

## Exhumations in Latin America: Current Status and Pending Challenges: A Psychosocial View

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### Abstract

In the present study, we reviewed exhumation processes in 14 Latin American countries where collective massacres have been perpetrated and people have been detained or disappeared as a result of state policies or social violence. In most of these countries, exhumations were instigated through the efforts of organized family groups rather than the state, and implemented by forensic anthropology teams, only rarely (as in Guatemala) with psychosocial support for victims. In general terms, there have been no significant reparation processes. We reviewed the different procedures carried out by the three parties who take coordinated action in an exhumation process—forensic anthropology, legal, and psychosocial—and the controversies that have arisen as a result of these processes. Lessons have been learned from this analysis, and we propose strategies for developing standards of good practice for exhumation of victims of political violence.

Many Latin American countries have suffered state violence or war that resulted in forced disappearances. Exhumations have been conducted in many of these countries to identify victims, clarify events, and serve as a basis for reparations and in some cases, legal proceedings. The circumstances and development of these exhumation processes as well as their effects on communities have varied, although they share elements that differentiate them from processes implemented in other continents. Recently, various exhumation processes have been systematically studied. As a result, the organizations involved have produced narrative collections, a process for sharing of experiences, and a debate that produced significant achievements such as the World Congress on Psychosocial Work in Exhumation Processes, Forced Disappearance, Justice and Truth held in Guatemala in 2007 and Bogota in 2010 (Ecap, Gac, & Geza, 2009; Pérez Sales & Navarro Garc'a, 2007b).

These collective works have also served as the basis for the Working Document for an International Consensus on Minimum Standards for Psychosocial Work in Exhumation Processes (Ecap et al., 2009). These standards are necessary because, as we will demonstrate, exhumation processes may be reparatory in nature but carry a risk of retraumatizing the victims' families (Amnesty, 1994; McEvoy & H.Conway, 2004; Nesiiah, 2002; Stover & Shigekane, 2002).

During the last 15 years, exhumations have been carried out in 14 Latin American countries. Each country has seen different patterns of human rights violations:

- 1) Collective massacres in Guatemala (Navarro Garc'a et al., 2007), El Salvador (Hernández, 2007), Colombia (G-mez L-pep & Mart'n Beristain, 2007), and Peru (Stornaiuolo, Chauca, & Baca Soto, 2007);
- 2) State terrorism with detention and forced disappearance in Chile(Baeza Fernández et al., 2007), Argentina (Tumini, Garay, Bancheri, & . 2007), Uruguay (Nadal, Piroto, & Robaina, 2007), Brazil (Bouças & Vital, 2007), and Paraguay(Portillo, 2007);
- 3) Collective violence for different reasons in Venezuela (Carrillo, 2007), México (Limas Hernández, 2007), and Panama (Sanjur, 2007); and

4) Selective deaths under democratic regimes in Ecuador (Donoso, 2007) and Honduras until 2008 (Oliva, 2007) (Table 1).

This exercise has shown that: (a) in contrast with experiences in other continents, exhumations have generally been initiated and promoted by organizations of victims' relatives (Eppel & Borer, 2006; Keough & Samuels, 2004); and (b) the forensic anthropology work has been conducted by inexperienced local teams or with advice from international teams; and (c) in the majority of countries, exhumations have been carried out without psychosocial support, or with support based solely on self-care and mutual support groups (Pérez Sales & Navarro Garc'a, 2007a).

**Table 1.** Exhumations analyzed in this study (Pérez-Sales and Garc'a2007b).

	Instigated by:	Forensic Anthropology Investigation/Vision of the Relatives  EG: Governmental teams  EIL: Independent local teams  EII: Independent international teams	Legal Proceedings		Psychosocial Accompaniment
			Pre-trial proceedings promoted by:	Subsequent access to justice (convictions of perpetrators)	
Exhumations and collective massacres					
El Salvador	Relatives Organizations  Human Rights	EII (EAAF) - Adequate	NGOs	No, despite long legal battle	Self-support Relatives
Colombia	Relatives	EIL – Adequate	NGOs	No	NGOs (irregular)
	States (majority)	EG – Inadequate (Destruction of evidence; no identification of remains (double disappearance); re-traumatizing actions for relatives)	Office of Public Prosecution  (Official)	No	No
Guatemala	Relatives	EIL - Adequate	Relatives NGOs	No (99.5% of cases)  Yes (0.5% of cases in international courts (Inter-American Court of Human Rights))	Yes (systematic and formally registered)
Peru	Relatives  Organizations Human Rights	EG – Inadequate (no identification of remains, destruction of evidence in some cases (Frontón))	NGOs	No	NGOs (irregular)
	Truth Commission State		Office of Public Prosecution  (Official)	No	No
Detainees-disappeared persons as state policy					
Chile	Courts <sup>1</sup> (current)	EG – Irregular (Patio 29 Case and identification errors)	Office of Public Prosecution  (Official)	Some cases	Ministry of the Interior  NGOs
Argentina	Courts <sup>1</sup> (current)	EIL - Adequate	Office of Public Prosecution  (Official)	No	No
Uruguay	Relatives	EIL - Adequate	NGOs	No	No
Brazil	Relatives	EII / EIL – Inadequate (absence of clear information; work interrupted, not agreed on ...)	NGOs	No	No
Paraguay	Truth Commission	EII - EAAF	Truth Commission	No	Truth Commission
Exhumations and social violence					
Venezuela	Relatives	EG – Inadequate (destruction of evidence; reburial too soon and without consulting; no identification of remains)	Relatives	No (Venezuelan legal system did not impose sentences; favorable sentence obtained only in Inter-American Court of Human Rights)	Self-support

EAAF, Argentine Forensic Anthropology Team; NGO, non-governmental organization.

### **Justice and exhumation processes in Latin America**

When the existence of clandestine graves is suspected, all legal systems require investigation of the human remains, their origin, and the events that led to their death. Legal and judicial authorities are obliged to collect evidence and prosecute those responsible.

