

## On the Frontline: Enforced Disappearances and Latin America

By Ariel E. Dulitzky

**E**nforced disappearances cannot be understood without Latin America. For better or worse, the region has always been at the forefront of the use and/or fight of this policy and technique of terror. In 2015, the United Nations Working Group on Enforced or Involuntary Disappearances will celebrate its 35<sup>th</sup> anniversary. And each anniversary is an appropriate time to reflect on what has been achieved, what has been learned, and what remains to be accomplished. Through the Working Group we see Latin America as a space where the use of enforced disappearances was widespread but also a place where the most effective responses in terms of truth, justice, reparations and memory emerged. Latin American victims, in spite of intense resistance from the Argentine dictatorship were able to convince Governments to create the Working Group in 1980 as the first specialized human rights mechanism within the UN.

Latin American victims went to the UN after the Inter-American Commission on Human Rights made its historic 1979 visit to Argentina, in the midst of the dictatorship. This visit and the subsequent report marked a watershed in the history of the human rights movement showing how useful on-site visits areas are to unmask enforced disappearances, to raise awareness, to conceptualize and document disappearances, and to legitimize and protect human rights organizations. When the OAS, under pressure from the dictatorship, refused to condemn Argentina, human rights defenders and relatives turned part of their efforts to the UN.

Latin America's experience shows us that enforced disappearances of people is a terror technique. In the region, they were traditionally part of the national security doctrine, a strategy against so-called subversive or terrorists groups used by the State, particularly Armed and Security Forces, intelligence services, or paramilitary groups acting with the cooperation, tolerance, or acquiescence of the state. Often this policy was a coordinated effort between multiple states, the archetypical example of which is Operation Condor and most of the time supported or at least tolerated by the U.S. Today, in some countries of the region, disappearances occur in other contexts such as the disappearances carried out by organized crime groups in Mexico which requires a rethinking of its contours.

Sadly its use in the region, even in democratic contexts, has also become globalized. However, there are some encouraging signs. In the context of the "war on terror", the CIA "extraordinary rendition" program used enforced disap-



pearances but Latin America was the only region where no country cooperated or assisted the agency mainly because of the trauma the phenomenon engendered in the area.

During the first years of its existence, the Working Group could not rely on legal instruments which defined enforced disappearances. For this reason, a large part of the Group's efforts focused on identifying the phenomenon and establishing legal principles to define it and especially to prevent, prosecute, punish, and eradicate this crime. Since its first report the Working Group affirmed the inalienable right

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for families to know the truth about their loved ones' fates. In that first report, the Working Group identified the phenomenon of the disappearance of pregnant women and the babies born during their disappearance, infants who were then illegally taken by the captors. This phenomenon would later lead to special legislation in multiple treaties, for example the International Convention on the Rights of the Child and its Article 8 on the right to identity.

Since then, an important number of Latin American countries have propelled the progressive development of international law in the struggle against enforced disappearances. Latin America was in the forefront of discussions which led to the 1992 adoption of the United Nations' Declaration on the Protection of All Persons from Enforced Disappearance, the Inter-American Convention on the Forced Disappearance of Persons of 1994, and the International Convention for the Protection of All Persons from Enforced Disappearance approved by the United Nations in 2006. Latin America also contributed to the creation of the International Criminal Court in 1998 and the inclusion of enforced disappearance as one of the international crimes over which the International Criminal Court has jurisdiction.

The crime of enforced disappearance was also reflected in domestic legislation with a great number of Latin American countries including it as an autonomous crime in their criminal codes. This trend was also accompanied by a sustained effort throughout the region to bring perpetrators to justice. While Argentina and Chile are at the forefront of this fight, we can see some impressive developments in many other countries. Former head of States such as Fujimori in Peru are in jail in part for his command responsibility in enforced disappearances. In Guatemala, Ríos Montt was tried and convicted for genocide (including acts of disappearances) although his sentences was later overturned. In Colombia, with important pockets of impunity and sometimes with serious setbacks, there has been progress made in terms of individual responsibility for those who commit this serious crime. But still, there is a long way to go in other countries such as El Salvador, Guatemala, Mexico, Brazil, Uruguay, Honduras, and Paraguay. The family of each person who disappeared has searched, is searching, and will continue to search for their loved ones until they know their fate or their resting place. The Working Group has more than 45,000 cases of enforced disappearances still open, synonymous of failure for both the Working Group and Latin America as a whole.

Through the use of Truth Commissions, forensic anthropology teams in Argentina, Peru, or Guatemala, specialized forensic medical services like in Chile, national search plans, we have learned that enforced disappearance is a continuous crime until the fate the person is established. And as

such, they are not a question of the past.

Undoubtedly the Inter-American Commission and the Inter-American Court of Human Rights made crucial contributions to the fight. From the visits and reports of the Commission to the first three cases<sup>1</sup> submitted to the Court were enforced disappearance cases, the Inter-American system has led the international response to this crime. The Court's comprehensive doctrine and its jurisprudence in terms of the continuous nature of the crime, the right to know the truth, the right to reparations, the right to justice and the inapplicability of amnesty laws and statutes of limitation in cases of enforced disappearances are all essential contributions made by the inter-American system to Latin America and to the entire world.

But beyond these international actors, Latin America contributed to the development of the human rights movement through the associations of relatives and human rights organizations. From the traditional and historic Mothers and Grandmothers of the Plaza de Mayo in Argentina, the Vicaría de la Solidaridad in Chile or FEDEFAM to the new models such as Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos in El Salvador or CADHAC in Mexico, many organizations demonstrated new strategies for resistance against dictatorships and injustices committed during civil wars and even in democratic systems. Their work, vision, endurance, and strategic partnerships with international actors served as a model in other parts of the world. It is not possible to study and conceive the human rights movement today without analyzing its origins and consolidation during the 1970s, 80s, and 90s in Latin America, largely in reaction to enforced disappearances. Finally, we cannot understand this movement without acknowledging the key role played by women who lead this struggle for truth, justice, reparations, and memory for the victims of enforced disappearances in many countries of the region.

We have travelled a long road but there is still a very long way to go. But, we are not satisfied. The mottoes that emerged from Latin America continue to guide us: NUNCA MÁS; DÓNDE ESTÁN?; JUICIO Y CASTIGO; VERDAD, JUSTICIA Y REPARACIÓN; FUE EL ESTADO.

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Alicia Inés Naymark Gabe and Matilde Itzigsohn de García in 1976 and 1977.