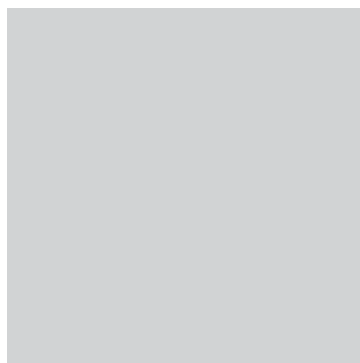
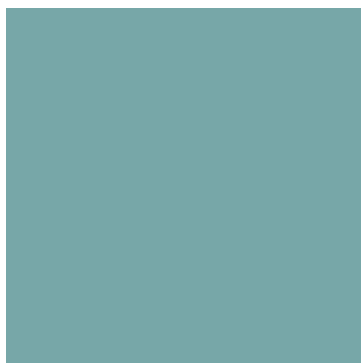
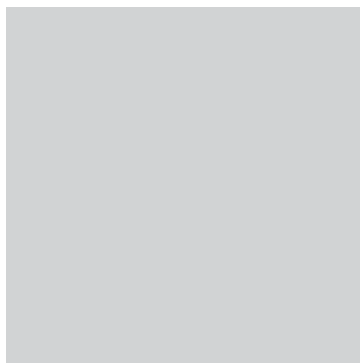
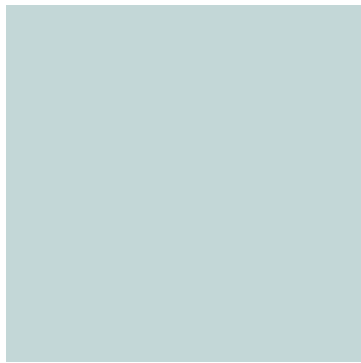
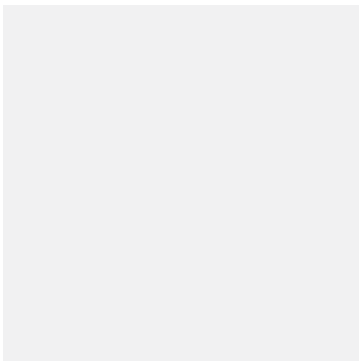
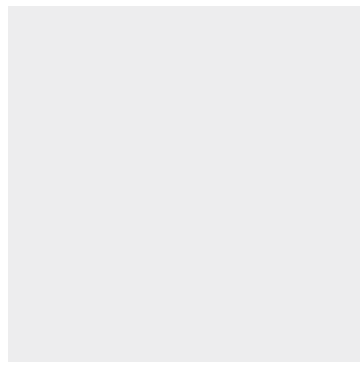


**Thinking Historically about Missing Persons: A Guide for Teachers**  
**3. What Do We Mean by Missing Persons? Experiences and Responses Around the World**



## **Thinking Historically about Missing Persons: A Guide for Teachers**

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### 3. What Do We Mean by Missing Persons? Experiences and Responses Around the World

In this section, the reader will be able to learn about:

- What is meant by missing persons in contrast to enforced disappearances;
- Why enforced disappearance exists, why and how it is used as a tool for political repression;
- Where there are experiences of missing and disappeared persons and the responses by the international community to this issue;
- The effect on families;
- Major developments, including:
  - The role of the Geneva Convention and the Nuremberg Tribunals;
  - The discovery of the DNA method of identification and its application to human rights;
  - The emergence of truth commissions and the impact of the South African experience;
  - The application of forensic anthropology and forensic archaeology to human rights;
  - The work of civil society;
  - The International Day of the Disappeared;
  - The 2006 Convention for the Protection of all Persons from Enforced Disappearance;
  - The United Nations Working Group on Enforced Disappearances and the Committee on Enforced Disappearances;
  - The responses of humanitarian and human rights law.

Often, the disappeared persons are killed immediately, but their spouses, children or parents continue to live for many years in a situation of extreme anguish and stress, torn between hope and despair. They must therefore also be considered as victims of the crime of enforced disappearance (Pourgourides, 2005, paragraph 3).

One of the most terrible effects of conflict is the loss of life that results, and the destruction which it causes to whole communities of people. In many conflicts, within that loss almost always lies a deeper, and sometimes quieter tragedy: questions about the whereabouts of people who went missing and whose fate was never learned. In some cases, as in the Congo, they could be children who were separated from their families. In others like Iraq, Chechnya, or the former Yugoslavia, they could be people who were rounded up, killed, and then buried in mass graves. Or they could be arrested and held incommunicado in secret prisons as was common throughout Latin America. When the fates of these people are unknown, they are considered 'missing'.

## 3.1 Experiences and responses around the world

### 3.1.1 What do we mean by missing persons?

This pack looks at situations where people have gone missing, and where they have been disappeared. While the end scenario is the same - not knowing the fate of a person's loved one, and agony for families over their whereabouts - there is a difference in law and in politics between the 'missing' and the 'disappeared'. It is helpful to be clear about the difference between these two terms, however, which are briefly explained below.

**'Missing persons' are people whose families have no news of them, and those who are reported missing as a result of an armed conflict, on the basis of reliable information.** This term is different from and broader in scope than 'enforced or involuntary disappearance' (Scovazzi and Citroni, 2007).

Missing people can be:

- People captured during conflict;
- Combatants 'missing in action' (MIAs) who probably died during combat;
- Victims of mass killings;
- Victims of abductions;
- Bodies not properly identified and buried as unidentified people;
- Displaced people and refugees;
- Victims of natural catastrophes.

The crime of **enforced disappearance**, on the other hand, is defined under the 2006 International Convention for the Protection of all Persons from Enforced Disappearance as

the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law (International Convention for the Protection of all Persons from Enforced Disappearance, 2006, article 2).

**The primary difference between a person who has gone missing, and a person who has been disappeared, lies in the intention of the crime. Enforced disappearance is almost always part of a systematic policy of making people disappear.**

The Rome Statute of the International Criminal Court has also set out a definition on enforced disappearance, which differs from the above primarily because it is broader, and regulates international criminal law.<sup>1</sup>

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1. The Rome Statute of the International Criminal Court is the treaty that established the International Criminal Court. It was adopted on 17 July 1998, and entered into force on 1 July 2002. It broadens this definition of enforced disappearance to include non-state actors, defining enforced disappearance as: the arrest, detention or abduction of persons by or with the authorisation, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time (Rome Statute, 1998, article 7 paragraph 2(i)).

### 3.1.2 Introducing experiences of missing persons around the world

This section of the educational pack provides an overview of how the phenomenon of missing persons has been experienced in various contexts around the world. Educators and other users of this pack will gain a better understanding of key definitions and terms, along with the main developments that have occurred on the issue of missing persons at the global level over the past decades. Given the complex and multi-dimensional nature of the subject, the text should be seen as a first step towards introducing the human, political, social, and legal dimensions of the issue.

The responses of civil society actors, families' groups, governments, and international actors and organisations to the issue of missing persons have differed across time and across societies.<sup>2</sup> 'Contrary to what many people think, enforced disappearance is not a practice of the past nor is it limited to a few regions of the world. All the continents have experienced or are experiencing this criminal practice. People are disappearing in many parts of the world' (International Coalition Against Enforced Disappearances, 2010). This educational pack looks specifically at how the phenomenon of enforced disappearance and missing persons has affected five different societies: **Cyprus, the former Yugoslavia, Spain, Guatemala, and Morocco**. Each of the case studies was chosen because of its ability to show us a different perspective on what happens in a society when people go missing, about how people in the country and the international community have responded to the phenomenon, how governments have treated the crime, and how the societies have tried to overcome the legacy of the violence which caused the disappearances. Generally speaking we will refer to situations of enforced disappearance and missing persons together, because we are concentrating on the impact of these situations and on what happens to families and to communities after people are disappeared.

- The **former Yugoslavia** was chosen because this case study illustrates the progress and the tensions that can arise in conflicts where there are multiple groups involved in violence. The former Yugoslavia also highlights the often tense relationships that emerge between truth seeking efforts in civil society and international legal efforts to prosecute people who perpetrated crimes like disappearance, murder, and ethnic cleansing. It is also an example of the process of regional efforts at truth-seeking.
- **Spain** was chosen because the disappearances happened more than a generation ago, and were followed by a very clear societal, legal, and political 'pact of forgetting' which attempted to bury the memories of the past, and the official memory of the people who remained missing. Spain's recent efforts to find the missing, as well as to deal with the legacy of conflict which caused so many deaths and so much fear enables a discussion about the importance of dealing with the past and about what can happen if societies try to bury their past along with their missing.
- **Guatemala** is interesting for its approach to reform, and the wider level of community engagement in the process of uncovering and returning the remains of disappeared people. There is also a tension in Guatemala regarding the large gap between what the Guatemalan Historical Clarification Commission recommended and the reforms and restitution efforts that have been made. Constant pressure from victims' families using the local Guatemalan courts and Spanish courts, coupled with the discovery of police archives have been significant catalysing factors for prosecuting the authors of the Guatemalan genocide. The Guatemalan case therefore also highlights the use of different pressure points which has led to the prosecution of perpetrators of enforced disappearance.
- The **Moroccan** case is a much less clear-cut study of what happens in societies that have suffered from a policy of enforced disappearance. In Morocco, in contrast to the other case studies, there has been very little interaction with international forensic, anthropological, or human rights experts, and it is the Moroccan government which heads the excavations of the missing. Morocco is a case where progress is very slow, domestic and international human rights organisations have a particularly difficult task in pressuring authorities to create progress, and there is very little accountability for the crimes committed, or deep official support for promoting alternative narratives about the past.

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2. Civil society can be defined as a collection of voluntary social actors and organisations with shared interests and values that help form the basis of society.

What unites all of those cases is the agony shared by the families who live their lives between worlds, with no answers about what might have happened to their loved ones; simultaneously imagining the worst and hoping for the best. Without the simple right of knowing the fate of their loved ones, people are unable to mourn, tormented both by the possibility that their loved ones may be alive and waiting for help, and by the possibility that they have died and no one has laid them to rest.

The right to know the truth about the fate of missing loved ones is a fundamental human right. The '**right to truth**' means the right of families to know the fate and the whereabouts of their missing loved ones. Some, including the Inter American Court of Human Rights, also argue that this right does not just belong to the relatives of missing people, but also to society in general. With the right comes a society's collective responsibility to inform, and to be informed. The state has an obligation to inform to the individual about the fate of missing persons, and, by extension, society as a whole.

It is not simply the right of any individual victim or his nearest and dearest to know what happened, a right to the truth. The right to know is also a collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is a 'duty to remember' on the part of the State: to be forearmed against the perversions of history that go under the names of revisionism or negationism, for the history of its oppression is part of a people's national heritage and as such must be preserved. These, then, are the main objectives of the right to know as a collective right. (UNCHR, 1997, paragraph 17)



### 3.1.3 Why does enforced disappearance take place?

The phenomenon of forced disappearance... is the worst of all human rights violations. Indeed, it is a challenge to the very concept of such rights, the negation of the right of a human being to exist, to have an identity. Forced disappearance transforms the being into a non-being. It is the ultimate corruption, an abuse of power which allows the authorities to transform law and order into something derisory and to commit infamous crimes. (MacDermot, 1981)

To 'disappear' a person is a political act designed to create a very specific kind of terror. The crime of disappearance is designed to silence opposition and criticism on two levels: first, the act of disappearing people silences those who are the targets of the crime, who were in opposition, or who were critics of those committing the crime of disappearance. But disappearing people also creates fear and insecurity in the broader community, silencing those who might oppose.

The crime of disappearing people has enduring consequences. It is not just designed to harm the person who has been disappeared, but to cause continuous anxiety and fear to their families, their loved ones, and their communities. Therefore withholding information about what happened is part of the crime; it is a crime designed to harm over a long period and ensure the perpetrators escape justice.

It can happen in the context of internal armed conflicts within democratic countries or as part of dictatorships or occupations.

In a post-war context, political factors play a significant role in how the issue of the disappeared or the missing is addressed. It can be used to silence opposition to government, telling families and victims' groups that uncovering and publicising too much truth about the violence of the past can destabilise fragile peace processes or progress towards reconciliation. Oftentimes, transition processes from conflict situations will not result in a complete handover of power, or will entail making a pact with the former power-holders. This has enabled those who were involved in carrying out the atrocities to continue to hold important positions and even be viewed as leaders by powerful elements within societies. If there is political interest in continuing to deny the atrocities, or to tell particular versions of the past, then it might be that only one group of disappeared is prioritised, or that the process is continually stalled. Without the support of political leaders, it is very difficult to initiate a process to recover the remains of the missing, and families and the people involved in exhuming and identifying the disappeared could find themselves facing overt or covert opposition through actions like continual bureaucratic blocks, the refusal of authorities to open archives, a lack of financial support, harassment, and threats.

Additionally, in post-conflict contexts where fighting between groups led to atrocities being committed by multiple parties, the issue of disappearance or the missing often runs the risk of being used to reinforce black and white narratives about victimhood and perpetration. 'Our' missing and 'their' murderers can sometimes prevent authorities on all sides from wanting to allow exhumations, because they run the risk of challenging hegemonic narratives about guilt and innocence. Such situations become extremely complex, and often, humanitarian concerns about relieving the suffering of families become subsumed within political and strategic manoeuvring. However, in cases such as these, bringing to light multiple groups of victims of atrocities can be the most powerful means of building empathy between communities that have suffered.

### 3.1.4 Where are there experiences of missing and disappeared persons?

People going missing or being 'disappeared' in conflict or authoritarian regimes is not a new phenomenon. But it is only relatively recently that the international community has been addressing the issue. The reasons for this are explored below.

The first time in modern history that the phenomenon of disappearance was made 'official' was in Nazi Germany's *Nacht-und-Nebel-Erlass* ('Night and Fog decree') of 7 December 1941. In this decree, people in occupied territories that were considered to be a threat to German security were secretly moved to Germany and disappeared. 'In order to maximise the desired intimidating effect, officials were prohibited to provide any information on their fate' (Pourgourides, 2005). This technique of terror was also used in Latin America some twenty years later.

The large number of soldiers who went missing in action during the Vietnam War (1955-1975) and efforts to recover them, brought the issue of missing persons to the attention of the West. International attention to the phenomenon of missing and disappeared people continued to grow, mainly as a result of two major contexts: the struggles against dictatorships in Latin America in the 1970s, 1980s and 1990s, and the collapse of the former Yugoslavia in the 1990s, where more than 20,000 people disappeared. The term 'enforced disappearance' ('*desaparicion forzada*' in Spanish) was first coined by Latin American civil society groups. In both regions, it was the families of the missing and disappeared that were the driving force behind the development of laws to assert the rights of the disappeared and their loved ones. As Pourgourides observes:

The Inter-American Commission on Human Rights and the UN Commission on Human Rights were the first international human rights bodies to respond to this phenomenon in the 1970s, with regard to cases in Chile after the military putsch of 11 September 1973 (Pourgourides, 2005).

Unfortunately, missing persons and enforced disappearance are common features of conflicts all over the world, and the crime continues to occur. People have been abducted and disappeared by states or warring factions in conflicts in more than seventy countries in all regions of the world over the last fifty years, including in the following places:

*Africa:* Angola, Côte d'Ivoire, Eritrea, Ethiopia, Democratic Republic of the Congo, Namibia, Somalia, Sudan and Zimbabwe.

*Asia and the Pacific:* East Timor, Indonesia, Nepal, Pakistan, Philippines and Sri Lanka.

*Europe:* Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Cyprus, the former Yugoslavia, Republic of Macedonia, Russian Federation, Georgia and Serbia (Kosovo), Spain, and Turkey.

*The Americas:* Argentina, Chile, Colombia, Guatemala, Haiti and Peru. More recently, the actions of the United States in 'renditioning' individuals within the war on terror is a form of enforced disappearance, recognised as such by the United Nations Working Group on Enforced Disappearances.

*Middle East and North Africa:* Iran, Iraq, Tunisia, Kuwait, Lebanon, Syria, Algeria and Morocco.

### 3.1.5 The effect on families

He came up to me, took me by the chest and threw me into the truck. At the same moment, the truck moved. I was lying on the floor of the truck and I don't remember the trip from Potocari to Tisca... For the last ten years I have been trying to learn the fate of my husband and my child. Ten years have gone by and I still know nothing of the fate of my child. I don't know whether I will ever discover a single part of his body. (Sabaheta Fejzic, Srebrenica Beyond a Reasonable Doubt Conference, 2005)

The families of the disappeared still want to know the truth, both because they have not lost hope and because they need to end the uncertainty and close the grieving process. (Batallas, 2010)

Families of missing and disappeared people are subject to a kind of torture that lasts a lifetime: not being able to know what happened to their loved one, always wondering about their fate, both praying for the best and imagining the worst, and not being able to mourn their loss. It is in the continued silence of the victim, of the perpetrator, and of the society, in the face of so many nightmares that the crime of enforced disappearance becomes truly terrible.