In 11 of the 14 countries studied, exhumations were initiated by relatives, either directly or through family organizations. Their prolonged efforts have often been exhausting and carried out without support. Only in four countries (Chile, Peru, Uruguay, and Colombia) have exhumations of clandestine graves been instigated by the state with various levels of legal guarantees. In Chile and Peru, these exhumations were linked to investigations by the corresponding Truth Commissions or as follow-up to their recommendations.

The technical work of investigating remains is performed by forensic anthropologists and, to a lesser extent, by legal medical specialists. The work is technically complex, requiring high levels of professional expertise (Keough, Simmons, & Samuels, 2004). In seven countries (Chile, Peru, Colombia, Mexico, Venezuela, Ecuador, and Panama), the state reserves sole authority to conduct the exhumations, although in a few cases, independent exhumation teams have been allowed at the request of local courts (Peru, Colombia, Mexico). Even when exhumations are not instigated by competent state bodies (e.g., Legal Medical Institute or forensic teams attached to the Prosecutor's Office), the state is still considered responsible for the legal proceedings.

In four countries (Honduras, Brazil, El Salvador, and Paraguay) relatives have obtained judicial authorization for exhumation by international teams (usually the Argentine Forensic Anthropology Team), and in another four countries by local teams, with or without international advice (Guatemala, Brazil, Argentina, and Uruguay) (Pérez Sales & Navarro Garc'a, 2007a). The presence of independent teams may: 1) generate trust among relatives, 2) guarantee an independent investigation, especially when the state is involved, and 3) enable the accumulation of information regarding various exhumation processes.

In all countries where exhumations have been the sole responsibility of the state, there have been accusations of inexperience or negligence (Pérez Sales & Navarro Garc'a, 2007a) related to:

- destruction of evidence (especially in Colombia, Peru, Venezuela, and Mexico, but also mentioned in Brazil and Uruguay)
- lack of security and an adequate search process (Guatemala and Colombia)
- inadequate identification of the remains, leading to double disappearance (i.e., remains from the clandestine grave are stored anonymously with restricted access, and then reburied in legal graves marked NN [no name]) (Colombia, Peru, Brazil, Mexico, and Venezuela)
- technical inexperience or errors in judicial procedure (e.g., errors in identification or use of heavy machinery) (Chile and Panama)
- unnecessary delays or attempts to obstruct or deter the efforts of relatives (Venezuela, Ecuador, Panama, and Peru)
- actions that are retraumatizing for the relatives, particularly inappropriate handling of remains or disrespect or mutilation (Mexico, Brazil, Colombia, and Peru).

In contrast, these situations were not reported when exhumations were the responsibility of independent national or international teams.

The logical consequence of exhuming massacre victims is a criminal investigation to hold responsible parties accountable. However, in the majority of cases, the process concludes with reburial; exhumations generally fail to result in judicial proceedings. The few exceptions generally have been achieved through the Inter-American Human Rights System, such as the Caracazo case in Venezuela (Carrillo, 2007) and cases in Ecuador (Donoso, 2007), Colombia (Gmez L-pep & Mart'n Beristain, 2007), and Guatemala (Navarro Garc'a et al., 2007). As of 2007, only seven of the more than 1,000 exhumations of massacres in Guatemala resulted in internal legal proceedings with convictions. Two cases were sent to the Inter-American System and the Inter-American Court; conviction of the state in the Plan de Sánchez case was particularly significant (Navarro Garc'a et al., 2007).

Intervention by the Inter-American Human Rights Court has been justified in these cases by the lack of access to justice within the countries' legal systems. In all cases, binding sentences have condemned the state and established its obligation to investigate. The Inter-American Human Rights Court does not have a mandate to determine individual criminal responsibility, and given the absence of mechanisms for sanctions for non-compliance in the Inter-American Human Rights Court, impunity continues. Furthermore, acceptance of responsibility by the state has been accompanied by partial compliance with economic reparations, but very limited or no compliance with other aspects (sanctions against perpetrators, compensation, rehabilitation, moral and symbolic measures, and access to justice)(Mart'n Beristain, 2009). For example, sentences in the case of Efra'n Bámaca in Guatemala or the Restrepo brothers in Ecuador explicitly establish the right to the truth for relatives seeking justice, as well as the state's obligation to investigate (including appropriate exhumations), but this has not occurred. Public institutions have generally considered exhumations as private concerns for the victim's relatives. Therefore, relatives are denied access to justice (El Salvador, Brazil, Colombia, Guatemala, Peru, Chile, Argentina, Venezuela, Mexico, Panama, and Honduras)(Pérez Sales & Navarro Garc'a, 2007a).

### **Psychosocial accompaniment**

Relatives have usually been alone in this process. Psychosocial accompaniment has been provided only in Guatemala, where systematic work has been formally conducted at the individual, family, or community level in nearly all exhumations performed during the last decade (Comisi-n para el Esclarecimiento, 1999; Navarro Garc'a et al., 2007). In Chile, governmental teams and non-governmental organizations (NGOs) have provided support at key times (Baeza Fernández et al., 2007). In Peru, specific support has been provided at key times in about 10% of all exhumations (Stornaiuolo et al., 2007), and very recently in Colombia, support teams have begun to be developed(G-mez L-pez & Mart'n Beristain, 2007). In five cases (Venezuela, Honduras, El Salvador, Mexico, and Panama), the families themselves developed informal mutual support networks. In some cases families have been assisted by professionals (Mexico, Venezuela, and Honduras)(Pérez Sales & Navarro Garc'a, 2007a). These examples show that psychosocial accompaniment has not been provided consistently.

### **The exhumation process and characteristics of accompaniment**

Three parties coordinate an exhumation process: forensic anthropology, legal, and psychosocial teams (Keough et al., 2004; Nesiah, 2002; Stover & Shigekane, 2002). Exhumation procedures are not homogenous, even among forensic, legal, and psychosocial parties working jointly.

#### *Participants in the process*

##### 1. Family members

Extraordinary differences exist between contexts in which exhumations led to family organization or existing family organizations have served as a driving force for the process, compared with situations in which the state or human rights groups have taken the initiative.

