Panel Event: "The Uses of Truth: Truth Commission Archives, Justice and the Search for the Disappeared in El Salvador"

Hosted by Cardozo Law Institute in Holocaust and Human Rights (CLIHHR) and co-convened with the Observatorio de Justicia Transicional, Universidad Diego Portales, Chile and Transitional Justice Institute, Ulster University, Northern Ireland. Supported by Open Society Foundations.

Monday, April 23, 2018
6:00pm to 8:00pm
Cardozo Law School
New York, NY, USA[1]

Panelists:

1. Jocelyn Getgen Kestenbaum, Director of the Cardozo Law Institute in Holocaust and Human Rights, CLIHHR (Moderator)
2. Eduardo González Cueva: Transitional Justice Consultant
3. Trudy H. Peterson: Certified Archivist
4. Kate Doyle: Senior Analyst of U.S. policy in Latin America at the National Security Archive, USA
5. Benjamín Cuellar: Coordinator of the *Laboratorio de Investigación y Acción Social contra la Impunidad* (*LIASCI*), El Salvador
6. Leonor Arteaga Rubio: Senior Program Officer at the Due Process of Law Foundation and recently appointed Commissioner for the National Commission for the Search for Persons Disappeared During the Conflict in El Salvador (CONABUSQUEDA)[2]

Purpose:

Falling on the heels of the United Nations Day on the Right to Truth and the 25th Anniversary of the El Salvador Truth Commission,[3] CLIHHR and partners hosted an event to draw attention to the role that truth commission archives play as a potential source of information for justice and the search for those forcibly disappeared in times of conflict. The panel discussed historical decisions about access to truth commission archives in the light of evolving standards on the right to truth, accountability, and justice. The panel also talked about the specific potential of El Salvador's truth commission archives and the ways

[1] Authored by Allison O'Brien. Edited (in English) by Cath Collins (Spanish edition forthcoming.).
[2] For full panelist biographies, *see* Appendix 1, *infra*.
[3] Comisión de la Verdad para El Salvador, July 1992-March 1993, final report published by the UN on 15 March 1993 under the title 'From Madness to Hope: The 12-Year War in El Salvador' (official versions exist in both English and Spanish).

in which they have a contribution to make to a newly opening case universe and/or the search for the disappeared.

Structure:

The event took the form of a directed conversation, Q&A interview-style, between panel chair Jocelyn Getgen Kestenbaum, and the panelists, with final questions and comments from the floor.

Video and audio of the event can be found at:

https://cardozolaw.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=a4314b1e-1225-4559-ae10-a8cb00f4635f

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- **Jocelyn Getgen Kestenbaum:** Thank you to Cath Collins, Patty Blum, Cecilia Gebruers, Alison O'Brien, Cardozo's Events team and AV department, and in particular to CLIHHR Fellow Marissa Wong for making this event possible.

  Question to Eduardo González Cueva: Could you please give us a general outline of the ways in which understandings of the 'right to truth' have evolved over the past two decades or so, and how this has or should affect previous understandings about the confidential status of truth commission archives?

- **Eduardo:** It is good that the question asks us to view this issue in historical perspective. What has happened over the past two decades that makes this issue of the right to the truth so important? Which cases do we have to take account of the fact that this discussion has to do with the wave of democratization of the 1990s, and the opening of the archives of totalitarian regimes in Eastern Europe? The Stasi archive in East Germany, for example, was opened, which changed citizens' perceptions around access to information that the state may have about them. Then, you have the practice of truth commissions on all continents, which has enhanced our understanding of the rights of persons, particularly the victims of human rights violations, to have information about what happened to them; what are the reasons; what was the context and the consequences of those actions. So, there is a clear historical process going on here, and I would be remiss if I did not mention that in the last five or six years, in countries like the United States, we have had significant debates about what is possible for the state to have, and not to show, in its conduct of international affairs . . . with the scandals about the leaks of information from governments: with Wikileaks and so on.