While knowing the fate of a loved one who has disappeared is a right under human rights law and international humanitarian law, states have not all adopted and applied laws that will give those answers to relatives of disappeared people. In addition to the trauma of losing your loved one in circumstances of complete uncertainty, the families of missing or disappeared persons often have to endure legal, practical, and emotional hardships. Families are often left in limbo. Legal and administrative procedures such as remarriage, applying for a child's identity document, and difficulties for the children of the missing, as well as for families if it is the primary earner who has been disappeared all become part of the trauma of disappearance. Claiming inheritance or transferring property titles also frequently become impossible. As Carlos Batallas, Head of the International Committee of the Red Cross (ICRC) in Guatemala observes:

All these formalities would be so much easier if a person could be legally classified as 'absent due to disappearance.' In many cases, families record the disappeared person as dead, just so they can carry out these formalities. But this makes the suffering worse; on top of the uncertainty, they feel guilty because they have denied the existence of a loved one. (Batallas, 2010)

In addition to the grief and stress faced by relatives, they also often encounter isolation and intimidation. Because disappearance is often institutionalised, victims' families cannot seek the support of the state and of state institutions such as the courts, the police, and hospitals. In addition, families sometimes find themselves marginalised by their communities because of community fear of becoming victims themselves.

### 3.1.6 How did we get to the point where missing people can be traced?

In the last decades, there have been a number of developments at regional and international levels which have led to a great deal of progress in the ways in which missing persons are handled. By far the most important development in enabling the recovery of those who have been disappeared is the application of DNA technology to human rights work. The impact of this has been vast, and has formed the foundation of the field of forensic anthropology, which has allowed a much more effective process of understanding what happened to people, and how.

At the same time, the early experiences of countries like Guatemala, Chile, and Argentina has led to significant progress in the field. In addition, developments in the jurisprudence of international humanitarian law have made it more clear to state actors what their responsibilities are to the victims and to society at large. Civil society groups are also helping to build awareness about the experiences of missing persons and their families, and the steps that need to be taken to address their grievances. While progress is not uniform and significant gaps still exist, these developments point towards a greater acceptance of awareness, accountability, and responsibility.

The different forms of response to the phenomenon of disappearances include: responses by civil society and family associations, scientific investigations, memorialisation projects, fact-finding commissions, reparations programmes, and legal responses. Because Latin American countries had experienced the devastating effect of systematic enforced disappearance over a sustained period of time, that region was at the forefront of confronting the issue, at the level of families, of civil society, and of legal approaches. Key milestones are highlighted below.

- **The role of the Geneva Convention and the Nuremberg Tribunals in establishing the basis for human rights**

The brutal experiences of World War II, most notably the Holocaust, led to the growing recognition of human rights and the development of legal instruments to define and enforce those rights (Winter, 2007). In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights, which embodies the main principles upon which today's understanding of human rights is based. Between the 1970s and today, the United Nations and a number of regional and international courts have worked towards creating a legal system which protects people from enforced disappearance and other violations of human rights which are described further below.

After World War II, the Allies established the International Military Tribunal at Nuremberg and subsequent trials under the law known as Control Council 10. While some well-known international legal scholars indicate that enforced disappearance is a recent crime in international law, it can be argued that the tribunals established enforced disappearance as a war crime and a crime against humanity, in relation to the Nazi regime's Night and Fog decree (Finucane, 2010).<sup>3</sup>

The 1949 Geneva Convention Relative to the Treatment of Prisoners of War requires parties in an international conflict to ensure there is effective communication between prisoners of war and their families. It also requires the establishment of offices which communicate information about the capture of soldiers to their families (Finucane, 2010). The Geneva Convention applies in times of war and armed conflict to governments who have ratified it.

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3. See in particular the cases of the indictment of Wilhelm Keitel before the International Military Tribunal, and the United States v Altstoetter et al. Available at: [http://www.adl.org/education/dimensions\\_19/section3/justice.asp](http://www.adl.org/education/dimensions_19/section3/justice.asp)

## • The discovery of the DNA method of identification and its application to human rights

The application of DNA profiling to human rights, and to the identification of victims of conflict revolutionised the work of people trying to trace the missing and disappeared. DNA profiling was developed by British geneticist Sir Alec Jeffreys in 1984. It was originally used in forensic science in the 1988 Enderby murders case in the UK.

It began to be used in the late 1980s as a means of identifying the remains of unidentified people who had been buried in mass graves, or in unmarked graves without identification. Previous to this, excavations had relied on identification documents or military insignia to identify unknown bodies. However, in the case of enforced disappearance, anything that could identify a person would usually be removed before they were buried in hidden locations. Additionally, documentation about their secret detention or their fate was also extremely difficult for families or human rights protection groups to get hold of. Therefore, families were entirely at the mercy of the authorities that disappeared their loved ones, who had no incentive to share information. The ability to use DNA profiling technology in these cases changed the entire dynamics of the field.

The work of people like American anthropologist Clyde Snow, Argentine anthropologist Mercedes Doretti, and their colleagues uncovering mass graves in Argentina in the 1970s, 1980s and 1990s was of critical importance to developing forensic anthropology (Newman, n.d.).

The application of DNA technology in the 1990s and 2000s to discovering missing US servicemen in the Vietnam War was also important for the refinement and acceptance of the use of DNA profiling in human rights work and to find missing people (Mydans, 1999). DNA profiling is also being used to identify unmarked graves from the First World War (BBC News, 2009).

## • The application of forensic anthropology and forensic archaeology to human rights

As the Argentine Forensic Anthropology Team explains, 'forensic anthropology uses methods and techniques from physical anthropology and forensic medicine to solve legal cases involving skeletal or almost skeletonised remains' (AFAT, n.d.) It also uses forensic archaeologists, who apply 'traditional archeological methods to legal contexts' (AFAT, n.d.). The process of exhuming and returning remains, collecting evidence and identifying patterns of abuse draws on the resources of 'a range of disciplines, including forensic pathology, geophysics, odontology, genetics, ballistics, radiology, and computer science, among others' (AFAT, n.d.). As the Anthropology Archive put it, summarising the applications of forensic archaeology and anthropology in human rights work:

Human rights organisations are often involved in the recovery and identification of victims of genocide.<sup>4</sup> Their work is divided between careful archaeological fieldwork to excavate clandestine graves and meticulous laboratory work to document trauma and attempt to identify missing individuals. The organisations that investigate these crimes are often composed of international scientists. Some active groups in this field include the Argentine Forensic Anthropology Team (Equipo Argentino de Antropología Forense), Physicians for Human Rights, the Guatemalan Forensic Anthropology Foundation (Fundación de Antropología Forense de Guatemala), the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Commission on Missing Persons (IC-MP), and the International Forensic Centre of Excellence for the Investigation of Genocide (INFORCE).

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4. Genocide is defined in Article 2 of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide as: any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; [and] forcibly transferring children of the group to another group.

The work of the human rights groups can be extremely challenging on many levels. Not only are they working in potentially hostile environments, but the job of identification can be especially problematic due to the lack of antemortem, or before death, records in many instances. The work of these groups is of obvious importance to the families of the missing, but it is also critical to the prosecution of those responsible for the atrocities. Forensic anthropologists have worked across the globe, in countries such as Argentina, Guatemala, the former Yugoslavia, Rwanda, Cambodia, and Iraq, to name just a few (Anthropology Archive, 2011).

Other forensic anthropology teams include:

*Argentine Forensic Anthropology Team/Equipo Argentino de Antropología Forense (AFAT/EAAF)*, whose work is described at: <http://www.eaaf.org/>

*Guatemalan Forensic Anthropology Foundation/La Fundación de Antropología Forense de Guatemala* whose work is described at: <http://www.fafg.org/Ingles/paginas/FAFG.html>

Forensic work has also been conducted in the following locations:

- In the former Yugoslavia thousands of missing people have been recovered and identified through large-scale forensic investigations using novel forensic methods and technology.
  - The Cypriot forensic team, comprising Greek and Turkish Cypriot forensic practitioners, integrates different disciplines, including archaeology, anthropology and genetics. The team works with the families of missing persons and is a model of best practice.
  - In the Middle East, Iran, Iraq, Kuwait and Lebanon, are making remarkable efforts to provide answers to families who lost relatives as a result of armed conflicts in the region.
  - Investigations continue in several countries of Latin America, such as Argentina, Colombia, Chile, Guatemala and Peru.
  - Many countries in Africa including Angola, Ethiopia, Kenya, Morocco, Sierra Leone and South Africa have launched forensic initiatives.
  - The search for missing persons in Asia has included forensic investigations in several countries, including East Timor, Nepal, The Philippines and Sri Lanka (ICRC, 2009).
- **The emergence of truth commissions and the impact of South African Truth and Reconciliation Commission**

Truth or reconciliation commissions are truth-seeking bodies of enquiry that have as their goal the uncovering of past human rights violations by a government or parties involved in a conflict, making those violations public, and trying, as far as it is possible, to rectify the situation (Hayner, 2001).

Truth commissions, or historical enquiry commissions are established by state actors to carry out enquiries or investigations on a particular issue. There is no uniform approach to commissions: each situation is different to the other, and each commission has used different methods (Hayner, 2001).

Truth commissions frequently include a number of investigative steps—protecting evidence, compiling archives, interviewing victims and key political actors, opening and publishing state information, and producing reports and recommendations (ICTJ, 2011). In some cases where national governments have not established truth commissions, other official institutions—such as municipalities or ombudspersons—have created more limited official inquiries. There are also many examples of important truth seeking initiatives launched by civil society, faith-based communities and victims' associations.

There have been a number of commissions focusing exclusively on disappearances. Some of the countries that have had commissions on disappearances are Uganda, Bolivia, Argentina, Uruguay, Sri Lanka, and Honduras. Truth commissions have also included disappearance as part of their mandate, including in: Guatemala, Chile, Ghana, South Africa, Morocco, and Peru (Hayner, 2001).

While the South African Truth and Reconciliation Commission (SATRC) was not the first truth commission it has come to be seen as a major milestone in truth-seeking efforts for a number of reasons, especially because it was the first commission to use the tools of public hearings and quasi-judicial amnesty hearings to explain and confront in a public way the legacy of a structural violence. Operating from December 1995 to March 2003, its mandate included a range of violations that happened under the apartheid regime, of which disappearance was one. The SATRC heard 22,000 witness statements, and delivered a seven-volume report at its conclusion with a number of recommendations. One of the most important contributions South Africa made to the issue of disappearance is the level of publicity both the commission and the issue received. The SATRC was the first commission to hold public hearings where both victims and perpetrators were heard. The nature of the confessions and of the truth commission spectacle, together with South Africa's transition to democracy led to an extraordinary level of global attention, which in turn promoted the concept in the broader public consciousness of societies dealing openly and systematically with legacies of violence.

In South Africa, amnesty was exchanged for full disclosure of a crime, and only if the crime had been politically motivated. The crime had to be judged as proportional to political motive, and it is important to note that the amnesty process was designed as part of a quasi-judicial process, not as a general amnesty that figures of the Apartheid regime granted themselves. It was considered as an exchange for truth, and therefore a form of moral reparation (Coyne, 2005). The process is often misunderstood. Only around 10% of approximately 7,000 applicants were granted amnesty. There has been a great deal of criticism since the SATRC ended that the national prosecution authorities and the government have done very little to pursue those who were not granted amnesty or who did not apply for amnesty.

This was an exceptional situation however, driven by a political compromise. The incoming South African government was forced to accept the idea of conditional amnesty as part of the conditions of the political transition set by the Apartheid regime. The SATRC's truth in exchange for amnesty programme was therefore an attempt on the part of the incoming government to avoid giving blanket amnesty, which was being sought by the Apartheid regime, while also providing accountability. To date, it is the only truth commission to have had such powers (Bozkurt and Yakinthou, 2011). The Kenyan TRC has similar provisions, but may only recommend amnesty.

In other cases, some truth commissions have recommended prosecutions, passing information that came out of the commission to prosecutors' offices once the commission had finished its work. Others did not. In each case, the issue of how to deal with crimes committed has been different, and it is important to note that truth commissions are not prosecuting bodies, and do not serve the same purpose as courts.

### • **The work of civil society**

Civil society can be defined as a collection of voluntary social actors and organisations with shared interests and values that help form the basis of society. Civil society organisations, including those that are formed by victims themselves, have also been at the forefront of conveying demands to the state, building public awareness about the missing persons issue and paving the way for a number of international legal frameworks to be adopted. There are a multitude of organisations that exist at local and international levels, working with a different focuses and strategies. With the increasing vibrance and strength of the human rights movement over the last decades, their actions have had more of an impact. The focus, especially of organisations like the International Committee of the Red Cross (ICRC), is to prevent people going missing in the first place. This means that as soon as a conflict erupts, people are in place to register prisoners and communicate their whereabouts to families who have registered a person missing. National authorities are also reminded of their duty to establish strict lines of command within their armed and security forces to make sure there is effective supervision and discipline.

In Argentina, the civil society group *Madres de Plaza de Mayo* (Mothers of the Plaza de Mayo) along with other civil society and families' groups were instrumental in pressuring the government to establish a truth-seeking commission, which had limited success. Their pressure has resulted in increasing numbers of domestic prosecutions in recent years. Their work is described further at:

<http://www.madres.org/navegar/nav.php>

In Lebanon, the non-government organisation *Umam* has established a documentation centre to map the locations of mass graves, and to collect archival documents, oral histories and written testimonies of victims' families and perpetrators. Together with a coalition of families of the disappeared, they continue to form a constant pressure-point for the Lebanese government to address the issue. Their work is described further at:

<http://www.umam-dr.org/>

A number of regional coalitions against enforced disappearance exist, and have contributed to global awareness on the issue. They include, but are not limited to:

- Euro-Mediterranean Federation Against Enforced Disappearances  
<http://federation-euromed.blogspot.com/>
- Latin American Federation of Associations for Relatives of Detained-Disappeared  
<http://www.desaparecidos.org/fedefam/eng.html>
- Collectif Des Familles de Disparu(e)s en Algérie  
<http://www.algerie-disparus.org/cfda/index.php>
- The Asian Federation Against Involuntary Disappearance  
<http://www.afad-online.org/>

### • **The International Day of the Disappeared**

One important contribution of the Latin American Federation of Associations for Relatives of Detained-Disappeared was the declaration of 30 August as *The International Day of the Disappeared*.<sup>5</sup> The day was created to draw attention to the plight of loved ones of disappeared persons, and to put pressure on governments, international organisations and legal instruments to work harder to resolve past cases and prevent future cases of disappearance. The day is commemorated around the world in many different ways, for example with art exhibitions, book launches, public marches, conferences, lectures and plays.

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5. See, for example, ICRC (2011).



## • The responses of humanitarian and human rights law

States are bound by international law. International law comes from a variety of sources, including customary law and treaties. These instruments have developed principles that intend to protect people who might be vulnerable to being disappeared or to go missing. In respect of international human rights law and international humanitarian law relevant to the question of disappearances, the key principles which signatory states must abide by are:

- families have the right to know the fate of their missing relatives;
- the parties to a conflict are obligated to search for people reported missing, and to facilitate public and International Committee of the Red Cross (ICRC) enquiries;
- lists must be exchanged showing the locations of burial sites and the details of people buried there;
- parties to international armed conflicts must provide information on the wounded, sick, shipwrecked, prisoners of war, other protected persons deprived of their freedom and the dead, as quickly as possible and without adverse distinction;<sup>6</sup>
- captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They must be protected against all acts of violence and reprisals. They have the right to correspond with their families and to receive relief.

The **Inter-American Court of Human Rights (IACtHR)** has been the most important source of jurisprudence in developing the concept of enforced disappearance as a serious human rights violation. Since 1988, the Inter-American Court has been developing jurisprudence around the idea that disappearing people violates a number of fundamental human rights, including the rights to life, to justice, to be free of torture, and to liberty (Scovazzi and Citroni, 2007).

The Inter-American Court also developed the idea that **families of missing and disappeared people also had the right to know the truth about the fate of their loved one**. The Court has been a global leader arguing that the violation of the right of family members to know the truth about their loved one continues from the moment that the person is abducted, and ends only when they receive full information about their loved one's fate (Dijkstra, 2002). The Court linked that idea to the violation of families' right to be free of torture, arguing that not knowing is a form of psychological torture. This means that the Court also **extended the concept of who was a victim** to include loved ones of disappeared persons as victims of the original and ongoing crime. The Court also more recently ruled on the **obligation of states to inform society** about what happened to those people disappeared. That is, the Court has helped families and civil society organisations to turn the idea that society also has the right to know the truth about the fate of the disappeared into a legal right belonging not just to victims directly affected by the disappearance but to society as a whole.