Family organizations include the Committee of Victims' Relatives (COFAVIC) in the Caracazo case of Venezuela (Carrillo, 2007) and the Héctor Gallego Committee of Relatives of Disappeared Persons of Panama (COFADEPA-HG). COFADEPA-HG was established with logistical and organizational support and accompaniment from the Popular Human Rights Coordination of Panama (COPODEHUPA) founded in 1986(Sanjur, 2007), the foremost human rights organization in the country.

In Brazil, relatives and organizations not only had to fight a legal battle, but also had the task of removing the remains of over 2,000 people from an enormous common grave, raising funds, and setting up technical teams (Bouças & Vital, 2007). In Honduras, the process was similar at first; support from state institutions was not received until much later (Oliva, 2007). In Ecuador, the tenacity of relatives contributed to the search process (Donoso, 2007), and in Mexico and El Salvador, families struggled against the state and justice enforcement institutions(Limas Hernández, 2007). In Colombia, family organizations have lobbied for participation and control of governmental teams, a path that has been dangerous and exhausting (Gómez López & Martín Beristain, 2007).

In most of Peru, there are no strong relatives' organizations active in demanding exhumations. Therefore, the process is advancing very slowly and exhumations carried out by the state have occasionally faced serious technical problems due to a lack of control by the civil society. In places where relatives' organizations have been effective

(e.g., Totos), their insistence has been critical for completion of these processes (Stornaiuolo et al., 2007). The situation is similar in Guatemala, where victim organizations have long existed, are well organized, include legal accompaniment, and actively work to initiate legal proceedings, locate relatives, and provide logistical and media support. Where effective organizations exist, exhumations have been continuous and satisfactory (Navarro García et al., 2007).

Exhumations should be seen as a process rather than a specific activity. They start before and continue long after the excavation itself, which is simply the most visible and notorious part of the process (Navarro García et al., 2007). The exhumation can generate stable organizational structures, and it is this process that must be supported. Victim and family organizations not only improve efficiency (e.g., in locating and working with relatives), but promote cultural identification and adaptation to political circumstances, and address the demands and real needs of victims and relatives. Furthermore, these organizations help rebuild the social fabric and are therefore reparatory in nature.

On the other hand, Baeza et al. (Baeza Fernández et al., 2007) from the Centro de Salud Mental y Derechos Humanos (Center for Mental Health and Human Rights, CINTRAS) in Chile describe the exhaustion suffered by relatives' groups as the years have passed, and their pain and frustration over unsolved cases. The relatives need protection and attention, and they should not have to bear the weight of the search. The Guatemalan experience supports this view of double victimization: relatives not only suffer pain due to loss of their family members, but they must investigate, initiate legal proceedings, and take on all personal, emotional, economic, and security-related costs in this search for justice. The Guatemalan Attorney General's Office and the state take the position that legal proceedings are only possible if they are instigated by victims' relatives. This position is unfair and inhumane. Besides their personal suffering, the relatives are charged with the responsibility of being the country's moral conscience (Baeza Fernández et al., 2007; Navarro García et al., 2007).

## 2. The community

In some cases, such as Honduras, Brazil, Paraguay, Ecuador, and areas of Argentina and Uruguay, the disappeared were urban social or political militants who were murdered in remote rural areas. These exhumations have a social and political dimension, but do not involve the local communities. However, where genocide policies led to thousands of massacres in rural communities (particularly in Guatemala, Colombia, and Peru), the work of exhumations cannot be separated from the communities where the massacres took place.

To provide this type of support for cases of collective massacres, accompaniment teams in Guatemala report that teams need time to immerse themselves in the community to (a) explain the nature of the exhumation work, (b) determine the expectations of relatives, (c) discuss the origins and logic of violence and its impact on the community, (d) speak about exhumations as a form of reparation, and (e) inform the community about legal mechanisms to promote justice (Navarro García et al., 2007).

In Peru, this need was apparent from the start (Stornaiuolo et al., 2007), and is particularly serious in closed Andean communities, where distrust of outsiders is one effect of violence. Some communities have rejected the victims and their relatives, blaming them for their own misfortune. Furthermore, in places where the armed conflict produced confrontations within the community, it is necessary to restore shared values and a common history. Reconciliation should be seen as a long-term process; it is not possible to force progress or limit reconciliation to the exhumation.

In Colombia, this preparation and community collaboration is impossible under the current conditions of open conflict, putting the value of collective exhumation in doubt at the present time. Despite this, many relatives feel that it is important to find the remains of their relatives, even in the midst of a conflict (Gómez López & Martín Beristain, 2007).

In Peru, the importance of working in community institutions has been particularly emphasized in schools and youth training centers. Children are always present at exhumation processes. Attracted by the novelty of the event, they play, observe, and ask questions about the excavation. It is important to prepare for this reality and coordinate human rights initiatives with teachers and local education authorities (Stornaiuolo et al., 2007).

## 3. Society as a whole

An exhumation is also an event that involves and questions the entire nation. The experiences described in the present study demonstrate how the exhumation of remains has become, in many cases, a key event in the collective minds of societies in transition.

Bouças and Vital (Bouças & Vital, 2007), referring to the Brazilian experience, state that “exhumations have only resulted in the identification of eight people, but the impact of these exhumations on the media and on the society has been huge, leading to a public debate on violence during the dictatorship”. In Chile, the Lonquén ovens case resulted in such a loss of credibility for the dictatorship that it unleashed an operation to remove the remains of all disappeared persons to avoid similar situations. Recent cases of erroneous identification at the Cemetery of Santiago kept the country on tenterhooks and led to a questioning of human rights policies during the coalition governments (Baeza Fernández et al., 2007). In El Salvador, the exhumation of victims of the El Mozote massacre altered the collective understanding of the country, which influenced the conclusions and recommendations in the Truth Commission’s report (Hernández, 2007).