  So, there has been, I think, an evolving understanding of the rights of people to know what information the state has – this is the right to information – but on the other hand, the rights of victims of human rights violations, a very specific group, to know what happened and to know all the information that the state has that could contribute to finding those responsible. And I think perhaps an issue where this has been a notable

element is the search for the missing and forcibly disappeared. Here, it is obvious that what is at stake is to find information about what has happened, because the crime itself is about, and includes, the denial of information to families, to relatives, and to societies. So, this is the context: the emergence of a concept of a right that belongs to society in general, on the one hand, but also quite specifically to victims and their relatives on the other hand.

- **Follow-up Question to Eduardo:** To dig a bit deeper into this issue, we are talking about the possibility of opening the now decades-old archives of a truth commission. This sounds like a reasonable request, but is there a normative basis for this request? Do victims have a right to access to this information? What about society at the national level and the international community? Do we know of examples from other countries where truth commission archives have been key to achieving prosecutions, or to finding the disappeared?

- **Eduardo:** Well, I do think that there is a clear normative basis, and that is the right to an effective remedy that victims of human rights violations have. It is clear that the right to an effective remedy is impossible without information. In order to pursue a case in court, you need information to be available. In order to establish damages, or apply for some kind of reparation or restitution, you need information. So, I think that the notion of a right to the truth for victims of human rights violations is the surest normative basis for this kind of request.

  Now, we also need to understand what truth commissions do: they often do not create new information *per se*. Rather, they gather information that already exists that has not been obtained before: information that victims have, that they have never been able to share, or information that the state may have, but has not released. So, what truth commissions do is to collate existing information; then, they analyze that information in order to reach certain conclusions. That really means that truth commissions are working with information that was already there and should have been known. So, I do think that victims have a right to know what truth commissions have produced. This is particularly obvious in the case of information that victims themselves gathered and gave to the truth commission. If you have worked in a commission you know that victims come bringing information in the hope that the commission will help find more information about those cases. I think those victims have an eminent right to know what the commission obtained.

  And this has been the case, some truth commissions have done that. We know that some Latin American truth commissions have shared their information with the judicial system in order to help build cases against perpetrators. Some commissions have used their information to facilitate victims' demands for reparations; for example, the Commission of Inquiry established by President Aquino in the Philippines. That information has always been used by victims to establish damages. An interesting recent case is Brazil, which held a national truth commission during the presidency of Dilma Rousseff, at the same time as it passed legislation opening national archives and

declared that national archives with relevance to human rights violations should not be protected under the excuse that they constitute or contain state secrets.

So, to sum up, I do think there is a clear and growing practice regarding how Truth Commission archives can be helpful for the realization of victims' rights to obtain effective remedy

- **Follow-up Question to Eduardo:** Do states have any legitimate claims or arguments to hinder or limit access to truth commission archives? What about the arguments that we often hear, regarding privacy, safety, or national security interests? Are there special considerations where testimony about sexual violence, or testimony by minors, is involved? Can you tell us, for example, how Peru has managed this issue? I know you were involved in that commission.

- **Eduardo:** Well, in Peru we were fortunate because these processes cannot be explained without the historical context in which the transition took place. In the case of Peru, transition took place when it became apparent that the authoritarian regime led by Fujimori was entirely corrupt. Peru's was not a negotiated transition, nor a negotiated peace process with two parties who exchanged certain guarantees of mutual protection. It was really a disorganized transition. The regime collapsed, and interesting, it collapsed because of a leak of information. Videos showing the corruption of the regime were placed in the public domain, so the authorities in Peru had to decide how to deal with that. And I remember that the *Ministerio Público* [Attorney General's or Public Prosecutor's Office] publicized the criteria they were going to use to release videos that dealt with the corruption of the regime. They made clear from day one that they would not release information that compromised intimate personal details because it was obvious that the regime had compromising videos about their opponents' private lives and had used it for blackmail. So, it was made clear that the new, democratic authorities in Peru would not release this kind of information; only, for example, information about payments made behind closed doors by the Fujimori regime to members of the corrupt elite that propped it up. So, it is clear that privacy, and the protection of victims' intimacy, interests, and safety, are granted.