The **European Court of Human Rights (ECtHR)** has also recognised the ongoing nature of the violation. Each of the Courts has developed different aspects of reparations for enforced disappearance: the ECtHR has a higher level of states and parties abiding by its rulings, while the IACtHR has helped develop the concept of a society-wide right to truth, exercised through judgements recommending non-monetary reparations like memorialisation projects to educate society about what happened. The IACtHR dealt with enforced disappearance much earlier than the European system, which meant that set much of the tone for how enforced disappearance is perceived, but the European system is now dealing with a much higher volume of disappearance cases. European courts, until the 1990s, saw very few cases of enforced disappearance or missing persons. Disappearances in contexts like Chechnya/Russia, Turkey, and the former Yugoslavia only really began to flood the Court in the late 1990s

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6. A legal term that means non-discrimination.

and during the 2000s. However, the ECtHR now has 200 judgements in enforced disappearance cases, compared to the 33 judgements of the IACtHR. (Fernanda Perez Solla, 2006)

Active between 1996 and 2003, the **Human Rights Chamber for Bosnia and Herzegovina** tried very hard to use Inter-American precedents to bring European human rights standards up to the same level as those in the IACtHR. The ECtHR has slowly been making its approach to enforced disappearance and missing persons cases more consistent.

The two systems also take a different legal approach: the Inter-American Court has argued that because the nature of disappearance cases means that it is very hard for families to prove that their loved one has been disappeared, the burden of proof should be reversed – the Court stated that the burden of proof would rest on the state to show that it had not disappeared the victim. This made it much easier for families to bring cases to court and have them heard. The European Court has been much slower to recognise this rule, which means that many families have not been able to have their cases heard, because they do not have sufficient proof to show that their loved one has been disappeared (Dijkstra, 2002).

- **The 2006 Convention for the Protection of all Persons from Enforced Disappearance**

The convention is not just a document created by lawyers and politicians. For the last 30 years, families of disappeared and civil society organisations worked together for a Convention on disappearances. The right of families to know the truth has been acknowledged as a result of the generation-long struggle to create a document which protects against enforced disappearance. Thus the Convention represents the culmination of a long struggle.

The 2006 Convention is an international treaty, and is designed to prevent enforced disappearance. It was opened for signature in February 2007, and entered into force on 23 December 2010. As of today, there are 30 state parties to the treaty.

The Convention represents by itself an achievement of associations of relatives of disappeared people and NGOs from all over the world. Its adoption was first requested by families of victims of disappeared people from Latin America, back in the eighties. It took more than 30 years to the international community to adopt this legal tool, which fills an immense and intolerable gap: the lack of an international treaty to prevent and suppress enforced disappearance. (Bacalso, 2010)

The Convention states that the widespread or systematic use of enforced disappearance is a crime against humanity. The first article of the Convention states that:

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance. (2006 Convention for the Protection of all Persons from Enforced Disappearance, article 1)

A summary of the many steps that have been taken in order to create such a convention is provided at:

<http://www.icaed.org/the-convention/history-and-background-of-the-convention/>

To see the Convention's key provisions, visit:

<http://www.icaed.org/the-convention/need-for-the-convention-and-key-provisions/>

**The United Nations Working Group on Enforced or Involuntary Disappearances** was established in 1980, for one year, and renewed regularly since then. The Working Group

receives and examines reports of disappearances submitted by relatives of disappeared persons or human rights organisations acting on their behalf. After determining whether those reports comply with a number of criteria, the Working Group transmits individual cases to the Governments concerned, requesting them to carry out investigations and to inform the Working Group of the results. (OHCHR, n.d.)

The Working Group played a key role in the monitoring of states' progress in implementing the Declaration on the Protection of all Persons from Enforced Disappearances. Through its recommendations and its monitoring processes, the Group has contributed significantly to the protection against enforced disappearance.

A **Committee on Enforced Disappearances** was established to govern the Convention. It consists of ten experts deemed to be of high moral character, elected for four-year terms, serving in their personal capacity and acting impartially.

... Article 30 stipulates that a request, in particular, that a disappeared person be sought and found, may be submitted to the Committee, as a matter of urgency, by relatives of a disappeared person or by any person authorised by them. In the conditions set forth in Article 33, the Committee may also request its members to undertake a visit onsite. If the Committee receives information about a widespread or generalised practice of enforced disappearance in the territory under the jurisdiction of a State Party, it may urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary-General of the United Nations (article 34). (France Diplomatie, 2008)

**In conclusion**, developments in science, the attention of the international community, the emergence of legal norms and the vigilance of civil society all point towards growing awareness about, and sensitivity towards, the phenomenon of enforced disappearance and missing persons. Different societies have chosen to respond to missing persons in different ways, but often these responses have been inadequate. The issue of missing persons raises critical questions not only about how states meet their obligations towards people who have suffered human rights violations but also about how societies confront and handle the legacies of violent pasts in ways that seek to build trust and promote stability. It is becoming increasingly clear that states and other responsible parties cannot escape addressing the right to truth. Neither can they escape growing international attention when atrocities are committed or allowed to happen. This pack is designed to help its readers become aware of the global issue of enforced disappearance and missing people and also help in thinking about what creates the conditions which allow such atrocities to be committed repeatedly, creating scars that cut across generations. By becoming more aware about the experiences of different countries, and the developments around missing persons, a more informed and thoughtful discussion about these wider questions can, perhaps, become possible, and we may, perhaps, move one step closer to creating societies which will not fall prey to such horrors.

Anthropology Archive (2011). Human Rights Organisations. [Online.] Available at: <http://www.lwcag.org/forensic/human-rights-organizations.html>. Last accessed 24 September 2011.

Argentine Forensic Anthropology Team (AFAT) (n.d.). About Us. [Online.] Available at: [http://eaaf.typepad.com/about\\_us/](http://eaaf.typepad.com/about_us/). Last accessed 24 September 2011.

Bacalso, M.A. (2010). 'The International Coalition against Enforced Disappearance (ICAED) Celebrates the Entry into Force of the International Convention for the Protection of All Persons from Enforced Disappearance', *Press Release, ICAED*, 23 December 2010. Available at: [www.icaed.org/fileadmin/user...into.../ICAEDPressRelease23dicEN.pdf](http://www.icaed.org/fileadmin/user...into.../ICAEDPressRelease23dicEN.pdf). Last accessed 6 October 2011.

Batallas, C. (2010). 'Guatemala: The continuing tragedy of the disappeared', *Interview with ICRC*, 22 February 2010. Available at: <http://www.icrc.org/eng/resources/documents/interview/guatemala-interview-220210.htm>. Last accessed 5 October 2011.

BBC News (2009). 'DNA scheme to identify WWI dead', BBC News. April 20, 2009. Available at: <http://news.bbc.co.uk/1/hi/england/berkshire/8008355.stm>. Last accessed 24 September 2011.

Bozkurt, U. and Yakinthou, C. (2011). 'Legacies of violence and overcoming conflict in Cyprus: the transitional justice landscape', *Oslo Peace Institute Report*. Oslo: Oslo Peace Research Institute.

Coyne, R.T. (2006). 'Escaping Victor's Justice by the Use of Truth and Reconciliation Commissions', *Oklahoma Law Review*, 58(11), pp. 11-20.

Declaration on the Protection of all Persons from Enforced Disappearance (1992). General Assembly Resolution 47/133 of 18 December 1992. U.N. Doc. A/47/49.

Dijkstra, P. et. al. (2002). 'Enforced Disappearances as Continuing Violations', *Report of the Amsterdam International Law Clinic*, 7 May 2002.

Fernanda Perez Solla, M. (2006). *Enforced Disappearances in International Human Rights*. London: McFarland and Company Inc. Publishers.

Finucane, B. (2010). 'Enforced Disappearance as a Crime Under International Law: A Neglected Origin in the Laws of War', *The Yale Journal of International Law* (35), pp.171-195.

France Diplomatie (2008). Enforced disappearances. [Online.] Available at: [http://www.diplomatie.gouv.fr/en/france-priorities\\_1/human-rights\\_1101/enforced-disappearances\\_6493/index.html](http://www.diplomatie.gouv.fr/en/france-priorities_1/human-rights_1101/enforced-disappearances_6493/index.html). Last accessed 24 September 2011.

Hayner, P. (2001). *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. New York: Routledge.

International Center for Transitional Justice (2011). 'Truth and Memory.' [Online]. Available at: <http://ictj.org/our-work/transitional-justice-issues/truth-and-memory>. Last accessed 10 October 2011.

International Coalition Against Enforced Disappearances (2010). [Online.] <http://www.icaed.org/>. Last accessed 10 October 2011.

International Committee of the Red Cross (ICRC) (2009). Missing Persons: A major humanitarian concern. [Online.] Available at: <http://www.icrc.org/eng/resources/documents/interview/missing-interview-280908.htm>. Last accessed 24 October 2011.

International Committee of the Red Cross (ICRC) (2011). International day of the disappeared 2011. [Online.] Available at: <http://www.icrc.org/eng/resources/documents/event/day-disappeared-event-2011-08-26.htm>. Last accessed 24 September 2011.

International Convention for the Protection of all Persons from Enforced Disappearance (2006). [Online.] Available at: <http://www2.ohchr.org/english/law/disappearance-convention.htm>. Last accessed 15 August 2011.

MacDermot, N. (1981). *Le Refus de l'oubli - La politique de disparition forcée de personnes*. Colloque de Paris, janvier-février 1981. Paris: Editions Berger-Levrault.

Mandate of the Working Group on Enforced or Involuntary Disappearances. [Online.] Available at: <http://www2.ohchr.org/english/issues/disappear/index.htm>. Last accessed 10 June 2008.

Mendez, J. (1998). 'The Right to Truth', in Christopher Joyner (ed.) *Reigning in Impunity for International Crimes and Serious Violations of Fundamental Human Rights: Proceedings of the Syracuse Conference, 17-21 September 1998*, pp.255-278. Toulouse: érès.

Mydans, S. (1999). 'Of Soldiers Lost, but Not Forgotten, in Vietnam,' *New York Times*, April 19, 1999. [Online.] Available at: [http://www.mishalov.com/Vietnam\\_MIA.html](http://www.mishalov.com/Vietnam_MIA.html). Last accessed 24 September 2011.

Naqvi, Y. (2006). 'The Right to Truth in International Law: Fact or Fiction?' *International Review of the Red Cross*, vol. 88, no. 862, pp.245-273.

Newman, C. (n.d.). *Dr. Clyde Snow - the bone detective*. [Online.] Available at: <http://vimeo.com/2358781>. Last accessed 24 September 2011.

Nowak, M. (2002). 'Civil and Political Rights, Including Questions of: Disappearances and Summary Executions', *Report of Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, pursuant to paragraph 11 of Commission resolution 2001/46*. UN Document E/CN.4/2002/71. [Online.] Available at: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/3e140ed64e7c6a83c1256b9700513970?Opendocument>. Last accessed 2 October 2011.

Office of the High Commissioner for Human Rights (OHCHR) (n.d.). Working Group on Enforced or Involuntary Disappearances. [Online.] Available at: <http://www.ohchr.org/EN/Issues/Disappearances/Pages/DisappearancesIndex.aspx>. Last accessed 24 September 2011.

Pasqualucci, J.M. (2003). *The Practice and Procedure of the Inter-American Court of Human Rights*. Cambridge: Cambridge University Press.

Pourgourides, C. (2005). 'Enforced Disappearances', *Report of the Committee on Legal Affairs and Human Rights, Council of Europe Parliamentary Assembly Doc. 10679*, 19 September 2005. [Online.] Available at: <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc05/EDOC10679.htm>. Last accessed 10 October 2011.

Rome Statute of the International Criminal Court (2002). International Criminal Court. [Online.] Available at: <http://untreaty.un.org/cod/icc/index.html>. Last accessed 5 October 2011.

Scovazzi, T. and Citroni, G. (2007). *The Struggle Against Enforced Disappearance and the 2007 United Nations Convention*. Leiden: Martinus Nijhoff Publishers.

Srebrenica Beyond a Reasonable Doubt Conference (2005). Voice of the Victims Session, 11 June 2005. [Online.] Available at: <http://www.hlc-rdc.org/Outreach/Kazivanje-istine/1404.en.htm>. Last accessed 10 September 2011.

Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity (2005). UN Document E/CN.4/2005/102/Add.1. [Online.] Available at: [http://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=10800](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=10800). Last accessed 2 October 2011.

United Nation's Commission on Human Rights (UNCHR) (1997). 'Question of the impunity of perpetrators of human rights violations', E/CN.4/Sub.2/1997/20, 26 June 1997. UN Document.

Winter, J. (2007). *Dreams of Peace and Freedom*. Yale: Yale University Press.

## | 3.2 The experience of Guatemala

Guatemala is a multi-ethnic, multi-cultural nation with some 24 different linguistic communities. The country's history is marked by the marginalisation of the indigenous Mayan population, military rule, and a 36-year internal armed conflict – among the longest and most savage in the western hemisphere – that took place between 1960 and 1996. In a 1999 report, the United Nations (UN)-sponsored Commission for Historical Clarification estimated that 200,000 people were killed or disappeared during this almost four-decade long conflict.

### Roots of the conflict

Underlying the Guatemalan civil war was a deeper conflict over unequal access to land and resources. This dates back to the period of independence from Spain after 1821. An export-focused economy based largely on coffee was established, placing power largely into the hands of what became known as the 'agro-elite'. This group became politically influential through their close connections to the authoritarian regimes that ran the country in the period between the 1820s and the 1940s backed by the military.

Between 1945 and 1954, a series of agrarian and labour reforms were implemented, focusing on strengthening workers' rights and redistributing land to more than 100,000 peasants. Part of the reforms saw land taken from a US-owned company, and in the context of the Cold War, this was seen as a provocative act which threatened US interests, and as part of Soviet expansion. These tensions led to a CIA-led coup in 1954. The US-backed military regime used its power to violently repress dissent as it repealed all the reforms (Ladisch, 2011).

A guerrilla group, which formed and became active in the early 1960s against the military regime, evolved over the next two decades into a number of insurgent groups and became formidable opponents of the government. In 1982 these groups merged into the Revolutionary National Unity of Guatemala (URNG), and the military, under the successive leadership of General Fernando Romeo Lucas García and General José Efraín Ríos Montt, intensified its efforts to squash these insurgents. The military purposefully collapsed the difference between the Mayan communities and the guerrillas, and targeted community leaders, civilians, women, and children in its counter-insurgency strategy. It also targeted urban intellectuals who opposed the government, and it is from that group that the greatest number of the urban disappeared comes (Mejia, 2009).

While the military declared victory over the insurgents in 1983, rising poverty and inequality increased social unrest and protests against the state. An orchestrated transition to civilian rule ensued in 1984 in order to quell the discontent, but despite the election of a civilian president, in 1985, the military continued to exercise power. The new government, however, did manage to begin the process of opening the road for peace negotiations with the URNG (Ladisch, 2011).

After a lengthy peace process, a UN-brokered peace agreement was signed in 1996 between the government and the URNG. The agreement covered a range of issues - from demobilisation and reintegration of the guerrilla forces, to respect for human rights, resettlement of the displaced population, dissolution of civil defence patrols, steps toward resolving land tenure issues, and the strengthening of the judicial system and civil society. While the peace agreement was extremely ambitious, very few of the wide-ranging reforms or reparations recommendations have been implemented, and corruption and violence continue to be deeply ingrained.

### Official treatment of the missing

The Guatemalan peace accords also included the creation of a **Historical Clarification Commission** (CEH) that, operating with a mixed Guatemalan and international staff led by the UN, collected testimonies throughout the country and presented its report in February 1999 (CEH, 1999). The CEH's mandate was threefold:

- To clarify, with due objectivity, equity and impartiality, the human rights violations and acts of violence connected with the armed conflict that had caused the Guatemalan population to suffer.

- To prepare a report that would contain the findings of the investigations carried out and provide objective information regarding events during the civil war period covering all factors, internal as well as external.
- To formulate specific recommendations to encourage peace and national harmony in Guatemala. The Commission was tasked to recommend, in particular, measures to preserve the memory of the victims, to foster a culture of mutual respect and observance of human rights and to strengthen the democratic process.

The Commission aimed to document human rights violations linked to the conflict. It registered 42,275 victims of the armed conflict, including men, women, and children. A large number of people who would be considered victims of the conflict did not register their stories with the Commission. Of the violations registered, some 23,000 were victims of arbitrary executions and more than 6,000 were victims of forced disappearance (CEH, 1999). The overwhelming majority of the victims (83 percent of those who were fully identified) were indigenous Mayans, though people from all social and economic stratas of society were victims. Somewhere between 500,000 to 1.5 million people were displaced internally or sought refuge in other countries. More than 669 massacres have been documented (CEH, 1999). Other, broader figures state that in addition to the above, which focused on attacks in the countryside, up to 40,000 people from Guatemala City were also disappeared during the conflict (Mejia, 2009). It is estimated that up to 50,000 people were disappeared in total.