In Honduras, the Committee of Relatives of Disappeared Persons (COFADEH) reported that exhumation processes implemented so far have not resulted in justice and the restitution of remains to relatives, but that they have revealed the truth and contributed to a collective awareness of the past (Oliva, 2007). COFADEH has been the most active human rights group in Honduras since the coup d’état in 2009, maintaining an up-to-date database of human rights violations and issuing periodic reports of these human rights violations under the post-coup government (Cofadeh, 2009). According to the Committee for Human Rights (COPODEHUPA), exhumations in Panama have put the issue of disappeared persons on the national agenda (Sanjur, 2007). Nadal et al. (Nadal et al., 2007) reported that despite the small numbers of exhumations in Uruguay, exhumations were an “authentic collective process of the Uruguayan people” because it was no longer possible to publicly deny political disappearances in the country (Nadal et al., 2007). In Ecuador, judicial investigations and the media have raised awareness of these issues and exposed violence by the authoritarian government (Donoso, 2007).

Furthermore, long years of work in Guatemala have shown that the passage of time reduces the social impact of exhumations and removes them from the media’s agenda, confining them to the private sphere. Navarro and collaborators (Navarro García et al., 2007) have warned about this risk and raised the importance of maintaining the presence of the media at exhumations and keeping the local and national debate alive to maximize the potential of exhumations for social transformation. If we understand “reconciliation” as a long-term goal that can take generations to fully achieve, keeping the debate alive at local and national levels is an important part of a global strategy.

The social impact nearly always extends in both directions, and the perception of solidarity is very important for the victims’ families. In Mexico, the national and international mobilization of various academic, artistic, and popular organizations regarding the disappearances and murder of women from Ciudad Juárez have managed to open cracks in the hermetic political and judicial systems (Limas Hernández, 2007). In Venezuela, vigils, work efforts, sale of handicrafts and collections to fund the work of relatives, and even the cost of exhumations have produced tremendous solidarity among universities, popular sectors, and the church (Carrillo, 2007). This cohesion is now helping the relatives resist pressure and threats from the current government.

## **Organization of the work**

### *Accompaniment for relatives*

As previously stated, the need for psychosocial accompaniment is widely accepted; however, accompaniment has been the exception rather than the rule in forensic anthropology investigations (Pérez Sales & Navarro García, 2007a). In most countries, forensic anthropology and legal advice teams are gradually coming to understand exhumations as individual, family, community, and social processes with key human and reparatory elements. The enormous complexity of these tasks requires a professional team that is exclusively dedicated to this work. Furthermore, the experiences in Guatemala and other countries have shown that “the idea of the excavation as a painful period of psychological crisis requiring professional attention is not based on the experience of the teams. Emotional support during the excavation seems to be required by all ... with the exception of the relatives” (Navarro García et al., 2007).

Learning that accompaniment has little to do with providing a shoulder to cry on has taken years. Crying does happen in situations where crying is quite normal; however, providing a shoulder to cry on may be an invasion of the individual's private reencounter with the past. Accompaniment should be considered distinct from crisis intervention, because it is a much more complex idea related to reparations. Accompaniment entails the need to work closely with relatives’ organizations, not just prior to excavation, but systematically, and includes opportunities for discussion and

the winding down of the process, using popular methods for a participatory and systematic evaluation of the impact and efficacy of processes (Navarro García et al., 2007).

According to the Truth Commission, the dimensions of what needs to be done in Peru are similar to that in Guatemala. Stornaiuolo (Stornaiuolo et al., 2007) points out how psychosocial accompaniment in Peru, when it has been provided, has been linked specifically to the excavation phase with little prior work. In this context, it is important to look at Argentina. The Argentine Forensic Anthropology Team (EAAF) is one of the foremost organizations in this field and has given advice to the vast majority of forensic anthropology teams throughout the continent. In Argentina, coordination of exhumation processes does not usually include accompaniment of relatives (Tumini et al., 2007). This may be due to the psychoanalytical tradition of Argentina (as opposed to a more psychosocial and community perspective in other countries) or the difficulties sometimes encountered by coordinating organizations in a country in which victims' organizations are strong and sometimes divided.

### **Forensic anthropology investigation work**

Broadly speaking, we can consider two approaches to exhumation processes: the forensic approach and the psychosocial approach. The first substantial difference between the two approaches is exemplified by the difference between countries where exhumations are conducted only by government teams or teams dependent on the judicial branch (see Table 1) compared with countries where appointment by competent jurisdictional courts enables independent national or international teams to legally perform this work.

Numerous reports and complaints about government teams by relatives' organizations allege insensitivity, bureaucracy, connivance with military institutions or others potentially implicated in the violent events, delaying tactics, and interruption of action taken by relatives. Regardless of the veracity of the accusations, these claims demonstrate that exhumation processes should be carried out by teams trusted by the relatives. Unfortunately, in countries such as Peru and Chile, the teams appointed by relatives are limited to roles as experts for one of the parties to the action; in other words, they may oversee the process on behalf of the relatives to ensure that the work is technically correct. It is of fundamental importance that legislation is adopted in each country giving judges the authority to appoint forensic teams they deem adequate for each exhumation process, considering first of all appointing teams trusted by the victims and victims' families themselves.

Furthermore, relationships between relatives and forensic anthropology teams during the excavation can differ considerably depending upon the context. In Argentina, the presence of relatives in the area of the exhumation during this phase depends on legal criteria. Also significant is the concern of the Argentine forensic anthropology team, which feels pressure from relatives' expectations of the excavation results (Tumini et al., 2007). Relatives have not been present at exhumations in Uruguay, not having expressed any special interest or trust in the technical work of anthropologists (Nadal et al., 2007). In contrast, Guatemalan anthropologists promote and encourage the presence of the community around the grave, and relatives also carry out some of the related logistical tasks as a way of taking ownership of the process. The relatives participate by providing food and accompaniment, taking testimonies, and taking part in discussions (Navarro García et al., 2007).