  In cases of sexual violence and violence against children, victims do have a right to be protected because of the stigma attached. But I would make a caveat. I do think that victims of gender-based violence, or of violence committed against victims when they were children, need to be protected, but I also think that victims should in any case be consulted about the use of this information. In the case of Chile, for example, one of the excuses to declare that the [Valech] truth commission[4] information was classified

[4] The Valech Commission, a second truth commission carried out in Chile in 2004–2005 and again in 2011, focused on survivors of torture and political imprisonment. Its records were made subject to a post-hoc 50-year embargo, for both public and judicial access, which has been the object of numerous legal challenges and pressure for change. Limited judicial access and individual access for survivors has now been established as a result of that pressure. The records of Chile's first truth commission, the Rettig Commission of 1990-91, have always been available to the courts and other authorities, although not to the general public. Editor's note.

was that the authorities said some victims asked them to hide it because revelations about having suffered sexual violence would affect their relationships with their families. While that could be a legitimate reason, this procedure was wrong – for the President [Ricardo Lagos] just to decide in a blanket way that everything is closed to access. It should be for the victims to decide what happens.

One last point, is about the so-called protection on the grounds of national security, often invoked by governments. I recall this was used by the Obama administration for example to argue against the release of information about Abu Ghraib. This is a very dangerous argument. The key questions are: What is national security and who defines it? For me, I cannot conceive of a notion of national security that does not include the security of citizens, and the right of citizens to obtain an effective remedy for human rights violations. I do not think that national security should become a cover for impunity. So, I am not convinced by the notion of exceptions on the grounds of national security protection. I worry that this opens a window for governments to conflate national security with the image of institutions accused of violations.

- **Question to Trudy Peterson:** Can you give us details about where the Salvadoran Truth Commission archives are today and how this came about?

- **Trudy:** As Eduardo has already said, context is everything. You look at how a truth commission was created in order to determine who has authority over records at the end. We have seen, around the world, that sometimes governments create truth commissions; sometimes institutions like churches create them; and then there are some free-floating institutions that are neither international, national nor bi-national. I have spent much of the past decade working with the Nuclear Claims Tribunal in the Marshall Islands, which is a reparations commission for harms done by the 67 nuclear tests that the US conducted between 1946 and 1958 on the Islands. The Tribunal sits in "nowhere land." It is not part of the government of the Marshall Islands, nor of the U.S. – and we had to figure out who had the authority to make decisions about records. That is a little like our El Salvador case. El Salvador asked the U.N. to appoint commissioners to the Truth Commission (TC) – so these are U.N. appointees. Then the Commissioners chose the chair [from among their numbers], *i.e.* neither the U.N. nor the Salvadoran government specifically chose the chair. The funding was done *via* donors, given to the U.N. specifically to be passed on to the Commission. The TC began sitting in El Salvador. Then, in response, as I understand it, to actual threat – it moved back to New York, into rental space, again paid for by donors through the U.N. When the Commission closed, the records were boxed up and sent to the [U.N.'s] Department of Political Affairs, which turned them over to the U.N. Archives for storage. Notice here we do not have anyone in authority who can say in the long term what is going to happen to these documents. In fact, at one point, a Commissioner proposed that the records go a private entity, for example, to George Washington University in the United States. So, the Commissioners clearly did not see them as U.N. records, but they did not seem to see them as Salvadoran government records either. They were somehow in limbo.

So then, who gets to make the decision as to who can see what? This is a political question that I would argue has to be worked out by the U.N. The U.N. certainly should talk to El Salvador, but I do not think the Salvadorian government can be the be-all and end-all either, since the TC was obviously a body set up to be separate and distinct from the state. So, as with the Marshall Islands example, we have to figure out politically who can make decisions to open or close the records. As far as I understand it, there is very little documentation in the U.N. as to who will make these decisions on access: it is simply a political question that has to be worked out.

Once that has been decided, there are a whole host of examples of ways to make records available responsibly. Taking on board the points Eduardo has made about privacy and understanding the differences between documents that reflect what the state did, what the Commission itself did, and testimony brought by survivors; those are three different categories of records that are usually handled separately. Usually a person who has testified can get back and see their own testimony, just as someone seeking reparations can. Usually former Commissioners – and sometimes, though not always, Commission staff – can come back and see records they made or received. And, following the Joinet-Orentlicher principles,[5] you have to let attorneys who are prosecuting cases related to these records have access; and you have to let defense attorneys see them as well. But all of this requires the decision-making framework to be put in place first, and that, in my view, is where we are stuck.