The Commission concluded that acts of genocide, crimes against humanity, and other violations of human rights and humanitarian law had occurred. To provide guarantees for non-repetition and respect for human rights, the Commission recommended that those responsible for abuses should be brought to justice by the Guatemalan authorities and that a reparations policy should be promoted to dignify victims. The conclusions of the Commission were strongly contested by the government of the time. As a result, many of the report's recommendations languished along with prosecutions for serious human rights abuses.

A series of developments in the early 2000s led to the establishment of a National Reparations Programme in 2003. During the administration of Alfonso Portillo of the Guatemalan Republican Front (FRG), monetary reparations were promised to former civil defense patrols - which at one time numbered some 500,000 - following violent protests by their members. The Historical Clarification Commission found that the patrols were responsible for some 18 percent of human rights violations and acts of violence, and that they often acted in concert with the army, which was found responsible for some 85 percent of the abuses. Following Portillo's commitment to pay reparations to the civil defence units, a lengthy process to provide reparations to victims of human rights abuses finally culminated in an agreement among civil society, victims' groups, and the government to create the National Reparations Programme in May 2003.

On 25 February 2009 President Alvaro Colom accepted the CEH report in Guatemala City's Plaza of the Constitution, on the 'Day of Dignity for the Victims of the Internal Armed Conflict'. In accepting the report, he asked for pardon.

### **The groups involved**

Truth-seeking in Guatemala has been a community-led and community-involved affair. In the early 1990s, before the signing of the peace agreement, a broad group of civil society organisations and relatives of disappeared persons came together to lobby the Public Ministry about the existence of secret cemeteries in their communities. These organisations collected information about clandestine cemeteries, enforced disappearances, and political executions, in order to discover the locations of their loved ones' remains. They invited an international team of forensic anthropologists made up of members of the Argentine and Chilean Forensic Anthropological Teams, to conduct initial exhumations and to train local anthropologists and students who later formed the Guatemalan Forensic Anthropological Team (EAFG/FAFG).



Since 1994, the FAFG has been trying to find the disappeared. It

exhumes mass graves found in the Guatemalan countryside in an attempt to identify massacre victims – and how they died. The anthropologists analyse the unearthed bones for fractures, bullet holes, slash marks and other clues to causes of death. They compare the bones and other materials – such as clothing fragments – found in the graves with descriptions of the missing and the dead in the hope of compiling enough scientific evidence to identify and prosecute the victims' killers. When the work is complete, the researchers turn over the remains to victims' survivors so that they can have closure – and arrange proper burials for their loved ones. (Mejia, 2009)

The FAFG is currently focusing on 'the historical reconstruction of forced disappearances in Guatemala and the creation of a methodology for the search for people who went missing during the armed conflict' (FAFG, n.d.). Their work is primarily funded by foreign governments, foundations, and, for part of one year, by the Guatemalan government through the Reparations Commission. As of 2011, 1,242 forensic investigations have been conducted, and 5,656 remains recovered. Of these, 4,156 remains have been returned to the families to be reburied (Suasnavar, 2011).<sup>7</sup>

Exhumations in Guatemala, in contrast to other contexts, have been an inclusive process that extended beyond the return of remains. Children, neighbours, friends, and community members have been involved in helping, cooking meals, digging for remains, providing psychological support to family members. Exhumations in Guatemalan society have helped to create a broader process of healing among victims and communities (Ladisch, 2011). There has also been a focus on psycho-social reparations in Guatemalan society.

An unofficial truth-seeking process sponsored by the Catholic Church, called the Recovery of Historical Memory project (REMHI), issued a report in April 1998 that analysed some 7,000 interviews with victims and attributed responsibility for more than 90 percent of the atrocities documented to the army. Two days after the report was published, REMHI's leader, Bishop Juan Gerardi, was murdered. While this case eventually resulted in a few convictions, legal proceedings continue to this day.

The national reparations scheme initiated by the government in 2003 for victims of the conflict provides only financial compensation, is slow and insufficient, and does not address the needs of families to know what happened to their loved ones. There is no national tracing mechanism for families of disappeared people. The continued existence of embedded structural corruption and the continued power of crime syndicates have affected the confidence of the families of victims. Convincing the families of the disappeared to come forward is not always an easy task. The ICRC has reported that

only half of all rural families from which a person disappeared have undertaken any investigations. In most cases, this is because they are afraid, are isolated or do not know about the organisations they could call on, or else are too poor to travel, carry out the formalities required or undertake a search. (Batallas, cited in ICRC, 2010(b))

As a result, the fate of many of the disappeared continues to be unknown.<sup>8</sup>

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7. These numbers do not include more recent cases: notably in the Verbena Cemetery in Guatemala and the cemetery in Escuintla - where they are looking for remains of enforced disappearance.

8. The ICRC has also been involved in Guatemala. It has supported civil-society organisations 'in their efforts to trace those who disappeared during the armed conflict and offers legal advice to the government. In 2009, the ICRC succeeded in reuniting separated relatives in 37 cases, facilitated over 150 exhumations and burials, and helped procure 570 legal documents – mainly birth and death certificates' (ICRC, 2010(a)).

Moreover, recognition of the scale, and deep damage caused by the civil war is not country-wide. The elite, generally of Spanish ancestry, have largely denied the causes and consequences of the violence of the past. In the absence of widespread acknowledgement, alternative methods are used to protest and to memorialise the past:

Few formal memorials have been built in post-conflict Guatemala to commemorate those who were massacred during the internal armed conflict because the current power dynamics and social hierarchy of the country do not allow rural Maya people to [re]claim and appropriate public spaces. (Steinberg and Taylor, 2003 cited in Memory and Resistance, n.d.)

Institutions such as the military and other parts of the political domain

deny a need for commemorations that would exhibit the terror they bestowed upon the masses in the past. Because a lack of formal memorials exists, informal media such as graffiti have been used to transform public spaces into places of memory. (Memory and Resistance, n.d.)

Graffiti is used as a form of protest and an avenue for exploration of how pain is memorialised:

Testimony, *testimonio*, and various forms of artistic expression are some of the vehicles that have been used by Guatemalans to communicate and denounce the past. (Memory and Resistance, n.d.)

Legal action is another strategy that has been pursued, but as domestic prosecutions failed to achieve justice, some began to turn to international forums, including the Spanish courts. Others went directly to the Inter-American Court of Human Rights, which ruled against the government on a number of cases in recent years. In October 2005 the Spanish Constitutional Court ruled that genocide and crimes against humanity committed during the Guatemalan dictatorship and internal armed conflict could be prosecuted in Spanish courts under universal jurisdiction provisions in Spanish law. Overall, what kept investigations going despite grave risks was the will and effort of local victims, supported at key moments by honest prosecutors.

## Legacy of the conflict

The Guatemalan case highlights the power of a strong national and victim-led movement as well as evolving international approaches to prosecuting perpetrators of enforced disappearance. Because the Spanish courts ruled that under the principle of universal jurisdiction, crimes against humanity can be prosecuted in Spanish courts, the charges of genocide, state terrorism, torture and other crimes against humanity have been brought against three Guatemalan former military presidents and five senior army and police officials. People who are considered to be the main architects of the atrocities and lower-level perpetrators of the crimes are only recently beginning to be prosecuted in Spanish, Guatemalan, and international courts (BBC News, 2009(b) and Amnesty International, 2011). However, some cases are still under investigation or pending prosecution in national courts, and victims' organisations have continued to press for justice. 'General Efraín Ríos Montt, a former de facto president of Guatemala and army general, who human rights advocates say was responsible for massacres, was nonetheless [re]elected in 2007 to a four-year term in Guatemala's congress, making him virtually immune to prosecution in the Guatemalan court system' (Mejia, 2009) (he benefited from immunity as a Congress member since first being elected to that position in 1990). Sebastian Elgueta from Amnesty International has argued that a number of former government officials who contributed to the murders continue to hold powerful positions in the private sector (Mejia, 2009).

Today, Guatemala is recognised as one of the world's most violent countries (WHO, n.d.), where hundreds of human rights activists are attacked each year (Human Rights First, n.d.), and '[m]any Guatemalans whose family members were killed by the death squads still live in fear themselves' (Mejia, 2009). The majority of the violence today is drug related with impunity stemming from the fact that the state is co-opted at various levels

into a narco-state. This is partly due to the 'continued existence of illegal and clandestine security organisations, which are responsible for a large number of threats and attacks against human rights defenders. These organised crime-like groups allegedly have extensive links with many public institutions in Guatemala. They were supposed to have been dismantled following the Peace Accords, yet they continue to operate' (Human Rights First, n.d.). These organisations operate in a climate of almost complete impunity.

### On the conflict

- General background information:  
<http://www.gwu.edu/~nsarchiv/guatemala/index.htm>
- On the genocide, with an emphasis on the roles of family and victims' organisations:  
<http://www.gwu.edu/~nsarchiv/guatemala/genocide/index.htm>
- On the genocide case and the background:  
<http://www.guatemala-times.com/news/guatemala/1301-spanish-judge-tries-guatemalan-genocide-case-operation-sofia.html>
- On the 'Death Squad Dossiers' used by Guatemalan death squads to log and collect information about their victims:  
<http://www.gwu.edu/~nsarchiv/guatemala/logbook/index.htm>
- On threats to activists after police files were opened:  
<http://www.amnesty.org/en/news-and-updates/news/threatened-and-attacked-%E2%80%93-dangers-opening-guatemala039s-police-files-20090327>  
and  
[http://www.washingtonpost.com/wpdyn/content/article/2009/04/10/AR2009041003530\\_2.html?sid=ST2009041003614](http://www.washingtonpost.com/wpdyn/content/article/2009/04/10/AR2009041003530_2.html?sid=ST2009041003614)
- Film footage of victim stories can be found in the documentary film *When the Mountains Tremble*, made by Skylight Pictures
- On how Spanish courts were engaged in Guatemala:  
<https://nacla.org/node/6078>  
While the Spanish courts have not been very successful in their attempts to enforce universal jurisdiction against a number of countries (it began with Latin America, and extended to Israel, China, and the US, but Spanish politicians received significant pressure from the US to curtail the court's work, and so the Spanish parliament passed a law in 2009 limiting the court's mandate in universal jurisdiction cases), the primary value of the Spanish universal jurisdiction efforts has been to add legitimacy and visibility to victims groups and their demands.

### Association for the Recovery of Historical Memory (REMHI)

REMHI was a church-based initiative that extensively documented the atrocities committed by both sides, and presented them in a comprehensive four-volume report in April 1998, one year before the CEH report (see above).

Links:

- The second section of this article contains information about 'recovering historical memory':  
<http://gbgm-umc.org/nwo/99ja/guatemala.html#memory>
- This site includes the 7 questions REMHI asked when gathering information:  
<http://www.c-r.org/our-work/accord/guatemala/violent-truths.php> (see the section called 'recovering memory')
- <http://www.peoplebuildingpeace.org/thestories/print.php?id=95&typ=theme>

## Forensic Anthropology Foundation of Guatemala (FAFG)

The FAFG was an important part of the process of finding the disappeared, and was very involved in the exhumations:

<http://www.fafg.org/Ingles/paginas/FAFG.html>

Article on FAFG work:

<http://www.npr.org/templates/story/story.php?storyId=7019560>

### On the 'Nunca Mas/Never Again' Report

The issue of perpetration and responsibility can also be explored through the lens of the murder of the primary author of 'Guatemala Nunca Mas' (Guatemala Never Again), published by REHMI (see above) - Bishop Juan José Gerardi Conedera. The report carried statements from thousands of witnesses and victims of the civil war. The bishop was bludgeoned to death by a concrete slab in his garage two days after the report's publication in April 1998. Three officers were convicted of his murder – which was significant because it was the first time military officers were tried in civilian courts.

- Biography of Bishop Juan José Gerardi Conedera:  
[http://en.wikipedia.org/wiki/Juan\\_Jos%C3%A9\\_Gerardi\\_Conedera](http://en.wikipedia.org/wiki/Juan_Jos%C3%A9_Gerardi_Conedera)
- Blogger reactions to his murder, ten years later (see extracts):  
<http://globalvoicesonline.org/2008/05/06/guatemala-remembering-bishop-gerardi-and-his-report-never-again/>
- Reactions to prosecutions:  
<http://www.trocaire.org/whatwedo/victory-against-impunity-guatemala>
- Blog on trials from expert witness:  
<http://nsarchive.wordpress.com/2009/12/10/a-personal-account-of-testifying-at-a-guatemalan-genocide-trial-by-kate-doyle/>

### On victims/activist group, HIJOS Guatemala

- <http://upside-downworld.org/main/guatemala-archives-33/1980--from-memory-to-resistance-children-bear-witness-hijos-celebrates-10-years-in-guatemala->

### On the trials of perpetrators

- An article on the first prosecution of perpetrator of enforced disappearance:  
<http://jurist.law.pitt.edu/paperchase/2009/09/guatemala-court-convicts-paramilitary.php>
- A different perspective on the same trials:  
<http://www.lab.org.uk/index.php/news/57-focus/401-emerging-out-of-the-fog>  
<http://upside-downworld.org/main/guatemala-archives-33/2429-disappeared-but-not-forgotten-a-guatemalan-community-achieves-a-landmark-verdict->
- An account of the trial of killers of one disappeared man, Edgar Fernando García:  
<http://nsarchive.wordpress.com/2010/10/26/i-wanted-him-back-alive-%E2%80%9D-an-account-of-edgar-fernando-garcias-case-from-inside-tribunals-tower/>

### **On the role of archiving and archivists**

- <http://blog.witness.org/2010/10/kate-doyle-%E2%80%9Carchivists-can-be-at-the-heart-of-accountability-and-justice%E2%80%9D/>

### **On testimonies from loved ones of victims**

- <http://www.para-nunca-olvidar.org/transen.html> (text files)
- <http://www.para-nunca-olvidar.org/testen.html> (sound files)

### **On memorials in Guatemala**

Graffiti is used as a form of protest and an avenue for exploration of how pain is memorialised.

- For images see:  
<http://www.freewebs.com/guategraffiti/disappearancedisplacement.htm>
- For the interaction between formal memorials and graffiti see:  
<http://www.freewebs.com/guategraffiti/memorials.htm>
- This website contains various images of memorials and from the forensic anthropology laboratory:  
<http://web.unbc.ca/~nolin/>

## | Bibliographic sources on Guatemala

Amnesty International (2011). 'Guatemala Arrests Former General for Genocide'. 20 June 2011. [Online.] Available at: <http://www.amnesty.org/en/news-and-updates/guatemala-arrests-former-general-linked-massacres-2011-06-20>. Last accessed 29 September 2011.

Archdiocese of Guatemala (1999). *Guatemala: Never Again!* New York: Orbis Books.

BBC News (2009(b)). 'Guatemala sees landmark sentence', BBC News. 1 September 2009. [Online.] Available at: <http://news.bbc.co.uk/2/hi/8231142.stm>. Last accessed 29 September 2011.

Comision Internacional Contra la Impunidad en Guatemala (2011). Guatemala. [Online.] Available at: <http://cicig.org/index.php?page=guatemala>. Last accessed 29th September 2011.

Doyle, K. (2007). 'The Atrocity Files: Deciphering the Archives of Guatemala's Dirty War', *Harper's Magazine*, December 2007, pp. 52-64.

Gaebler, E. (2011). 'Four Guatemalan Soldiers Guilty of Massacre Sentenced to 6,060 Years in Prison', Impunity Watch. 9 August 2011. [Online.] Available at: <http://impunitywatch.com/?p=19360>. Last accessed 29 September 2011.

Guatemala Commission for Historical Clarification (CEH) (1999). Guatemala Memory of Silence: Report of the Commission for Historical Clarification. [Online.] Available at <http://shr.aaas.org/guatemala/ceh/report/english/toc.html>. Last accessed 29 September 2011.

Guatemalan Forensic Anthropology Foundation (FAFG) (n.d.). Forced Disappearances. [Online.] Available at: <http://www.fafg.org/Ingles/paginas/ForcedDisappearances.html> Guatemalan. Last accessed 29 September 2011.

Human Rights First (n.d.). [Online.] Available at <http://www.humanrightsfirst.org/our-work/human-rights-defenders/guatemala/>. Last accessed 29 September 2011.

International Committee of the Red Cross (ICRC) (2010(a)). 'Guatemala: ICRC calls for creation of a national search committee'. [Online.] Available at: <http://www.icrc.org/eng/resources/documents/news-release/guatemala-news-220210.htm>. Last accessed 29 October 2011.