In Venezuela, relatives take ownership of the process and collaborate on various aspects of the exhumation, including ante-mortem record forms, registration systems, communication with the media, excavation work, clearing undergrowth and disinterment, and moving bags that contain remains. The people involved agree that active participation in the process is not traumatizing, but rather gives relatives strength and generates trust (Carrillo, 2007).

These experiences should be compared with reports of the negative effects of incomplete findings shown to unprepared relatives in Colombia (Gómez López & Martín Beristain, 2007), Panama (Sanjur, 2007), and Ciudad Juárez (Limas Hernández, 2007). Relatives deserve access to factual and complete information. The excavation findings should be presented in private with sensitivity and empathy, and without traumatic details about the state of loved one's remains so that relatives can decide how they want the recognition to proceed (e.g., using clothing or photographs to identify physical remains, and naming an appropriate member of the family to perform identification). In addition, relatives should be informed before the press has access to news and disseminates details, although each country is working in very different ways in this regard.

Determining which person in the interdisciplinary team should be the information channel for relatives is another ongoing debate. Responsibility for informing relatives lies with the Ministry of the Interior's psychosocial teams in Chile (Baeza Fernández et al., 2007) and the Truth Commission's teams in Paraguay (Portillo, 2007). In Guatemala

(Navarro García et al., 2007) and Peru (Stornaiuolo et al., 2007), the psychosocial team is considered only a bridge to facilitate communication or transmit concerns and are expected to avoid interfering in direct communication between relatives and the anthropologists or the legal team, except perhaps to help convey technical concepts. The Argentine experience contributes an additional element: the anthropological team in charge of the exhumation requests (nearly always successfully) that a judge be responsible for communicating the results of the process in private and based on official documents. This is considered an intrinsically reparatory act of state legitimation (Tumini et al., 2007).

Taken together, these findings underline the need for coordination and harmony between institutions. The Guatemalan teams go further; based on their more than 10 years of experience, they claim that “relatives should be an active part of the whole process and participate in all decisions taken during that process”(Navarro García et al., 2007).

### **The importance of culture**

Native peoples of Latin America, including those in Guatemala (Mayans), Peru (Quechuas and Aymaras), Chile (Mapuches), Colombia (Afro American and Amazon communities), and Ecuador (Shuar, Ashuar, and Huaorani regions) have distinct worldviews and perspectives on community organization and violence as damage to the community. Their views may be difficult to understand and accept from urban and Latin viewpoints. It is therefore necessary to incorporate an anthropological viewpoint and cultural respect for themes related to life and death, relations with ancestors, and the social role of the dead, as well as to appropriately manage community conflicts generated by violence. It is also important to include professionals and workers from these ethnic groups in the teams and to promote dialogue and encounters so that psychosocial action can be culturally relevant and appropriate. An exhumation is largely a symbolic reconstruction, and symbols are based on and understood through the cultural matrix and specific ethnic interpretations of life, death, sickness, society, and conflict.

### **Political context**

The political context in which the exhumation takes place is undoubtedly the main factor that affects this work. Exhumations carried out during active conflicts usually lack guarantees for relatives, witnesses, and teams. This leads to personal security risks, difficulty gaining access to regions where remains are located, or difficulties working in the presence of armed persons when perpetrators have not yet been punished. The security of relatives and human rights teams is the primary condition for exhumations, as stated by Colombian non-governmental organizations and relatives of victims in Panama.

It is not surprising, therefore, that despite the efforts of relatives during times of strong political control, exhumations have been initiated in the majority of countries only when the context has permitted. Guatemala, El Salvador, Brazil, Argentina, and Chile are examples of this. Experiences in Panama, Peru, and Guatemala have revealed the extraordinary importance of Truth Commissions in recognizing massacres and recommending exhumations as a state policy to form part of the national reparation plans. This transforms the concept of exhumation from that of a private space for relatives or legal action for use as evidence (and therefore as a discretionary action of the local court) and places it in a much broader framework as an instrument of reparation for society as a whole.

The importance of the political context, even when internal armed conflict no longer exists, can be seen clearly in Peru. Reparation policies are vulnerable because the decision to perform exhumations depends solely on the state, and therefore on the administration currently in power. An administration accused by the Truth Commission as having direct responsibility for human rights violations may obstruct the attempts of relatives or human rights organizations to search for the disappeared.

### **Controversies**

Even when the political context permits an exhumation, relatives have different positions with regard to the exhumation. In the experiences described here, voices have been raised in disagreement for different reasons:

1. Political reasons. The emblematic phrase of Mothers of the Plaza de Mayo is the best example. “They took them alive, we want them back alive” summarizes their view that an exhumation is an acceptance of death. To receive the remains is to end the struggle. Forced disappearance is a crime against humanity. Finding the remains transforms the disappearance into a death, and in the worst case scenario, a murder, and acknowledges that the perpetrators have succeeded. Exhumation is thus seen as a means to neutralize the family’s struggle for justice. Now, however, Hijos por la Identidad y la Justicia contra el Olvido y el Silencio



(H.I.J.O.S.; Sons and Daughters for Identity and Justice Against Forgetting and Silence) regard exhumations as a space in the struggle for truth and justice for relatives and is now promoting and actively participating in the processes (Tumini et al., 2007).

