to truth, justice, reparation, and memory and guarantees of non-repetition of victims adequately addressed, recognizing the need to consider each situation on its own merits and particularities in order to develop tailored policies accordingly.

The basic right to know the truth about the fate or whereabouts of a disappeared person required this contextualized approach, considering the family situation and careful assessment of the cultural, religious, and social contexts.<sup>130</sup> This is also valid for memorialization or burials, exhumations, and identification. The concept of victim-centered approaches to enforced disappearances and victims' participation, on which international standards insist, require one to understand that the victim's needs are highly context-specific, local, emotional, psychological, and spiritual constructs.<sup>131</sup>

By contextualizing the practice of enforced disappearances, it is easier to understand some of the differences between Latin America and other regions and to highlight the similarities. One can understand why, unlike Latin America, Southeast Asian nations did not support the creation of the International Criminal Court or the inclusion of the crime of enforced disappearance in the Rome Statute. As explained in this article, Latin America uniquely and unlike other regions has placed a strong emphasis on criminal accountability and the criminalization of the practice of enforced disappearance both domestically and internationally.<sup>132</sup> It is understandable that enforced disappearances affect women differently, as, for instance, Jeevasuthan Subramaniam and her co-writers describe in "Implications of enforced disappearances on women-headed families in the northern province, Sri Lanka," explaining how cultural, ethnic, and social context influenced the identification of the wives of disappeared, the so-called half-widows,<sup>133</sup> or why broader definitions of disappearances, including non-State actors are used more often in certain parts of Asia.<sup>134</sup> Similarly, it helps to recognize the differences in healing processes. In Timor-Leste (East Timor), some families do not want DNA tests and burial rituals are possible even without the body or remains of the disappeared person, something that does not happen in Latin America.<sup>135</sup> Underreporting of disappearances is more pronounced in Africa or Asia than in Latin America, because the consent of the family to present cases to the Working Group is required.

And in places like North Korea, international laws, and even research are unenforceable.<sup>136</sup>

The contextualized approach to enforced disappearances also allows understanding that both the practice and response are temporal processes that evolve over time and that different regions do not follow the same paths.<sup>137</sup> The evolution of crime and resistance is also determined geographically within countries themselves.<sup>138</sup>

### Conclusion

Understanding Latin America is important, considering the place it has held in discussions about enforced disappearances on a global scale. As this article tries to demonstrate, Latin America has played a prominent role, as a source of innovation and protagonism, both in developing and perfecting this heinous crime and in constructing national, transnational, regional, and international responses. Of course, Latin America has not always been the leader or pioneer. In 2004, Bosnia and Herzegovina adopted the first law on missing persons, while a 1981 agreement between the Greek and Turkish Cypriot communities under the auspices of the United Nations created the first specialized body to search for disappeared people.<sup>139</sup>

Revisiting the relationship between Latin America and enforced disappearances serves another important aspect. It challenges the idea that the global south is the place where abuses are committed and the global north where ideas and strategies on how to confront them emerge. The scholar Paolo Carozza wrote

[Even] among human rights enthusiasts and activists, Latin America has long been regarded as the object of human rights concerns more than a contributor to human rights thinking. Or rather, its "contributions" have been perceived almost exclusively in negative terms. For example, the creativity of its repressive regimes in fashioning new forms of abuse, like the "disappearance," provoked the governments and human rights organizations of Europe and North America to come up with new norms and institutions to address problems. . . . But the affirmative dimensions of human rights in Latin America, instead, have much more often been seen to be tarnished and inferior copies of grand, rich European ideas.<sup>140</sup>

The purpose of this chapter is, in part, to highlight the immense contributions Latin America has made against enforced disappearances and to the human rights movement. However, despite the resemblances and generalizations, there are profound dissimilarities between diverse historical moments in which the disappearances occur, between methodologies or between sub-regions (with marked differences between disappearances in the Southern Cone and Central America). Many of the advances, developments, or "wins" have not happened uniformly. Chile and Argentina are at the positive end of the continuum, although moving at different speeds and vicissitudes, while other countries, like Honduras, are making less progress.<sup>141</sup> Others, like Guatemala and Peru have had both improvements and regressions. In still other countries, such as Colombia, progress coexists with the continuation of enforced disappearances. In countries like México, progress on disappearances has been extremely limited and the situation has worsened.<sup>142</sup>

While eliminating political opponents has long been a strategy of those in power throughout the world, the Latin American story, and its ability to capture international attention has forever left its imprint on international law defining enforced disappearances. The need to frame a distinct legal norm, and the content of that normative prohibition against enforced disappearance are deeply connected to the narrative that emerged from Latin America. The international norms outlawing, preventing, and punishing the use of enforced disappearance might never have existed but for the Latin American experience. Its narrative provided the urgency for the international community to address the crime through its own distinct frame, as a separate violation that was more than the sum of its criminal parts. The human stories that emanated from Latin America demanded an international call for action.<sup>143</sup>

Although Latin America's change from a system of enforced disappearance to one that deals with the crime more effectively is still fragile, uneven, and incomplete, it is nevertheless remarkable. The region's experience provides essential and inspirational lessons on the ability of civil society networks—especially family members, human rights advocates, and the professionals allied with them—to change law, policy, and political consensus through creativity and perseverance.<sup>144</sup>

As enforced disappearances continue and are globalized, societies that now face the same challenges are equipped with intellectual resources, policy, and activism models that can be readily employed, without having to invent them from scratch, as Latin America did.<sup>145</sup> The challenge is how to continue adapting and contextualizing the model to other regions, realities, and needs.

## Notes

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30. Committee on Enforced Disappearances, *Concluding Observations on the Report Submitted by Mexico Under Article 29, Paragraph 1 of the Convention*, CED/C/MEX/CO/1, para. 10.

31. Rainer Huhle, "Non-State Actors of Enforced Disappearance and the UN Convention for the Protection of All Persons from Enforced Disappearance," in *Humanitäres Völkerrecht—Informationsschriften / Journal of International Law of Peace and Armed Conflict* 1 (2013): 21–26.

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