International Committee of the Red Cross (ICRC) (2010(b)). 'Guatemala: the continuing tragedy of the disappeared'. [Online.] Available at: <http://www.icrc.org/eng/resources/documents/interview/guatemala-interview-220210.htm>. Last accessed 29 September 2011.

Ladisch, V. (2011). 'The Challenge of Implementation: Guatemala', in Wolff, S. and Yakinthou, C. (Eds.) *Conflict Management in Divided Societies: Theories and Practice*. London: Routledge.

Memory and Resistance (n.d.). Graffiti in Postconflict Guatemala. [Online.] Available at: <http://www.freewebs.com/guategraffiti/graffitiabriefsynopsis.htm>. Last accessed 18 August 2011.

Mejia, R. (2009). 'Digging Guatemala: Anthropologists Look for Clues to Past Political Killings', *Scientific American*, 23 March 2009. [Online.] Available at: <http://www.scientificamerican.com/article.cfm?id=anthropologists-study-political-killings>. Last accessed 29 September 2011.

Nelson, D. (2009). *Reckoning: The Ends of War in Guatemala*. Durham: Duke University Press.

Nolin Hanlon, C. and Shankar, F. (2000). 'Gendered Spaces of Terror and Assault: The Testimonies of REMHI and the Commission for Historical Clarification in Guatemala', *Gender, Place and Culture* 7, no. 3, 2000, pp. 265-286.

Suasnavar, J. Email correspondence with V. Ladisch. 19 September 2011.

Wilkinson, D. (2004). *Silence on the Mountain: Stories of Terror, Betrayal, and Forgetting in Guatemala*. Durham: Duke University Press.

World Health Organization (WHO) (n.d.). Violence and Injury Prevention and Disability: Guatemala. [Online.] Available at: [http://www.who.int/violence\\_injury\\_prevention/violence/national\\_activities/gtm/en/index.html](http://www.who.int/violence_injury_prevention/violence/national_activities/gtm/en/index.html). Last accessed 29 September 2011.



## | 3.3 The experience of the former Yugoslavia

Throughout the 1990s, the states that were part of the former Yugoslavia became battlegrounds that witnessed the worst violence in Europe since the Second World War.

### **Roots of the conflict**

The conflict itself did not begin with the end of the Cold War, but had its roots in earlier tensions. The Second World War was marked by 'harsh repression, great hardship and the brutal treatment of minorities. It was a time of prolonged armed conflict, in part the product of civil war, in part a struggle against foreign invasion and subsequent occupation' (ICTY, 1997). Three major Yugoslav factions fought against each other. In the early part of the war, there were widespread massacres of Serbs by the Croatian separatist Ustase group, as well as by Bulgarian and Hungarian occupiers. Later on, Muslims and Croats were also killed, especially at the end of World War Two, when Croatian soldiers were handed over by the Allies to Tito's Partisans and executed en masse (ICTY, 1997). This memory was easily rekindled as Yugoslavia began to break down in the 1990s.

The Socialist Federal Republic of Yugoslavia was made up of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia as well as the two separate regions of Kosovo and Vojvodina, which were autonomous provinces within the Republic of Serbia. Yugoslavia had a number of religions and ethnic groups, and these ethnic groups were also mixed within each of the states, though Bosnia and Herzegovina was the most unique in that it did not possess a single ethnic majority (ICTY, 1997). While 'divisive nationalism and open advocacy of national ethnic identity were...severely discouraged' (ICTY, 1997), the ethnic identity of Serbs, Croats, and Muslims remained prominent. The region experienced serious political and economic crisis during the collapse of communism, and this was deepened by political actors who used militant nationalism to fuel mistrust and tension between the ethnic and religious groups (ICTY, n.d.). Croatia and Slovenia accused Serbia of taking the majority of the governmental, military, and financial resources and power and Serbia accused Croatia and Slovenia of separatism (ICTY, n.d.).

In 1990, the provinces of Vojvodina and Kosovo lost their autonomy when (Serbian) Belgrade extended direct rule over them, despite the fact that ethnic Albanians outnumbered ethnic Serbs in Kosovo. Kosovo was a particular area of importance for ethnic Serbs, considered ancestrally Serbian, and therefore its integration into the state of Serbia was a particularly strong signal to the rest of the region (ICTY, 1997). At the same time that Kosovo was annexed by Serbia, the Kosovo Assembly declared Kosovo an independent republic within Yugoslavia. The assembly was subsequently dissolved by the Serbian Assembly. This was followed by widespread repression of Kosovar Albanians.

Slovenia's declaration of independence in 1991 marked the start of the bloody unravelling of Yugoslavia. Croatia and Bosnia and Herzegovina (BiH) followed suit in 1991 and 1992 through wars that lasted until 1995. In Croatia, the violence was primarily between the majority Croats and the large ethnic Serb minority and involved, among other factors, battles about territorial separation. Bosnia was made up of approximately 43 percent Bosnian Muslims, 33 percent Bosnian Serbs, 17 percent Bosnian Croats and approximately 7 percent of other nationalities. The broader ethnic tensions were therefore reflected internally.

Regional tensions were also reflected, as Serbia and Croatia struggled to hold power in the state. Fighting in Kosovo lasted from 1998 to 1999, and Kosovo was the site of violence between the ethnic Albanian community that sought refuge from Serbia, and Serb forces who used violence to force Kosovar Albanians to flee their homes en masse. In March until June 1999, NATO launched air strikes against Serb forces in Kosovo and Serbia, which led to the withdrawal of the Yugoslav army from Kosovo and the eventual end of the wars.

The conflicts in the former Yugoslavia included widespread attacks against civilians, population expulsions, systematic rape and the use of concentration camps (ICTJ, 2010). The conflicts were characterised by extensive war crimes and crimes against humanity. They were driven by breakaway struggles that grew into bitter and bloody ethnic conflict between and within the region's groups.

There are a total of 34,809 people reported missing as a result of the wars in Croatia, Bosnia and Herzegovina, and Kosovo (ICRC, 2011(b)). More than a decade later, approximately 13,714 of those people are still missing (ICRC, 2011(b)). It has been calculated that the lives of 200,000 people have been directly affected by the disappearances (ICTJ, 2010). A large number of those missing were buried in mass graves.

In the region, of the 22,456 people reported as disappeared during the conflict in Bosnia and Herzegovina between 1992 and 1995, 12,908 remain unaccounted for (ICRC, 2011(b)). 1,811 of the 6,016 people reported for Kosovo have not yet been found (ICRC, 2011(b)). From the conflicts in Croatia between 1991 and 1995, some 2,355 of 6,337 reported are still missing (ICRC, 2011(b)). The missing include Croats, Serbs, Bosniacs, Albanians, Montenegrins, Hungarians, and Roma. Exhumations have been slow-going, and progress in the region is not uniform, due to reasons of both political will and logistics. In some places, there are a small number of burial sites which contain a large proportion of the area's missing. Those areas are easier to marshal resources to excavate sites, and exhume the remains. This also often speeds up the identification and return process. In other places, there are a high volume of graves with fewer bodies, which makes identification of sites and their excavation a much more laborious process. In these areas, the return of remains is often a much slower process.

The International Commission on Missing Persons (ICMP) was established in 1996 to support the Dayton Peace Agreement in Bosnia-Herzegovina. Since the end of 2001, the ICMP has used DNA to identify 'large numbers of persons missing from armed conflict.' The organisation 'developed a database of 88,610 relatives of 29,073 missing people, and more than 33,000 bone samples taken from mortal remains exhumed from clandestine graves in the countries of former Yugoslavia. By matching DNA from blood and bone samples, ICMP has been able to identify 15,955 people who were missing from the conflicts and whose mortal remains were found in hidden graves' (ICMP, 2008). The use of DNA as a method of identifying remains has been critical in enabling the remains of loved ones to be returned to their families for burial, and to the ending of the suffering caused by uncertainty and the 'effective use of DNA as a means of mass identification has transformed ICMP from a small organisation operating on an essentially political level into the biggest identification program in the world' (ICMP, 2008).

When disappearance is mentioned in conjunction with the former Yugoslavia, the horrors of Srebrenica usually come first to mind. Srebrenica is a town in Bosnia-Herzegovina, which formed part of a UN-protected 'safe zone' during the war between Bosnian and Serbian forces for control over territory. It was supposed to be a demilitarised area, protected by the UN peacekeeping force, UNPROFOR. In July 1995, the Bosnian Serb military began laying siege to the areas surrounding Srebrenica, and as a result, thousands of Bosnian Muslims fled Srebrenica to nearby Potocari, seeking refuge in the UN military compound. In the days leading up to the massacre, some 20,000-25,000 Bosnian Muslims (mostly women, children, and the elderly) gathered in and around the compound, with Bosnian Serb snipers firing on the crowd at random. While some able-bodied men from Srebrenica decided to flee to the woods to escape the encroaching Bosnian Serb army, others were separated from the women and children, when they were being bussed from the UN compound to safe Bosnian Muslim territory, and taken to detention camps (Yakinthou, 2008). Many of those who fled into the woods were either killed or captured and also taken to detention camps (Human Rights Chamber, 2003). Most of those men separated from the women and children on the buses were killed and buried in mass graves:

Almost to a man, the thousands of Bosnian Muslim prisoners captured, following the takeover of Srebrenica, were executed. . . Most...were slaughtered in carefully orchestrated mass executions, commencing on 13 July 1995, in the region just north of Srebrenica. Prisoners not killed on 13 July 1995 were subsequently bussed to execution sites further north of Bratunac, within the zone of responsibility of the Zvornik Brigade. The large-scale executions in the north took place between 14 and 17 July 1995. (ICTY, 2004)

Based on the evidence gathered, the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Court of Justice have declared Srebrenica a genocide.<sup>9</sup> The impact of the massacre has been catastrophic on the women who were left behind, who have had to try to re-establish their lives in a context where the fate of their loved ones is still not officially known. As of 2011, approximately two-thirds of the Srebrenica missing have been identified and returned to their families. In March 2010, the Serbian parliament officially apologised for the massacre, though the fact that the parliament stopped short of calling it a genocide was heavily criticised by a number of sectors, including Muslims and Bosniaks in Serbia (BBC News, 2010).

The conflict was effectively ended in December 1995 with the signing of the Dayton Agreement by the presidents of Bosnia, Serbia, and Croatia (in Kosovo however, conflict erupted from 1998 to 1999). Though the agreement was focused on ending the war in Bosnia and Herzegovina, it was also designed to provide the basis for regional balance of power between the conflict states in the former Yugoslavia, both re-modelling the system of government in Bosnia and Herzegovina, and redistributing territory between the conflict parties.

### Official treatment of the missing

The scale and range of atrocities committed during the war were extensive. There have been some attempts to carry out prosecutions for war crimes, but there has been little coordinated effort to learn the fate of the missing in the region.

At the country level, extensive prosecutions have taken place in BiH at the cantonal and district levels, as well as before the War Crimes Chamber of the Court of Bosnia and Herzegovina, inaugurated in 2005. Croatia established specialised chambers to deal with war crimes cases in 2003; Serbia set up the War Crimes Chamber in the District Court of Belgrade the same year; and international judges and prosecutors were deployed in Kosovo in 2000. The quality of the prosecutions in these countries varies, however. Witnesses in the Serbian court have felt intimidated into silence when asked to testify against police officers suspected of war crimes. In the court in BiH, the use of plea bargains has often been ill-received by victims' groups.

A working group on missing persons, chaired by the ICRC, was established in 2004 to liaise between the Kosovar and Serbian authorities on the issue of the missing. In 2006, the Provisional Institutions of Self-Government in Kosovo established the Kosovo Commission on Missing Persons. Its mandate was to search for the missing, regardless of ethnicity (ICMP, n.d.).

The Missing Persons Institute of Bosnia and Herzegovina (MPI) was co-founded by the Bosnia and Herzegovina Council of Ministers and the ICMP in 2005, and began operating in 2008. It centralises all information on the missing and on mass graves, notifies families and issues certificates of disappearance, informs local judicial authorities about the locations of possible grave sites and requests investigation, participates in excavation and exhumations, autopsies and identifications, and provides support to the families of the missing. An important task has been to establish a unified record of people who went missing in Bosnia and Herzegovina. This is critical because, as has happened in other conflicts, in the absence of a centralised record of the missing and disappeared, a number of organisations keep their own records, which leads to confusion over numbers and information. The MPI grew out of a 1997 initiative by the Office of the High Representative (OHR) in 1997 called the 'Joint Exhumation Process'. This allowed the conflict parties to exhume their own missing persons in the 'other side's' territory (ICMP, n.d.). Together with the MPI, a group of

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9. Genocide is defined in Article 2 of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide as: any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life, calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; [and] forcibly transferring children of the group to another group.

The International Criminal Tribunal for the former Yugoslavia (ICTY), the Prosecutor vs Radislav Krstić, Judgement of 10 April 2004, case no. IT-98-33-A. Available at: [www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf](http://www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf) (1 November 2011); International Court of Justice (ICJ), The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Case 91, The Hague, Judgement of 26 February 2007.

families of the missing lobbied to have a Law on Missing Persons created. This law entered into force in November 2004, but has not yet been fully implemented (ICMP, n.d.). The law 'establishes the principles for improving the tracing process, the definition of a missing person, the method of managing the central records, realisation of social and other rights of family members of missing persons, and other issues related to tracing missing persons from/in Bosnia and Herzegovina' (BiH Law on Missing Persons, 2004).

The governments of Bosnia and Herzegovina, Croatia, and Kosovo each collaborated with the ICRC to produce a 'Book of Missing Persons' for their country, which lists the names of people still unaccounted for as a result of the conflict (ICRC, n.d.).

None of the governments involved have made a comprehensive effort to investigate the causes of the war crimes or document the crimes committed. Initiatives to launch truth-seeking measures have either failed to produce a commission (BiH, 1990s, 2005-2006) or have established commissions that failed to deliver a final report with findings and recommendations (Serbia and Montenegro, 2001). Throughout the former Yugoslavia, authorities have provided material reparations primarily to members of the dominant ethnic group in the area. Similarly, memorials usually pay tribute only to victims of the majority group. Reparation laws also are significantly more favourable to former combatants than to civilian victims. At the regional level, the International Criminal Tribunal for the Former Yugoslavia (ICTY), established in 1993 by the United Nations Security Council, has indicted 161 people, many of them high-ranking political or military leaders including the former Prime Minister of Kosovo, the former President of Serbia, and the former commanders of the Bosnian Serb and Croatian armies. The ICTY has also ruled on cases of genocide, which involves people who remain missing.

## **The groups involved**

The International Commission on Missing Persons (ICMP) and the International Committee of the Red Cross (ICRC), as well as families' and survivors' groups have been at the forefront of efforts to find the missing. Pressure, as well as financial and structural support by the international community has aided the excavation of burial sites and the identification and return of remains. The ICMP, initially set up to coordinate the various commissions that had been established to search for the missing in the region, also worked closely with civil society groups. Through its work, it provided a space for victims' groups to meet and it led advocacy efforts for the law on the missing.

Since 2006, civil society organisations from the post-Yugoslav countries have actively discussed the need for establishing a regional truth-telling mechanism. The Coalition for RECOM (regional truth commission) approached the governments in the region in the first half of 2011 with a request to establish a regional truth commission to establish the fate of the missing (ICTJ, 2010). The Coalition is made up of 1,500 regional NGO and human rights groups (Balkans Chronicle, 2011).<sup>10</sup>

Civil society has been heavily involved in pushing for progress on the issue of the missing, and a great deal of controversy exists over unresolved questions, including the exact number of missing people in the region. The numbers of missing in each country have been subject to political manipulation. In an effort to address this gap RECOM has gathered half a million signatures in a regional petition to establish the commission (Balkans Chronicle, 2011). At the same time, however, there is also strong opposition to a regional truth commission by some victims' groups in Kosovo, Croatia, and Bosnia: these groups fear that the commission will allow Serbia to escape its responsibilities for the crimes it committed by also presenting atrocities committed against ethnic Serbs (Balkans Chronicle, 2011). There is also resistance more widely to thoroughly addressing the issue, for atrocities were committed by all sides.

There are a number of civil society organisations that represent survivors and victims of Srebrenica. Women of Srebrenica is a non-governmental organisation whose task is to search for more than 10,000 people missing in Europe's largest massacre, committed by the Bosnian Serb army, on

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10. For more information on RECOM, see their website: <http://www.zarekom.org/The-Coalition-for-RECOM.en.html>

July 11, 1995, in Srebrenica' (Women of Srebrenica, n.d.). 'The Srebrenica-Potočari Memorial and Cemetery is an example of civil society engagement, and was designed in close consultation with survivors, serving as both a civic and sacred space.