2. Social and economic reasons. Some relatives have rejected exhumations in isolated communities in Peru, believing that spending money on the “dead” is offensive in the context of extreme poverty and that it would be better to invest in those who remain (Stornaiuolo et al., 2007). Relatives are often ambivalent about economic reparations—sometimes even rejecting them when they are not linked with justice against perpetrators.
3. Humanitarian reasons. The first exhumations in Chile were experienced by relatives as retraumatizing. When the possibility of new graves was announced, doubts, anxiety, and memories resurfaced. However, little or nothing was found in the majority of cases, which produced new frustration and a feeling of starting all over again. Consequently, most human rights organizations decided not to develop exhumation policies immediately after the end of the dictatorship (Baeza Fernández et al., 2007). Exhumations were resumed years later. In 2006, remains found in the Cemetery of Santiago in Chile were erroneously identified (the Patio 29 case). The team of forensic anthropologists relied on physical recognition techniques to determine probabilities that the remains corresponded to certain people. The courts accepted all the identifications as valid; however, the majority of identifications were found to be mistaken when DNA tests were performed 10 years later at the request of some of the relatives. The social and individual impact was extraordinarily negative and resulted in groups of relatives expressing their inability to trust any of the work performed by the Legal Medical Service. President Bachelet has since appointed a high-level commission to study this issue (Baeza Fernández et al., 2007).
4. Symbolic reasons. In the Araucanía region in southern Chile, interviews conducted over 20 years after disappearances occurred demonstrate that recovering the remains may not be important after so many years. Although some relatives still continue to assert that the disappeared person is not dead and may appear at any time, in fact very few people believe that this could happen. This does not mean that there are no groups of people for whom finding the remains is important, but it is not a priority for the majority (Baeza Fernández et al., 2007).

### **Reasons for exhumations**

Despite these reasons, the majority of relatives do wish to carry out exhumations for reasons that vary a great deal depending on the context. For example, in Guatemala (Navarro Garc'a et al., 2007) and Peru (Stornaiuolo et al., 2007), relatives are in favor of recovering their loved ones, which allows them to pray and restore continuity with their ancestors. However, the search for truth and justice is the primary motivation for exhumation. This is the case in the long battles for justice in Honduras (Oliva, 2007), El Salvador (Hernández, 2007), and especially Venezuela (Carrillo, 2007), and in the demonstrations of relatives in Uruguay (Nadal et al., 2007), Argentina (Tumini et al., 2007), and Chile (Baeza Fernández et al., 2007).

There are also practical reasons for supporting exhumations. In Argentina, a law that acknowledges forced disappearances removes obstructions to legal processes such as inheritances, land sales, and remarriage; however, in Chile or Peru exhumations are required.

### **Identifications**

#### *Locating relatives*

A related question is: Are exhumations even possible without the presence of relatives? If exhumation is considered a process that goes far beyond excavation and is significant for reparations, location is a key part of the work. Failing to inform a relative about the exhumation of a grave that may contain evidence of a loved one seriously violates a basic right to the truth and may cause irreparable moral harm. In this context, different experiences (Colombia, Venezuela, and Peru) have shown that denying families active participation in the process leads to anxiety about whether their relative might be among those reburied as NN in their absence. When permitted by the political context, psychosocial accompaniment includes historical and documentary investigation in the communities or family associations, as well public announcements in as many ways as possible (e.g., radio, press, and local

newsletters) to reach the largest number of people possible as soon as the process has started.

### *Obstacles to identification*

In general, relatives and organizations participating in the process have high expectations of identification. However, the actual rate of identification varies widely. The exceptions are cases in which witnesses were present, especially when they knew the victims (Hernández, 2007). These cases comprise only 3 to 5% of cases in large mass graves and 30% in best-case scenarios. Non-identification is more frequent than identification, and relatives are not always aware of this.

In our review we have included several cases in which identification has represented a significant problem for the relatives:

1. Delays. Cases in Honduras (Oliva, 2007), Brazil (Bouças & Vital, 2007), Peru (Stornaiuolo et al., 2007), and Guatemala (Navarro Garc'a et al., 2007) report that it can take a long time, sometimes years, from the time the remains are disinterred for laboratory analysis to the time when identification is made. It may also take a long time for the remains are returned to relatives, or the remains may never be returned.
2. No attempt to identify remains. As previously mentioned, cases such as those in Colombia (G-mez L-pep & Mart'n Beristain, 2007) and other exhumations of mass clandestine graves have occurred without the opportunity for family participation or any real effort to identify and return the remains. Mass graves have been "legalized" as deposits of unidentified bones, as in "operation television removal" by Pinochet after the exhumations at the Lonquén ovens in Chile (Baeza Fernández et al., 2007) or the so-called "operation carrot" in Uruguay (Nadal et al., 2007). Similarly, exhumations by the Legal Medical Institute in Peru have been reported in which appropriate efforts to locate relatives and identify remains were not made and the remains of victims were inadequately stored under unstable conditions (Stornaiuolo et al., 2007). In Venezuela, relatives spent years working on the exhumation of a common grave in Caracas cemetery and were ultimately blocked by the calculated action of the Legal Medical Institute, which issued death certificates stating cause of death by firearm and reburied the remains hours after obtaining them without informing the relatives or making an attempt at identification (Carrillo, 2007).
3. Mistaken identification. Even worse were the false identifications of women in Ciudad Juárez (Limas Hernández, 2007). In this case, the forensic authorities in the state of Chihuahua not only made no real attempt to identify the remains, but also handed over disfigured remains that did not correspond to the person being sought by the relatives to keep the family quiet. The relatives took responsibility for the funeral and burial as if the remains really belonged to their families, hoping that other families would do the same for their daughters. In Chile, identifications were considered valid even though evidence was insufficient, and in Panama, the state was negligent in its search for reliable experts to identify remains (Sanjur, 2007).

### **National Victims Registries and DNA Banks**

Some of these problems can be solved by creating national registries of disappeared persons and DNA banks of relatives. DNA tests also permit identification when remains are minimal and identification cannot be based on physical features.

As a result of the Patio 29 case, the Chilean government decided to create a national DNA bank for relatives of disappeared persons, and has invested considerable economic and human resources in visiting relatives to explain the initiative and gain their participation (Baeza Fernández et al., 2007). Similar programs exist in Argentina, Paraguay, Peru, and more recently in Brazil and Uruguay. Relatives of victims in Honduras are also requesting this type of program. However, the information is sensitive and these registries are in the hands of the state. In Colombia, where a bill is in the final stage of approval in Parliament, plans exist to create a genetic database as part of the Office of Public Prosecution, although this has led to some apprehension among relatives.