- **Question to Leonor Arteaga:** As a Salvadoran, and given your extensive work with the Due Process of Law Foundation,[6] what is your view of the current status and location of the archive? What is the potential importance of the archive with regard to the broader truth, justice and impunity situation in the country?

- **Leonor:** As we know, the Commission's mandate was to investigate serious acts of violence that occurred in El Salvador between 1980 and 1992, and the nature and effects of that violence. It was also to recommend different methods or measures to promote national reconciliation. It was comprised of three international commissioners, appointed, as Trudy has mentioned, by the U.N. From the standpoint of today's knowledge, the El Salvador TC must be seen as an early model of the genre. The Salvadoran peace negotiators looked to the previous examples they had to hand – mainly Argentina [CONADEP, 1983] and Chile [Rettig, 1990/91]. Nowadays, the establishment of a Truth Commission is widely seen as part of an overall strategy to address human rights violations. But in the case of El Salvador, this was not quite what happened. Now we know that TCs can play a vital role in setting the stage for additional efforts to overcome impunity and promote transitional justice. But what came immediately after the publication of the TC report in ES were explicit signs of the substitutions of truth for justice – for example, as we all know, the almost immediate passing of a blanket amnesty law.

[5] Adopted in 1997 by the United Nations Commission on Human Rights.
[6] *See* Due Process of Law Foundation, www.dplf.org, in English and Spanish.

The Truth Commission report named individual actors, who were perpetrators responsible for human rights violations, and called for extensive judicial and legal reform, particularly in security and judicial institutions. But it did not call for immediate prosecution of perpetrators, since it considered that the Salvadoran legal system of the time was completely incapable of carrying out such prosecutions effectively. At the same time, the TC provided a unique opportunity to promote awareness of the violence that had taken place; and about what still could, and still needed, to be done about it. But putting this into practice was particularly challenging for El Salvador because the regime responsible for the violations remained in power and the state's institutions remained weak. In general, those responsible still hold a lot of power even today.

In a context like that one, it may have made sense for the U.N. to be the guardian of the archives, even if it was not entirely clear that that would be the case, but it may have made sense at that time. But now, 25 years later, with no amnesty law in place, and some prosecutions, such as El Mozote, moving forward – it is the right time to have access to these records, and we as Salvadorans, as experts, as UN personnel, have to figure out a specific way to do it. Why? What could we find in these archives? Well, we have some ideas, though no one really knows. But what is clear is that if these archives were opened, that would be important for at least two reasons:

1. There is a powerful symbolic effect: to confirm the historical truth, as well as the idea that nothing remains the same, especially after the amnesty law has been overturned; and

2. These archives could be used as evidence for the purposes of justice, if there is a way to do so responsibly, and with taking care of the safety of people who gave information.

Another effect of all the years of silence around the Truth Commission records has been to create a huge demand for information, from civil society groups and victims' groups in El Salvador. So, it is important to find a way to give them a satisfactory answer.

- **Question to Benjamín Cuellar:** On the subject of the amnesty law, turning to Benjamín: what is the current status of truth and justice issues in the country, almost two years after the Supreme Court found the amnesty unconstitutional?

- **Benjamín:** To answer, we need to go back to 19 July 2017, I think it was… On that date, the Constitutional Bench of the Salvadoran Supreme Court carried out a one-year anniversary compliance hearing on the verdict declaring the unconstitutionality of amnesty. Present at that hearing, aside from ourselves, were representatives of the Public Prosecutor's Office (*Fiscalía General de la República*), the President's office (*Presidencia de la República*), and the Legislative Assembly. They were all asked what they had done to implement the verdict, in particular as regards the implementation to regulate a transitional justice process in El Salvador. The representatives of the Executive and the Legislature had to admit, in the end, that they had done nothing. The only one who could announce any kind of advance was the

Public Prosecutor, who, in December 2016, created a group of Special Prosecutors, dedicated to cases related to the internal armed conflict. The session ended with the Legislative and Executive branch representatives promising to expedite a transitional justice law "as soon as possible." However, that law is no longer in place.