The ICRC 'supports efforts to determine the fate of people missing in relation to conflicts in the former Yugoslavia and to ensure that their families' legal, psychological and economic needs are met. This includes assisting the authorities in Bosnia and Herzegovina and in Kosovo with amendments to existing legislation and the drafting of new laws to protect the rights of missing persons' families' (ICRC, 2010). The ICRC also chairs the Working Group on Missing Persons, through which dialogue is conducted between the Kosovar and Serbian authorities. The ICRC has worked to gather information which has been held in the archives of military contingents in Kosovo and of international organisations. This has led to exchanges of information between the conflict parties, as well as exhumations and the return of remains to family members in both Serbia and Kosovo. In Sarajevo, the ICRC has helped build the capacity of the BiH Missing Persons Institute, and in Pristina it supports the Government Commission on Missing Persons in Kosovo. The ICRC trains National Society staff in each of the countries to provide psychological support to families of the missing, and works with local Red Cross organisations on the issue of the missing (ICRC, 2010).

### **Legacy of the conflict**

Now, prosperous Slovenia is looking forward to EU and NATO membership. Croatia is recovering from war, and its territory is in tact, although most of its Serbs have fled or been driven out. Bosnia is divided into two, a shattered land still struggling to overcome the legacy of the war. Macedonia has been riven by ethnic conflict - but spared all-out war - between ethnic Macedonians and ethnic Albanians. Hundreds of thousands of ethnic Albanians returned to Kosovo after the war there, but then 230,000 Serbs and other non-Albanians were forced to flee...Serbia and Montenegro have been impoverished by the wars. (Judah, 2011)

There have been significant documentation efforts by NGOs and legal institutes, as well as memorials to the missing built by survivors' groups, civil society, and governments. For example, the Humanitarian Law Center, a non-governmental organisation, has accumulated information about all those who were killed or disappeared in the Kosovo war (about 12,000 people). During the process of documenting all individual cases they conducted interviews with hundreds of family members of the missing. They also collected newspaper articles and testimonies from family members.

The prosecution of war crimes and crimes which led to people's disappearance over the course of the conflict has been under-represented in the regional media, or else dealt with selectively within each country so that the media reinforces already-established victim-perpetrator narratives that emphasise separate narratives and that present the community concerned as innocent (Amnesty International, 2010(a)). Amnesty International has also claimed that a lack of political will at the regional level to provide accountability for crimes has contributed to the slow pace of resolution.

Currently, the regional coalition to establish a truth commission is the most dynamic aspect of the efforts to recover the remains of the many thousands of missing from the former Yugoslavia, and bring a measure of peace to their families. However, progress is slow, and internal disputes continue to hamper these efforts. In the meantime, the ICMP continues its excavations and identifications in each of the countries, and the families continue to wait for the truth about the fate of their loved ones.

## Selected Resources on the former Yugoslavia |

### **The International Criminal Tribunal for Former Yugoslavia**

<http://www.icty.org/>

- Testimonies provided by victims can be found at this link:  
<http://www.icty.org/sections/Outreach/VoiceoftheVictims>
- Testimonies of those providing statements of guilt can be found at this link:  
<http://www.icty.org/sections/Outreach/StatementsofGuilt>

### **The Human Rights Chamber for Bosnia and Herzegovina**

<http://www.hrc.ba/ENGLISH/DEFAULT.HTM>

### **The Humanitarian Law Center**

<http://www.hlc-rdc.org/stranice/14.en.html>

- From this link, one can access stories from family members of those who were killed in the massacre of Srebrenica:  
<http://www.hlc-rdc.org/Outreach/Kazivanje-istine/1404.en.html>
- This link provides two different perspectives on whether Mladic was a war hero or a war criminal: 'Serbia faces task of admitting its role in wars', June 13, 2005, Associated Press article posted on CNN:  
<http://www.hlc-rdc.org/Outreach/Kazivanje-istine/1404.en.html> (go to Press Clippings, Page 17)

### **Coalition for a Regional Truth Commission (RECOM)**

<http://www.zarekom.org/The-Coalition-for-RECOM.en.html>

- News and other sources on RECOM:  
<http://www.impunitywatch.org/en/publication/75>  
<http://old.balkaninsight.com/en/main/interviews/24056/>  
<http://humanrightshouse.org/Articles/12082.html>  
<http://www.balcanicaucaso.org/eng/Regions-and-countries/Serbia/Serbia-towards-a-regional-truth-on-war-crimes>  
<http://edition.cnn.com/2009/WORLD/europe/10/26/karadzic.trial.analysis/index.html>
- Facebook group:  
<https://www.facebook.com/group.php?gid=113683431991447#!/group.php?gid=113683431991447&v=info>

### **On the missing**

- Missing Lives. Authors: Nick Danziger (photographs), Rory MacLean (text), Mark Thomson (design). Copyright: Dewi Lewis publishing and the ICRC. Release year: 2010.

This is a photographic book and exhibition with photos of memorials and of memories, as well as stories from 15 family members. See for example:

<http://www.icrc.org/eng/resources/documents/misc/missing-lives-060710.htm>

- Other sources about the missing:  
<http://news.bbc.co.uk/2/hi/europe/4563551.stm>  
[http://www.swissinfo.ch/eng/specials/kosovo/Experts\\_lose\\_hope\\_of\\_finding\\_Kosovos\\_missing\\_.html?cid=29501766](http://www.swissinfo.ch/eng/specials/kosovo/Experts_lose_hope_of_finding_Kosovos_missing_.html?cid=29501766)  
<http://www.hurriyetdailynews.com/n.php?n=nearly-15000-war-missing-still-haunt-the-former-Yugoslavia-2010-08-29>  
[http://www.innovationsreport.com/html/reports/social\\_sciences/institute\\_missing\\_persons\\_hope\\_peace\\_balkans\\_123345.html](http://www.innovationsreport.com/html/reports/social_sciences/institute_missing_persons_hope_peace_balkans_123345.html)  
[http://www.usatoday.com/news/world/2007-08-30-844668576\\_x.htm](http://www.usatoday.com/news/world/2007-08-30-844668576_x.htm)

### **On the ICTY trials**

- While not focused on missing persons or enforced disappearance, this article describes the confession of a perpetrator who was responsible for war crimes, and how he sees what he did:  
<http://www.csmonitor.com/World/Europe/2008/0830/p01s01-woeu.html>

### **On efforts to establish commissions in Yugoslavia**

- <http://www.independent.co.uk/news/world/europe/yugoslavia-launches-truth-commission-681821.html>

### **On how atrocity is dealt with over time**

- This is an article with a video in which the Serbian president apologises during a visit to a Croatian massacre memorial:  
[http://www.rferl.org/content/Serb\\_President\\_Visiting\\_Croat\\_Atrocity\\_Site/2210210.html](http://www.rferl.org/content/Serb_President_Visiting_Croat_Atrocity_Site/2210210.html)

### **On disagreements over facts and interpretation, on apology and forgiveness**

- [http://www.rferl.org/content/The\\_Dynamics\\_Of\\_Apology\\_And\\_Forgiveness\\_In\\_The\\_former\\_Yugoslavia/2025889.html](http://www.rferl.org/content/The_Dynamics_Of_Apology_And_Forgiveness_In_The_former_Yugoslavia/2025889.html)

### **On the Srebrenica Massacre in BiH**

Srebrenica was the site of what has been characterised as the worst massacre in Europe since WW2. The ICTY labelled it a genocide. Many of the victims of the massacre are also still missing.

In July 1995 more than 8,000 men and boys were killed in the town of Srebrenica, and 25-30,000 people were displaced forcefully by the Serbian army as well as by paramilitaries. The town had been considered a 'safe zone' under UN protection. The Dutch forces who were representing the UN at the time did not stop the massacre, closing their compound and pushing people out as others were being murdered in front of the compound. There was a case of victims' families taking the Dutch commanders to the ECJ or the ECHR over the event.

- For the legal case against the Dutch state and the UN see:  
<http://news.bbc.co.uk/2/hi/europe/6721139.stm>  
<http://news.bbc.co.uk/2/hi/7457239.stm>
- Article on massacre:  
<http://news.bbc.co.uk/2/hi/675945.stm>
- Wikilink explaining massacre:  
[http://en.wikipedia.org/wiki/Srebrenica\\_massacre](http://en.wikipedia.org/wiki/Srebrenica_massacre)



## On memorials in the former Yugoslavia

- About the contested nature of memorials, whether and why they are important:  
<http://www.balcanicaucaso.org/eng/Regions-and-countries/Bosnia-and-Herzegovina/IWPR-Calls-for-War-Memorials-Divide-Bosnia>
- About a memorial to those killed or missing in Croatian village of Nadin:  
<http://www.zadarskilist.hr/clanci/20112008/kameni-spomenik-u-nadinu---simbol-ponosa-i-sjecanja>  
There are photos (at the bottom of the page under 'Galerija slika') to those who were killed or went missing in the Croatian village called Nadin. The newspaper article says that the monument 'symbolises a stone which stands still although it is wounded by the enemy's grenade, which is represented by the hole in the middle. The rosary is a symbol of all rosaries which Croatian combatants and civilians wore during the Homeland war'.
- A video of a monument honoring Bosniak victims from the village of Kozarac (near Prijedor, in Republika Srpska - BiH):  
<http://www.youtube.com/watch?v=z2-MSIGpN7g&feature=related>  
At 6:45 is the text (on the monument) in English. A majority among the names of the killed are names of those whose bodies have not been found yet, so they are missing persons. The 'sticks' (lamps) on the outer wall symbolise barbed wire (because many Bosniaks from the region were held in 1992 in infamous Serb-run camps, where Bosniaks were routinely tortured and killed).
- On memorials in Bosnia-and-Herzegovina:  
The Srebrenica-Potočari Memorial and Cemetery was designed in close consultation with survivors, serving as both a civic and sacred space. This site contains a vast array of information and sources about this memorial.  
<http://memoryandjustice.org/site/srebrenica-potochari-memorial-and-cemetery/>

Women of Srebrenica is a non-governmental organisation whose 'task is to search for more than 10,000 people missing in Europe's largest massacre, committed by the Bosnian Serb army, on July 11, 1995, in Srebrenica':

<http://www.srebrenica.ba/index.en.php?link=intro>



## | Bibliographic sources on the Former Yugoslavia

Amnesty International (2010(a)). 'Amnesty International Report 2010'. New York: Amnesty International.

Balkan Chronicle (2011). 'Half a million in former Yugoslavia sign a petition for missing persons', *The Balkan Chronicle*, 2 July. [Online.] Available at: [http://www.balkanchronicle.com/index.php?option=com\\_content&view=article&id=1193:half-a-million-in-former-Yugoslavia-sign-a-petition-for-missing&catid=83:former-Yugoslavia&Itemid=460](http://www.balkanchronicle.com/index.php?option=com_content&view=article&id=1193:half-a-million-in-former-Yugoslavia-sign-a-petition-for-missing&catid=83:former-Yugoslavia&Itemid=460). Last accessed 29 September 2011.

BBC News (2010). Serbian MPs offer apology for srebrenica massacre. [Online.] Available at: <http://news.bbc.co.uk/2/hi/8594625.stm>. Last accessed 29 September 2011.

Brunborg, H., Lyngstad, T. and Urdal, H. (2003). 'Accounting for Genocide: How Many Were Killed in Srebrenica?', *European Journal of Population*, 19(3), pp. 229-248.

Humanitarian Law Center (2007). *Transitional Justice in Post-Yugoslav Countries: 2007 Report*. Belgrade: Humanitarian Law Center.

International Center for Transitional Justice (ICTJ) (2006-2011). Memory and Justice: Srebrenica Potochari Memorial and Cemetery. [Online.] Available at: <http://memoryandjustice.org/site/srebrenica-potochari-memorial-and-cemetery/>. Last accessed 29 September 2011.

International Criminal Tribunal for the Former Yugoslavia (ICTY) (1997). *The Prosecutor vs Dusko Tadic*, IT-94-1-T, Judgement 7 May 1997, The Hague. [Online.] Available at: [http://icty.org/x/file/Legal%20Library/jud\\_supplement/supp6-e/tadic.htm](http://icty.org/x/file/Legal%20Library/jud_supplement/supp6-e/tadic.htm). Last accessed 10 October 2011.

International Criminal Tribunal for the former Yugoslavia (ICTY) (2001). *The Prosecutor vs Radislav Krstić*, IT-98-33-T, Judgement, 2 August 2001, The Hague. [Online.] Available at: [http://www.icty.org/x/file/Legal%20Library/jud\\_supplement/supp49-e/krstic.htm#1](http://www.icty.org/x/file/Legal%20Library/jud_supplement/supp49-e/krstic.htm#1). Last accessed 10 October 2011.

Human Rights Chamber for Bosnia and Herzegovina (2003). *Srebrenica Cases*, decision of 7 March 2003. [Online.] Available at: [www.hrc.ba/ENGLISH/press\\_eng/pressEng/march03.pdf](http://www.hrc.ba/ENGLISH/press_eng/pressEng/march03.pdf). Last accessed 10 August 2011.

International Commission on Missing Persons (ICMP) (2008). About ICMP. [Online.] Available at <http://www.ic-mp.org/about-icmp/>. Last accessed 29 September 2011.

International Committee of the Red Cross (ICRC) (2010). The ICRC in the Western former Yugoslavia. [Online.] Available at: <http://www.icrc.org/eng/where-we-work/europe-central-asia/serbia/overview-western-former-Yugoslavia.htm>. Last accessed 29 September 2011.

International Committee of the Red Cross (ICRC) (2011(a)). Annual Report 2010. Geneva: International Committee of the Red Cross.

International Committee of the Red Cross (ICRC) (2011(b)). Email communication with Christalla Yakintou, 4 November 2011.

International Criminal Tribunal for the Former Yugoslavia (ICTY) (n.d.). The Former Yugoslavia – Conflicts. [Online.] Available at: <http://www.icty.org/sid/322>. Last accessed 29 September 2011.

Judah, T. (2011). 'Yugoslavia: 1918-2003', [Online.] Available at: [http://www.bbc.co.uk/history/worldwars/wwone/yugoslavia\\_01.shtml](http://www.bbc.co.uk/history/worldwars/wwone/yugoslavia_01.shtml). Last accessed 1 November 2011.

(n.a.) (2004). 'Bosnia-and-Herzegovina Law on Missing Persons'. [Online.] English translation available at: [www.ic-mp.org/wp-content/.../11/lawmp\\_en.pdf](http://www.ic-mp.org/wp-content/.../11/lawmp_en.pdf). Last accessed 1 November 2011.

Perriello, T. and Wierda, M. (2006). *Lessons from the Deployment of International Judges and Prosecutors in Kosovo*. New York: International Center for Transitional Justice.

Ivanišević, B. (2007). *Against the Current – War Crimes Prosecutions in Serbia*. New York: International Center for Transitional Justice.

MacLean, R. (2010). *Missing Lives*. Stockport: Dewi Lewis Publishing.

Mégevand-Roggo, B. (2005). Srebrenica - remembering the missing. International Committee for the Red Cross, 5 July 2005. [Online.] Available at: <http://www.icrc.org/eng/resources/documents/misc/srebrenica-editorial-050705.htm>. Last accessed 29 September 2011.

Wagner, S. (2008). *To Know Where He Lies: DNA Technology and the Search for Srebrenica's Missing*. Berkeley: University of California Press.

Women of Srebrenica (n.d.). Women of Srebrenica. [Online.] Available at <http://www.srebrenica.ba/index.en.php?link=intro>. Last accessed 29th September 2011.

Yakinthou, C. (forthcoming). *The Emergence of a 'Right to Truth': A Comparison of Inter-American and European Human Rights Approaches*.

## | 3.4 The experience of Spain

### Roots of the conflict

Spanish public interest in the legacy of violence from the civil war has been increasing over the last decade, after a generation of disengagement, where debate over the civil war was left primarily to academia (Boyd, 2008). Spain went through a bloody civil war from 1936 to 1939, sparked by a military rebellion led by General Francisco Franco against Spain's democratically elected government of the II Republic. Franco's dictatorship ended in 1975 with his death, which led to a transition to democracy. By the end of the regime, more than half a million Spaniards had been killed during the civil war and the subsequent dictatorship period (Graham, 2004).

Many of those killed in the Spanish Civil War were executed away from the battlefields and left buried in unmarked graves (Kovras, 2008). Recent historical research estimates the number of people executed by Franco's troops during and after the war as being between 70,000 and 100,000 (Ferrándiz, 2006). Between 1939 and 1947, more than 400,000 Spaniards were kept in concentration camps. Over the next three decades, political executions and persecution were rife. Half a million people fled the country (Anderson, 2009). Among those who were killed during the war, around 114,266 were buried in common graves all over the country and their remains went missing.