Although the use of DNA has made identification more precise, the technique is still somewhat controversial. First, it involves the destruction of body fragments, which may be the only ones that remain from the disappeared person. From a human and procedural viewpoint, the use of DNA represents the individualization of the search, with the danger of losing the collective dimension of an exhumation as a space for community efforts, mourning, rebuilding the past, and dialogue (Baeza Fernández et al., 2007). Moreover, in some cases in Guatemala, DNA analysis has led

to cultural conflicts with relatives who fail to understand the process and that DNA results may contradict results from site recognition or use of clothing at the site (Navarro Garc'a et al., 2007).

## **From the viewpoint of reparations**

### *Political measures*

When asked about future challenges for exhumations in their country, participants often mention political measures (Pérez Sales & Navarro Garc'a, 2007a). Exhumations are seen as part of the broader issue of global human rights.

Legislation is necessary where no laws exist, and compliance with Integral Reparation Plans (which may include exhumation of mass graves) should be required of the appropriate authorities. In Peru, for example, organizations demand application of the National Forensic Anthropological Plan, which has been legally approved but not yet applied. Furthermore, the legal framework of exhumations should be changed in most countries to allow intervention of non-government teams proposed by relatives after appointment by the competent court.

At least one comment should be made about the existence of huge graves in nearly all large cemeteries in Latin America where presumably destitute people have been buried, probably as a result of massive social cleansing. No one inquires about these people, nor has there been any effort to document their deaths or locate relatives. The huge graves found in cemeteries in Sao Paulo, Bogota, and Caracas and the suspicion that similar graves exist in most Latin American cities opens a subject that should be addressed by the appropriate authorities.

### *Justice*

As previously mentioned, the personal involvement of some Argentine judges has resulted in symbolic recognition ceremonies through the reading of public documents (Tumini et al., 2007). This experience and that of special Chilean judges appointed to the search for the disappeared (Baeza Fernández et al., 2007) are some of the few situations in law enforcement institutions that demonstrate a positive attitude toward victims.

The search for justice is the driving force motivating victims in most countries. According to relative associations in Argentina and Venezuela, it may be more important than emotional elements or reencounters. However, the struggle for justice is difficult, especially in Brazil, Honduras, Peru, El Salvador, Ecuador, Colombia, and Guatemala, where the relatives bear the responsibility of finding evidence and initiating the proceedings (Pérez Sales & Navarro Garc'a, 2007b). In Venezuela, the family organization COFAVIC is still at the stage of "preliminary investigations" after 17 years of litigation, and no case has yet been judged by the country's courts (Carrillo, 2007).

Table 1 shows that exhumations are carried out with impunity. In a few cases, the Inter-American Human Rights Court has intervened, resulting in sentences with considerable social and political impact in Colombia (a case of 19 businessmen and others), Ecuador (the Benavides case), Brazil (the Araguaia case), Peru (the Cantuta case), Guatemala (the Plan de Sánchez case and others), El Salvador (the Pro-Búsqueda case), and Venezuela. As Mar'a Julia Hernández (Hernández, 2007) said in El Salvador, "The judicial branch is not independent in this country and there are constant obstructions of processes to enforce justice when the military is involved (...). It is the relatives who carry the weight of the search for justice (...). Justice institutions only permit exhumations for humanitarian reasons."

The situation in Guatemala is particularly significant in this context. According to Navarro (Navarro Garc'a et al., 2007), "The accompaniment teams have not been sufficiently aware of this reality nor have they included the work of information and discussion of the possibilities of legal proceedings as a systematic part of their work". In contrast, the Centro de Desarrollo Integral de la Mujer, A.C. (Center for Women's Integral Development, CEDIMAC) team in México makes this issue a priority, addressing it through education about human rights, training in legal proceedings, support for submitting testimonies, and recognition processes (Limas Hernández, 2007).

Where legal proceedings have been conducted in Chile, some family members have suffered through long interviews with prosecutors who are aggressive or question the victims' experience (Baeza Fernández et al., 2007). In Ecuador, similar mistreatment of relatives has occurred. The most important conclusion from such experiences may be that relatives should participate in all actions taken to repair damage, including exhumations. Only in this way can exhumations be considered reparatory, as a process.

### *The state's role*

As mentioned above, the state's role in exhumation processes has been widely questioned. Although the responsibility of the state to make reparations is assumed, actions taken by the state on a day-to-day basis could hardly be more negative. Therefore, the state's role in exhumations has been questioned in Panama, for example (Sanjur, 2007). In many cases, the state is judge and jury, and the institutions responsible for proper process, chain of custody, and expert reports depend hierarchically on the state. Reports that forensic evidence has been destroyed by the corresponding medical-legal institutions are not unusual in Peru (Stornaiuolo et al., 2007), Colombia (G-mez L-pep & Mart'n Beristain, 2007), Mexico (Limas Hernández, 2007), and Venezuela (Carrillo, 2007).

The Uruguayan model seems to be more appropriate: exhumations are carried out in the context of an agreement between the government and an independent public institution such as a university (Nadal et al., 2007). Alternatively, in the Guatemalan model, the judge appoints an expert responsible for the case after hearing the relatives (Navarro Garc'a et al., 2007). In Mexico, a similar system of agreements is being supported (Limas Hernández, 2007).

In Guatemala, exhumations have been funded for years through multilateral cooperation and international agencies. In 2006 and 2007, they were financed by the state under the National Reparations Programme (PNR). The nature of exhumation processes changed considerably, especially regarding access to justice (Navarro Garc'a et al., 2007). In Chile, official programs include workers with extensive backgrounds in human rights (Baeza Fernández et al., 2007), which generates trust and confidence among relatives.