During the dictatorship, Francoist repression not only aimed to punish Republican sympathisers but it also aimed at eradicating ideas that it saw as 'anti-Spanish', such as communism, masonry, liberalism, and atheism. To spread the regime's ideology particular attention was paid to teachers to ensure that future generations would be educated in 'national' ideas: between 1936 and 1943, together with other civil servants of the II Republic, around 60,000 primary schoolteachers were investigated and 6,000 fired (Ruiz, 2007). The positions were replaced with supporters of the regime.

A standard textbook 'El Parvulito' in Spain's preschools, reveals how Franco justified his regime and indoctrinated younger generations.<sup>11</sup> This textbook - used until Franco's death - explained the Civil War to four and five year olds with these words:

'Some years ago, Spain was very badly governed. Every day there were shots fired in the streets and the churches were burned down. To stop all of this, Franco rose up with the army, and, after three years of war, managed to throw out the enemies of the Fatherland. The Spaniards named Franco their Chief and he has been governing Spain gloriously since 1936.' (Anderson, 2009)

In 1977, two years after Franco's death and as part of a long negotiated process of transition to democracy, between the Francoist elite and the democratic opposition, Spain's first democratically elected parliament passed an amnesty law (Kovras, 2008). The law, envisioned to free the remaining political prisoners of the regime, also guaranteed amnesty for the crimes committed by Francoism. This meant that no one would be called to account judicially. At that moment, there was a strong fear in Spain that opening old wounds would trigger another civil war or a military coup. This fear drove the compromise accepted by democratic reformers, who feared the army and the considerable residual military strength of the civilian extreme right, to leave the past behind (Graham, 2004).

Over the course of the 1980s, there were fractured efforts to deal with the past from different sectors. A series of limited reparations laws were passed, however, none of these laws explicitly or officially recognised the victims, which led to complaints among those affected by the war. During this period Spain also witnessed the explosion of detailed empirical works of history that minutely reconstructed Francoist repression on a province-by-province basis. By the end of the 1990s about 60 percent of provinces had been researched to some degree. A new history was constructed which listed the real names of the dead by counting them from municipal registers and cemetery lists (Graham, 2004).

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11. For a discussion on other factors which influenced the return to democracy, see Aguilar, P. (2000). *Memory and Amnesia: The Role of the Spanish Civil War in the Transition to Democracy*, Oxford, Berghan Books.

Yet the real breakthrough in terms of coming to terms with the past came in the 2000s. This was the period when Spain saw the emergence, simultaneously, of a number of different factors which made debate about the civil war legacy more possible (Blakeley, 2005). Among those factors was the appearance of a victims' families movement that aimed at the 'recovery of historical memories'. The recovery process essentially aimed at locating graves and exhuming remains of the victims of the civil war (Kovras, 2008). This was an initiative started by local organisations that sprung up in different regions of the country. The most notable of these organisations was the Association for the Recovery of Historical Memory (ARMH) which has petitioned for the exhumation from common graves of the remains of those extra-judicially murdered so they may be identified and reburied by family and friends (Encarnación, 2008).

### Official treatment of the missing

President José María Aznar, from the conservative Partido Popular which was in power from 1996 to 2004 was generally unsympathetic to families' demands for exhumations. The Aznar government rejected requests to finance exhumations of the mass graves throughout Spain containing the remains of those executed during the Civil War, though it almost simultaneously assumed the cost of exhuming and repatriating the remains of the members of Blue Division that fought during World War II alongside the Nazis in Russia (Kovras, 2008). This position of the government further contributed to the 'uneven acknowledgement' of the suffering caused by the civil war (Kovras, 2008).

This period witnessed a shift in public attitudes regarding facing the past, and intellectuals and left-wing groups took much stronger public stances on the issue. While the 1977 amnesty had been consistently supported by a significant proportion of Spanish society (Blakeley, 2005), the arrest of Chilean dictator Augusto Pinochet, the deepening societal confidence in Spanish democracy, reduced fear about a return to conflict, and a growing urgency among families of victims began to erode this consensus (Blakeley, 2005). The passage of time and the evolution of a new generation of Spaniards who were less beholden to the early transition period's political compromises made delving into the past seem less threatening.

Aznar's succession by the Socialist José Luis Rodríguez Zapatero started a new phase in Spain's newly surfaced interest to reckon with its past. In December 2007, Spain's parliament approved the so-called **Law of Historical Memory** after a long period of fierce debate.<sup>12</sup> The law included a condemnation of Franco's military uprising as 'illegitimate', as well as the judgements carried by Franco's courts. It also established a number of measures to adjudicate the appropriate reparation to the victims of the war and the dictatorship, including monetary compensation, and the restoration of citizenship to those forced into exile, with extension to their descendents, as well as those who fought in the international brigades. These measures were intended to complement existing reparations laws, passed during the late 1970s and 1980s. Most importantly, the law obliged the government to provide support for the exhumation of the remains of those executed by Franco's supporters, still buried in unmarked graves throughout the country. However, the fact that the law did not oblige the government to finance the exhumations was criticised by a number of human rights organisations (Tamarit Sumalla, 2011). Lastly, the law called for the removal from public view of 'shields, plaques and statues and other commemorations to the Spanish Civil War that exalts one of the warring parties and post-civil war Francoist regime' (Encarnación, 2008).

Responding to a series of claims presented by victims' groups disappointed with the law before the Audiencia Nacional (the National Criminal Court), Judge Baltazar Garzón decided to investigate the cases of executions and disappearance in November 2008. However, the same Audiencia 'ruled that it was not competent to investigate cases of enforced disappearances dating from the Spanish Civil War and early years of the rule of Francisco Franco; it therefore referred the 114,266 suspected cases of enforced disappearance to the 43 local criminal courts in whose jurisdiction the mass graves had been found' (Amnesty International, 2010). 13 courts subsequently 'classified the cases as ordinary crimes and closed the

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12. The complete title of the law is: Law 52/2007 which recognises and expands the rights, and establishes measures in favor of those who suffered persecution or violence during the civil war and the dictatorship. For a direct link to the law, see [http://www.boe.es/aeboe/consultas/bases\\_datos/doc.php?id=BOE-A-2007-22296](http://www.boe.es/aeboe/consultas/bases_datos/doc.php?id=BOE-A-2007-22296). Last accessed 10 October 2011.

investigations on the grounds that the crimes had passed the statute of limitations (which sets a maximum period of time that legal proceedings may be initiated after a specific crime). Only three of the local courts classified the cases as crimes under international law (which have no expiry date) (Amnesty International, 2010). In 2010, Garzón was charged with knowingly exceeding his jurisdiction, and faces being removed from the bench (Ku, 2010).

## The groups involved

The Association for the Recovery of Historical Memory (ARMH) was founded in 2000 by Emilio Silva who was in search for his own grandfather, killed in October 1936 by Francoist vigilantes (Encarnación, 2008). Silva's grandfather's roadside grave which also contained the remains of another thirteen victims, became the ARMH's flagship case and was taken to the United Nations High Commissioner for Human Rights.

In November 2002, the United Nations Working Group on Enforced or Involuntary Disappearances urged the Spanish government to undertake investigations about the fate of the killings of Republicans following the end of the Spanish Civil War and exhumations of known graves of the remains of the disappeared. While the Working Group recommended the Spanish government investigate only two cases, it increased the pressure on the government to deal with this issue (Blakeley, 2005). Instead of waiting for the government to respond to the UN resolution to start digging the graves, the ARMH started the exhumation process with the aid of private funds. Emilio Silva's grandfather became the first victim of Spain's civil war to have his identity confirmed by a DNA test. By 2006, the ARMH had exhumed some 40 gravesites containing 520 bodies. What needs to be underlined is that ARMH's work has depended on volunteers and on the financial contributions of the families of the missing. Although local authorities have sometimes offered aid, during the early period of exhumations there were no central government funds for the work (Graham, 2004).

The 1998 arrest in London of Chilean General Augusto Pinochet was one of the factors which contributed to increasing debate about the civil war past in Spain. Pinochet's arrest was ordered by Spanish investigating judge Baltazar Garzón, who asserted competence on the basis of universal jurisdiction (Encarnación, 2008). After assuming power in a CIA-backed coup d'état on 11 September 1973 that overthrew Salvador Allende's democratically elected socialist government, Pinochet had become president of the republic from 1974 until transferring power to a democratically elected president in 1990. The initial indictment had accused him of the murder of 50 Spanish citizens living in Chile. This charge was later expanded to include the systemic torture, murder, illegal detention, and forced disappearances of hundreds of Chilean citizens between 1973 and 1991 (Encarnación, 2008). Garzón's move attracted the attention of the association of victims' families, who subsequently submitted their application to his court.

However, more critical to the public debate domestically was the combination of pressure from victims' associations such as AMRH and the political parties from the left which supported them (Izquierda Unida and Catalanish), and who played a significant role in awakening Spanish society's consciousness. In 2008, Garzón began investigations into the execution and disappearance of 114,266 people killed between 17 July 1936 and December 1951 after receiving cases from the association of families (Beevor, 2006). It is estimated that there are 2,052 burial sites across Spain, of which less than 10 percent have been investigated (Fotheringham, 2010). The Spanish government remains ambivalent in its commitment, progress continues to be slow, often right-wing town councils in towns in which burial sites exist oppose excavations, and urban development means that possible sites are being built over (Fotheringham, 2010). Recently, however, the government has mapped gravesites, and approved a protocol for exhumations.<sup>13</sup>

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13. For information on this, see: [http://mapadefosas.mjusticia.es/exovi\\_externo/CargarInformacion.htm](http://mapadefosas.mjusticia.es/exovi_externo/CargarInformacion.htm)

## Legacy of the conflict

The legacy of the civil war has only begun to be dealt with in Spain, and there is a great deal of tension across all sectors of society regarding how the past should be addressed. This is especially evident in the treatment of the missing. There is an emerging, but cautious, debate in the media about the importance of finding the graves of the missing. At the same time, the political division across left and right remains pervasive, and families of missing people still sometimes request anonymity in the process of seeking remains. However, families continue to play an important role in continuing pressure to open burial sites and exhume and identify bodies. There is also an increasing engagement among civil society actors and the arts and academic communities in the discussion about the past and in rethinking the way the civil war is understood.

In a way the spirit of the 1977 amnesty continued to live on in Zapatero's Law of Historical Memory, as the 2007 law explicitly states that any adjudication of human rights violations anchored on the new law 'will omit any reference to the identities of those who took part in the events or legal proceedings that led to sanctions or condemnations.' This virtually guarantees that no one in Spain will ever be prosecuted on charges of crimes against humanity (Encarnación, 2008). The law also falls short of international standards regarding the right of victims of serious human rights violations and their relatives (Amnesty International, 2010).

## | Selected Resources on Spain

### On the Spanish Civil War

- BBC Edited Guide Entry on Spanish Civil War:  
<http://www.bbc.co.uk/dna/h2g2/A882902>
- A short clip summarising the Spanish Civil War:  
[http://www.encyclomedia.com/video-spanish\\_civil\\_war.html#moretext](http://www.encyclomedia.com/video-spanish_civil_war.html#moretext)
- A clip showing the meeting between Franco and Hitler in 1940:  
[http://www.youtube.com/watch?v=\\_d32vTvpV7s](http://www.youtube.com/watch?v=_d32vTvpV7s)
- A clip with an excerpt from Franco's speech after his civil war victory:  
[http://www.youtube.com/watch?v=HX\\_-faiNTVU&feature=related](http://www.youtube.com/watch?v=HX_-faiNTVU&feature=related)

### On the search for the missing persons

- The Association for the Recovery of Historical Memory:  
<http://www.memoriahistorica.org.es/joomla/>
- Minister of Justice map of graves:  
[http://mapadefosas.mjusticia.es/exovi\\_externo/CargarInformacion.htm](http://mapadefosas.mjusticia.es/exovi_externo/CargarInformacion.htm)
- 60 years after the war, the relatives of the disappeared search for their relatives:  
<http://www.youtube.com/watch?v=FKOfzMa-NOU>
- The painstaking search for Spain's Franco-era missing, AFP, November 22, 2010:  
<http://www.dawn.com/2010/11/22/the-painstaking-search-for-spain%E2%80%99s-franco-era-missing.html>
- Spain begins to confront its past:  
<http://www.csmonitor.com/2003/0206/p06s01-woam.html>
- An interview with a grandson of man killed by Franco whose remains were found in a mass grave:  
[http://www.democracynow.org/2004/11/23/recovering\\_historic\\_memory\\_in\\_spain\\_grandson](http://www.democracynow.org/2004/11/23/recovering_historic_memory_in_spain_grandson)
- On the exhumation of mass graves:  
<http://www.archaeology.org/0609/abstracts/franco.html>
- An article on the murder of the poet and playwright Federico Garcia Lorca by nationalists in 1936 and recent efforts of his family to find his remains:  
<http://news.bbc.co.uk/2/hi/europe/5262420.stm>

- On Judge Baltazar Garzón:  
<http://news.bbc.co.uk/2/hi/europe/2211769.stm>  
[http://www.nytimes.com/2010/04/09/opinion/09fri2.html?\\_r=1](http://www.nytimes.com/2010/04/09/opinion/09fri2.html?_r=1)  
<http://www.guardian.co.uk/world/2010/apr/25/baltasar-garzon-spain-franco>

### **On memorials in Spain**

- A statue of Franco is removed in Spain:  
<http://www.youtube.com/watch?v=glrqHAjTwHc&feature=related>
- 'Spain Examines Future of Fascist Monument, and Franco's Remains' by Raphael Minder for the New York Times on 21 June 2011:  
[http://www.nytimes.com/2011/06/22/world/europe/22ihtspain22.html?\\_r=1&scp=2&sq=franco&st=cse](http://www.nytimes.com/2011/06/22/world/europe/22ihtspain22.html?_r=1&scp=2&sq=franco&st=cse)



## | Bibliographic sources on Spain

Amnesty International (2010(c)). Spain – Amnesty International Report 2010. [Online.] Available at: <http://www.amnesty.org/en/region/spain/report-2010>. Last accessed 29 September 2011.

Anderson, J.L. (2009). 'Lorca's Bones Can Spain finally confront its civil-war past?'. *The New Yorker Digital Edition*. [Online.] Available at: [http://www.newyorker.com/reporting/2009/06/22/090622fa\\_fact\\_anderson](http://www.newyorker.com/reporting/2009/06/22/090622fa_fact_anderson). Last accessed 29 September 2011.

Beevor, A. (2006). *The Battle for Spain*. Phoenix, London

Blakeley, G. (2005). 'Digging up Spain's past: consequences of truth and reconciliation', *Democratization*, 12(1), pp. 44-59.

Elkin M. (2006). 'Opening Franco's Graves', *Archaeology* 59(5), pp. 38-43.

Encarnación, O. (2007/8). 'Pinochet's Revenge: Spain Revisits its Civil War', *World Policy Journal*, 24(4), pp. 39-50.

Encarnación, O. (2008). 'Reconciliation after Democratization: Coping with the Past in Spain', *Political Science Quarterly* 123(3), pp. 435-459.

Ferrándiz, F. (2006). 'The return of Civil War ghosts, The ethnography of exhumations in contemporary Spain', *Anthropology Today*, 22(3), pp. 7-12.

Ferrandiz, F. (2009). 'Cries and Whispers: Exhuming and Narrating Defeat in Spain Today', *Journal of Spanish Cultural Studies*, 9(2), pp. 177-192.

Fotheringham, A. (2010). 'Scandal of the Spanish Civil War mass graves', *The Independent*, 14 November 2010.

Graham, H. (2004). 'Coming to Terms with the Past: Spain's Memory Wars', *History Today*, 54(5). [Online.] Available at: <http://www.historytoday.com/helen-graham/coming-terms-past-spain%E2%80%99s-memory-wars>. Last accessed: 29 September 2011.

Kovras, I. (2008). 'Unearthing the Truth: The Politics of Exhumations in Cyprus and Spain', *History and Anthropology*, 19(4), pp. 371-390.

Ku, J. (2010). 'Garzon Formally Charged for Exceeding Jurisdiction, Could Be Suspended Within Days', *OpinioJuris*, 8 April 2010. [Online.] Available at: <http://opiniojuris.org/2010/04/08/garzon-formally-charged-for-exceeding-jurisdiction-could-be-suspended-within-days/>. Last accessed 10 October 2011.

(n.a.) (2008). 'Digging up the Franco era: Spanish judge orders 19 mass graves exhumed', *Der Spiegel Online*, 17 October 2008. [Online.] Available at: <http://www.spiegel.de/international/europe/0,1518,584822,00.html> Last accessed 10 October 2011.

Ruiz, J. (2007). 'Franco and the Spanish Civil War', *History Review*, 57(8).

Tamarit Sumalla, J. (2011). 'Transition, Historical Memory and Criminal Justice in Spain', *Journal of International Criminal Justice*, 9(3), pp. 729-752

## 3.5 The experience of Morocco |

### Roots of the conflict

Morocco's gaining of independence from France in 1956 started a dark phase in Moroccan history, defined by systematic human rights violations. For many years Moroccan authorities arbitrarily detained, tortured, 'disappeared' and executed approximately 50,000 of its citizens. They also responded brutally to public protests and strikes (ICTJ, 2009).

In 1961, King Hassan II succeeded to the throne and ruled the country with a 'firm and arbitrary' hand for 30 years (Howe, 2000). King Hassan II aimed to make Morocco a pro-Western bastion of stability in a volatile area. He also laid the foundations for a modern constitutional monarchy. Yet King Hassan II's administration was fearful of Arab socialism that was on the rise in the 1960s, and as a result, his security forces carried out waves of repression against anyone seen as posing a threat to the monarchy (Howe, 2000).

The authorities targeted intellectuals, trade unionists and members of the left-wing National Union of Popular Forces, as well as farmers and anyone seen to be opposed to the monarchy during the 1960s (Opgenhaffen and Freeman, 2005). Furthermore, the two unsuccessful military coup attempts carried out in the early 1970s led to greater repression, particularly towards Marxists and Islamists. Dissidents were arrested and taken to secret detention centres where they were 'disappeared'. Some military officers accused of taking part in the coups were executed after summary trials, whereas others were sent to the detention centres, and kept there for many years. 'Survivors of torture have written autobiographical accounts of captivity in dark and cramped cells deep within secret detention facilities' (Opgenhaffen and Freeman, 2005). There was a significant rise in human rights violations after 1975 when war broke out in Western Sahara between Morocco and the Sahrawi Polisario Front.<sup>14</sup> Thousands more people were arbitrarily detained and tortured (ICTJ, 2009(a)). In total, approximately 50,000 people were victims of arbitrary detention, torture, disappearance, and extrajudicial execution. Between 1,000 and 2,000 were disappeared (Opgenhaffen and Freeman, 2005).

### Official treatment of the missing

Morocco started experiencing a period of reform during the 1990s. King Hassan II, in response to growing internal and international criticism was compelled to establish the **Advisory Council on Human Rights (CCDH)** in 1990 to advise him on 'all matters concerning human rights'. A few years later, authorities released several hundred political opponents (ICTJ, 2009(a)). At this stage, King Hassan II produced a new constitution, which stated that the kingdom would 'abide by universally recognised human rights'. However, Morocco's main opposition parties opposed the new charter that limited public freedoms and reaffirmed the monarch's overwhelming powers. In response, the monarchy took new steps to win international approval in 1993 with the creation of a Ministry of Human Rights and ratification of the United Nations Convention against Torture (Opgenhaffen and Freeman, 2005).

In February 1998 Hasan II named Abderrahmane Youssoufi, a human rights lawyer and leader of the Socialist opposition, as the prime minister (Guillerot et. al., 2009). The Youssoufi government programme promised sweeping reforms in the administration, education, economy, judiciary, human rights and the status of women. On September 28, 1998, **the Advisory Council on Human Rights (CCDH)** announced that investigations showed the number of disappeared persons to be 112, with 56 of these known to be dead. Human rights groups contested the figures as unrealistically low, but considered the Council's statement an implicit recognition of state responsibility on the issue of disappeared persons (Guillerot et. al., 2009). In the very same year, the CCDH also recommended that the King establish an official body to compensate victims of past human rights abuses. King Hassan II approved the proposal just two weeks before he died (ICTJ, 2009).

King Hassan II was succeeded by his son King Mohammad VI, who ascended to the throne on July 30, 1999. The new king wanted to avoid following in his father's footsteps. In one of his first acts, King Mohammed VI, created the **Independent Arbitration Commission (IAC)** to compensate

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14. A Sahrawi rebel national liberation movement working for the independence of Western Sahara from Morocco.

victims of arbitrary detention and forced disappearance. During almost four years of work the IAC decided more than 7,000 cases and awarded about \$100 million in reparations (ICTJ, 2009). The Independent Arbitration Commission clarified 742 cases of enforced disappearances in its final report but hundreds remain unaccounted for (ICTJ, 2009). Some victims and their families complained about the Commission's procedures, however, and sought justice as well as greater disclosure of government wrongdoings (ICTJ, 2009).

## The groups involved

As a result, Moroccan civil society organisations began to demand the adoption of a comprehensive approach to addressing the past. A group of former political prisoners established the **Moroccan Forum for Truth and Justice** (Forum Vérité et Justice, or FVJ) in October 1999 to campaign for an independent truth commission and a broader definition of reparation. The Forum at the time was headed by Driss Benzekri, a political prisoner from 1974 to 1991 (ICTJ, 2009(a)). At a national symposium held in 2001, the FVJ, together with two human rights organisations, the Moroccan Association for Human Rights and the Moroccan Organization for Human Rights, agreed on a plan for an independent truth commission and submitted it to the King (ICTJ, 2009).

The FVJ campaigns on behalf of the victims of the repression on the basis of a four-point programme: establishing the truth about gross human rights violations, petitioning for official apologies by the state, pressing for victims' rehabilitation and also for institutional reforms likely to prevent coercive policies and past abuses from happening again (Vairel, 2008). Significantly, the FVJ brings together victims from all the groups that suffered under repression whether they are nationalists, socialists, Marxist–Leninists, Islamists or army officers involved in the two coup attempts (Vairel, 2008).

Over the years, FVJ carried out routine demonstrations to keep the issue on the public agenda. Starting in March 2000, and inspired by the contentious practices observed in Latin America, the association routinely demonstrated in front of the former secret detention centres. The leaders of the association initiated a series of sit-ins that gathered human rights activists and victims, carrying candles and roses, brandishing portraits of the disappeared or wearing the portraits around their necks (Vairel, 2008). The FVJ's role in coming to terms with the past in Morocco is very important because it is primarily through their pressure that a truth and reconciliation model was allowed to develop (Vairel, 2008).

In 2003 the Advisory Council on Human Rights (CCDH) formally recommended that King Mohammed establish a truth commission to 'deepen the democratic transition'. He inaugurated the **Equity and Reconciliation Commission** (IER) in January 2004. The CCDH recommended members for the IER whom the King then appointed. Several of them were former political prisoners. The IER's president became Driss Benzekri, the co-founder of the FVJ.

The IER aimed to establish the truth about past violations, provide reparations to victims and families and recommend measures to prevent future violations. The Commission was authorised to investigate human rights violations from independence in 1956 to the establishment of the Independent Arbitration Commission in 1999 and to identify institutional but not individual responsibility for those wrongs. It expanded its mandate from investigations of enforced disappearance and arbitrary detention to include other abuses, including torture, extra-judicial executions, excessive use of force against protesters, sexual violence and forced exile (ICTJ, 2009). Although the IER lacked the authority to carry out searches, public authorities were legally obliged to cooperate. Yet certain security agencies and former officials refused to cooperate.

Some human rights organisations also protested against the fact that the IER prevented witnesses and victims from naming perpetrators. Their testimonies were publicised over television and radio, but witnesses had to first sign statements that they would not give names of perpetrators. In response, various NGOs, led by the Moroccan Association of Human Rights, ran parallel hearings where a small number of victims gave full testimony and named perpetrators.

In December 2005, the IER presented its report to King Mohammed, who approved the publication of the report and asked the CCDH to carry out the Commission's recommendations (ICTJ, 2009).

The IER report established the responsibility of state actors and other parties for past abuses. It also outlined extensive individual reparation plans, proposed adoption of a communal reparations programme and recommended that the prime minister issue a public apology for past abuses. The Commission also recommended reforming state institutions to strengthen the rule of law and prevent the recurrence of human rights violations. It advised the Moroccan government to add clear constitutional guarantees of human rights, abolish the death penalty and reform the country's security and justice systems (ICTJ, 2009(a)).

It is difficult to know the exact numbers of disappeared in Morocco, though the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID) received 248 cases over the years. Of these it clarified 185 cases, primarily through the government. Nine remain outstanding with the UNWGEID (ICRC, 2010) and a number more, not submitted to UNWGEID, remain unresolved. This is thought to be only a percentage of the actual missing, for not all families have listed their missing with the UNWGEID.

### **Legacy of the conflict**

Morocco's communal reparations programme represents one of the most advanced experiences in the field of collective reparations. It includes a development dimension that seeks to meet the social and economic needs of the targeted communities and a symbolic dimension that seeks to acknowledge past abuses and preserve the memory of them by converting former detention compounds into social, cultural and economic centres, and memorials. Officials selected 11 communities and regions that suffered from collective punishment or isolation due to the presence of the former secret detention centres to benefit from the programme, including al-Hoceima, Khenifra, Figuig, Zagora and Hay Mohammadi in Casablanca (International Coalition Against Enforced Disappearances, n.d.).

Since 2006 the CCDH has made substantial progress in carrying out the IER's reparations programmes. The distribution of individual compensation to victims is nearly completed, with \$85 million distributed to some 9,000 people. The CCDH has signed agreements with ministries and official agencies to provide victims and their families with medical care and vocational training at the state's expense. A programme was launched in 2008 to manage and fund communal reparations efforts at the regional and community level (ICTJ, 2009). The symbolic dimension of the collective reparations programme 'aims to acknowledge the harm and preserve memory through the organisation of commemorative activities, and the construction of memorials, including the conversion of former secret detention centres into sites of memory' (ICTJ, 2009).

The CCDH's record on clarifying the fate of the disappeared remains mixed. Unlike in many other contexts, not all disappeared in Morocco were killed, but a number languished in prisons for years and sometimes decades. Those who were released were simply freed by the government, without explanation of why they had been held, or why they had been released. As part of the CCDH's commitment to following the recommendations of the report, exhumations have been undertaken by the Moroccan authorities at the request of victims' families, but victims' families have complained that the process is not transparent. Another important criticism brought to the Commission was its limited investigative powers and lack of authority to hold perpetrators of human rights abuses to account. International organisations like the ICRC and Amnesty International have engaged with the issue by maintaining a 'dialogue with the Moroccan authorities and the Polisario Front to try to clarify the fate of people still disappeared from the 1975-1991 Western Sahara conflict' (ICRC, 2010).

As of 2011, important work remains to be done. The Moroccan authorities have not yet fully complied with their obligation to grant victims 'the rights to truth, justice, and adequate reparation' (Amnesty International, 2010). A number of disappearance cases remain unresolved. Some relatives of disappeared persons have had no access to their loved ones' remains, and information about the conditions surrounding their capture and death is not uniformly or consistently provided. Significant complaints involved the limited information the Commission released about the

fate of the disappeared and the burial sites of the deceased. Furthermore, communal reparations programmes are still in the implementation phase. The IER's legal and institutional reform recommendations remain in embryonic form (ICTJ, 2009). It is also important to note that the practice of disappearance continues in Morocco, though it is not as widespread.

### General background on Morocco

- Human Rights and Freedom from State Tyranny: Country Studies – Morocco:  
<http://www.democracyweb.org/rights/morocco.php>

### On recent human rights reform in Morocco

- 'Morocco's King Mohammed pledges constitutional reform':  
<http://www.bbc.co.uk/news/world-africa-12695092>
- Moroccan government pledges in face of growing protests:  
<http://www.youtube.com/watch?v=qP1plxzyQXE>

### On recent disappearances

- <http://www.euromedrights.org/en/about/4306.html>

### On the truth commission

- Summary of the Final Report of the Equity and Reconciliation Commission (IER):  
<http://www.ccdh.org.ma/spip.php?article551>
- Report by Human Rights Watch about the Commission and disappearances:  
[http://www.hrw.org/reports/2005/morocco1105/4.htm#\\_Toc119468371](http://www.hrw.org/reports/2005/morocco1105/4.htm#_Toc119468371)
- Information about the Commission:  
<http://www.hrw.org/en/node/11523/section/7>
- Statement by Driss Benzekri, President of the Equity and Reconciliation Commission, on the conclusion of the Commission's mandate:  
<http://www.ictj.org/static/MENA/Morocco/IER.benzekri.eng.pdf>
- 'Morocco Truth Commission Public Hearings to Begin Tomorrow', ICTJ Press Release, 20 Dec 2004:  
<http://www.ictj.org/en/news/press/release/282.html>
- 'Morocco lifts lid on torture cases, abuse':  
<http://www.ictj.org/en/news/coverage/article/365.html>
- 'Royal Gulag' Economist piece on Tazmamart prison camp:  
[http://www.economist.com/node/486729?Story\\_ID=486729](http://www.economist.com/node/486729?Story_ID=486729)

- 'New king delves into father's gruesome heritage':  
<http://www.spiegel.de/international/spiegel/0,1518,348023,00.html>  
 Contains photographs of victims of Moroccan oppression and torture listening at public hearings designed to expose human rights abuses during the regime of King Hassan II.
- 'Morocco truth panel details abuse':  
<http://news.bbc.co.uk/2/hi/africa/4536258.stm>
- 'Stirrings in the Desert' New York Times interactive webpages:  
[http://www.nytimes.com/packages/khtml/2005/10/01/international/20051001\\_MOROCCO\\_FEATURE.html](http://www.nytimes.com/packages/khtml/2005/10/01/international/20051001_MOROCCO_FEATURE.html)
- 'Morocco's justice and reconciliation Commission':  
<http://www.merip.org/mero/mero040405>

### **On memorials in Morocco**

- A call for a memorial of Tazmamart prison:  
<http://www.moroccoboard.com/viewpoint/42-jamal-laoudi/490-tazmamart-the-memorial>
- Plans for re-using torture centres:  
[http://www.magharebia.com/cocoon/awi/xhtml1/en\\_GB/features/awi/features/2008/12/02/feature-03](http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2008/12/02/feature-03)
- Google videos for Tazmamart prison:  
[http://www.google.com/search?hl=en&biw=1280&bih=576&gbv=2&q=tazmamart%20prison&ie=UTF8&sa=N&tab=iw#q=tazmamart+prison&hl=en&sa=N&biw=1280&bih=576&gbv=2&prmd=ivns&source=univ&tbs=vid:1&tbo=u&ei=ehSJYrsOtSZhQe6y8i2Dg&ved=0CEYQqwQ&bav=on.2,or.r\\_gc.r\\_pw.&fp=ff3e2739446bc197](http://www.google.com/search?hl=en&biw=1280&bih=576&gbv=2&q=tazmamart%20prison&ie=UTF8&sa=N&tab=iw#q=tazmamart+prison&hl=en&sa=N&biw=1280&bih=576&gbv=2&prmd=ivns&source=univ&tbs=vid:1&tbo=u&ei=ehSJYrsOtSZhQe6y8i2Dg&ved=0CEYQqwQ&bav=on.2,or.r_gc.r_pw.&fp=ff3e2739446bc197)

## Bibliographic sources on Morocco |

- Amnesty International (1991). 'Morocco: A Pattern of Political Imprisonment, Disappearances and Torture'. London: Amnesty International.
- Amnesty International (2010(b)). 'Broken Promises: The Equity and Reconciliation Commission and Its Follow Up'. London: Amnesty International.
- Guillerot, J. et al. (2009). 'The Rabat Report: The Concept and Challenges of Collective Reparation'. New York: International Center for Transitional Justice.
- Hazan, P. (2006). 'Morocco: Betting on a Truth and Reconciliation Commission', USIP Special Report, vol.165.
- Howe, M. (2001). 'Under a New Regime, Moroccans Search for Truth And Justice', Washington Report on Middle East Affairs, 20(7), p. 32.
- Human Rights Watch (2005). 'Morocco's Truth Commission: Honoring Past Victims During an Uncertain Present', Human Rights Watch Reports, 17(11).
- International Center for Transitional Justice (ICTJ) (2009). 'Truth and Reconciliation in Morocco'. New York: International Center for Transitional Justice.
- International Coalition Against Enforced Disappearances (n.d.). Morocco: Country by Country Ratification Campaign. [Online.] Available at <http://www.icaed.org/the-campaign/morocco/>. Last accessed 29 September 2011.
- International Committee of the Red Cross (ICRC) (2010). The ICRC regional delegation in Tunis. [Online.] Available at: <http://www.icrc.org/eng/where-we-work/africa/tunisia/overview-tunis.htm>. Last accessed 29 September 2011.
- Opgenhaffen, V. and Freeman, M. (2005). 'Transitional Justice in Morocco: A Progress Report'. New York: International Center for Transitional Justice.
- Slymovics, S. (2003). 'No Buying Off the Past: Moroccan Indemnities and the Opposition', Middle East Report, no. 229. Washington, D.C.: Middle East Research and Information Project, pp. 34.37.
- Vairel, F. (2008). 'Morocco: From Mobilizations to Reconciliation?', Mediterranean Politics, 13(2), pp. 229-241.