## Conclusions

Thousands of exhumations have been carried out over the last 15 years in Latin America. This experience has contributed many lessons, but tremendous challenges remain. This work aims to contribute to the general picture of what is being done from the viewpoint of psychosocial accompaniment. The following conclusions have been drawn:

- Scientific exhumation processes are needed to satisfy relatives' expectations for recovering the remains of their loved ones, but also because they help provide the truth for relatives as well as for society in general.
- Exhumations may be one of the most significant events in political transitions. Despite this, professionals in the areas of mental health and psychosocial and community work have given exhumations very little attention.
- The context of an exhumation depends on the type of human rights violation, such as selective deaths of social or political militants, collective massacres of scorched-earth policies, and social cleansing operations. Each situation requires a different strategy by the relatives and organizations.
- In most Latin American countries, no psychosocial accompaniment exists, or else consists of small contributions by volunteers who focus on mourning or crisis intervention. Most relatives of victims organize themselves or are alone in the process.
- Exhumations should not be seen simply as excavations, but as processes that begin long before the excavation and continue long afterwards in the framework of a global strategy focusing on reparations. This idea is not usually considered by teams in the different countries.
- Mutual recognition among teams providing forensic anthropology investigation, legal support, and psychosocial accompaniment is gradually developing, but unfortunately has not taken place in all countries.
- The role of the state in the processes of searching for disappeared persons is controversial. Although some people believe that the state should be responsible for this as part of reparations, many other voices describe the problems that this creates, sometimes with serious accusations. Some form of institutional regulation is needed in each country to gain the full trust of relatives.
- There is also some debate about the role of the relatives themselves, from that of assistance to the view that they should be consulted before any important decision. This does not imply that the responsibility for action should be placed on the relatives. However, important differences in the success and global and community effects of exhumations are apparent between places where strong organizations of relatives exist and places where they are lacking. All forms of self organization should be encouraged and exhumations should be promoted as opportunities for gaining strength (Ecap et al., 2009; Stover & Shigekane, 2002).
- Some exhumations are conducted for purely human and emotional reasons. On other occasions, the prevailing motivation is the pursuit of truth and justice. The experiences in different countries presented in this review have

shown that the perpetrators almost always go unpunished. Psychosocial accompaniment teams have not traditionally prioritized these aspects of their work, which focuses on intrapsychic processes. It is necessary to provide opportunities for reflection so the relatives can freely decide whether they wish to pursue legal proceedings beyond excavation and reburial. This appears to be one of the most significant issues of this work.

- Culturally relevant psychosocial approaches are lacking in countries where most relatives are indigenous.
- It is important to promote a collective awareness of the past and help reveal the truth about past events of violence.

The reparatory potential of exhumations and impact on individuals, families, and communities is enormous. However, retraumatization and harm can result from bad practices or when exhumations are used for political intentions to break down the relatives of victims. For these reasons, it has been necessary to progress gradually towards achieving the goals in the International Consensus on Minimum Standards in Psychosocial Work and Exhumation Processes Related to Grave Violations of Human Rights (Ecap et al., 2009). Its implementation will be a huge challenge in the years to come. We seek to contribute substantially to this process from the viewpoint of Latin America with the large amount of data accumulated in this review (see Table 2).

<p><i>Accompanying relatives and victims</i></p> <p>1. Psychosocial work shall contribute to developing elements necessary for the exhumation process and the search for the disappeared to be reparative as a whole for individuals, relatives, communities, and society.</p> <p>2. Psychosocial work shall aim to strengthen the capacity of victims to demand their rights to truth, justice, and reparation.</p>
<p><i>Identification of expectations and needs</i></p> <p>3. From the standpoint of psychosocial work, the significance of undertaking search and exhumation processes lies in the expectations and needs of individuals involved in the search for the disappeared.</p> <p>4. All efforts shall be made to identify and locate relatives before starting the excavation process.</p>
<p><i>Cultural context</i></p> <p>5. The sociopolitical and cultural context of the individuals affected shall be taken into account as well as the significance that families and communities attach to these processes to facilitate justice, truth, memory, and integral reparation.</p>
<p><i>Community process</i></p> <p>6. Psychosocial work shall facilitate organizational possibilities for the individuals affected, so that exhumations and the search for the disappeared can be reparative.</p>
<p><i>Working with children</i></p> <p>7. Psychosocial work shall consider accompanying children and adolescents, and their specific needs during the processes of exhumation and the search for disappeared persons.</p>
<p><i>Coordination, communication, and security</i></p> <p>8. Work teams involved in the process of exhumation and the search for the disappeared shall guarantee coordination of all parties involved: individuals, families, communities, the State, international agencies, and non-government organizations, at all levels of the process.</p> <p>9. All parties shall guarantee clear and precise information for affected individuals about the exhumation process or the search for disappeared persons, and about their actions, implications, consequences, and rights. This is particularly</p>

<p>significant in aspects related to reparation and the right to justice.</p> <p>10. During an exhumation process and search for the disappeared, adequate security conditions shall be permanently guaranteed for families, witnesses, and participants.</p>
<p><i>Forensic anthropology considerations</i></p> <p>11. During exhumation processes and the search for disappeared persons, compliance with legal and scientific, national, and international standards shall be guaranteed for forensic anthropology work.</p>
<p><i>Self-support for teams</i></p> <p>12. Integral care shall be available for the interdisciplinary teams intervening in exhumation processes.</p>
<p><i>Role of the state</i></p> <p>13. The state shall guarantee control and oversight mechanisms by victims, local organizations, and international agencies, thus ensuring transparency in the exhumation processes and the search for the disappeared.</p> <p>14. The state shall take legislative, administrative, judicial, or any other necessary steps to fulfill the rights of individual and collective victims.</p>
<p><i>Judicial and legal aspects</i></p> <p>15. Information shall be provided for relatives about the legal and social context of exhumations and their judicial consequences, contributing to decisions about future actions by relatives.</p> <p>16. Judicial personnel participating in the search and exhumation shall have enough basic knowledge to respond to the psychosocial needs of relatives of the victims, adapting procedures to ethnic, gender, and generational characteristics in each case.</p>
<p><i>Integral reparation</i></p> <p>17. Individuals, relatives, and communities shall be informed of their rights to integral reparation, as contemplated in national and international legislation.</p> <p>18. Expectations of and rights to reparation for individuals, families, and communities shall be actively incorporated into psychosocial work, facilitating elements which will contribute to organization for this purpose.</p>

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## Footnotes

[1] Relatives / NGOs (before 1990)

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