Instead, the only actor who has made it possible for the effects of the amnesty law to disappear has been the Constitutional Bench of the Supreme Court. The terms of four of the judges of that bench expire next July, and there are good reasons for fearing that their replacement may lead to the reversal of that jurisprudence. So, in sum, the institutional scenario is risky and uncertain. Notwithstanding, there are some judicial personnel who, like organizations accompanying victims, are pushing forward justice claims and cases.

- **Question to Benjamín:** How do the victims you work with and accompany feel about the fact that the TC archive is held outside the country by the U.N.? Do they view the archive as key in the search for truth and justice?

- **Benjamín:** Well, I can report the views of, for example, relatives of six victims who were leaders of the social and political wing of the Democratic Revolutionary Front, (*Frente Revolucionario Democrático*) . . . . The widow of one of them has instructed us, required us, to do all we can to make sure that the TC file on that crime can be viewed, at the very least, by the Salvadoran Attorney General and his research team.

  Leonor has already mentioned El Mozote, one of the worst massacres in Latin America of the late 20th Century . . . . I am sure as well that those relatives want the case archive to be opened, as in the case of Monseñor Romero, and other cases that have already been denounced to the Attorney General.

  There are at least three grounds for this, this demand . . . . First, the victims' rights to know the truth and have justice and holistic reparations. Second, society's rights to non-repetition, above all of the atrocities of the 1970s and 1980s. Also, there's the fact that the parties who signed the peace agreement promised to overcome impunity in the final, Chapultepec, Accords of 16 January 1992. Chapter one, point 5 of the Accords – about the Armed Forces – was actually entitled "Overcoming Impunity," and its two components were: (i) cases of grave human rights violations in which the Armed Forces were involved would be scrutinized by the TC, and (ii) most importantly, both sides recognized the principle that cases scrutinized by the TC, and "other similar cases" must be passed to the courts in order to be subject to the "exemplary effect" of justice being done. Why? What was the exemplary effect? That the institutions of justice would operate, could be seen to be operating, irrespective of who the perpetrators were. That's why, 25 years later, atrocities still go on. We still have disappearances, torture, massacres, forced displacements due to violence.

Agnes Callamard, the U.N. Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, in her recent preliminary report on a visit to El Salvador,[7] explicitly said that impunity for the past is one of the things that allows present-day atrocities to continue unchecked: with or without ideological motives. Today, it may be the *pandillas* (gangs) rather than the *guerrillas* (guerilla groups) who are the target, but the worrying thing is that state forces are still the ones carrying out these atrocities unchecked.

- **Question to Leonor:** Can you give us a sense of the crimes that were committed during the conflict, and the current challenges in terms of missing persons and so on?

- **Leonor:** Well the Truth Commission documented over 22,000 complaints, of which 60 percent involved extrajudicial killings; 25 percent disappearances; and 20 percent of torture cases (some complaints of course alleged more than one form of violence.) The Truth Commission documented about 5,000 cases [of enforced or involuntary disappearances]. The final report presented results of in-depth investigation of only 3 cases, but also made an effort to describe patterns of enforced disappearances, identify the actors responsible, etc. Civil society and victim groups have for their part gathered at least 10,000 complaints of more disappearances. This means there are 5,000 to 10,000 adult victims of disappearances.

  Based on testimony, the TC attributed 85 percent of acts of grave violence to state agents. This was particularly concentrated in rural areas. Five percent of serious violations were attributed to [left-wing] guerrilla groups and the rest to different [right wing and pro-government] paramilitary groups. In the case of disappeared adults, no search policy, program, or institution has ever been implemented. To date, there has been only private searches carried out by families. In El Salvador, as also in Guatemala and in some ways similarly to Argentina, there were also enforced disappearances of children. Unlike with adult victims, in the case of children, something more was done in El Salvador. Victims [relatives] organized themselves very well and founded a well-known human rights organization known as the *Asociación Pro Búsqueda*.[8] They did a lot of national and international advocacy and litigation, and as a result, the Inter-American Commission [and eventually Court] of Human Rights condemned El Salvador, in the 'Serrano Cruz vs. El Salvador' case, ordering the creation of a National Committee for the Search for Disappeared Children. And eventually, after some resistance, the State did set up the Commission, which has been working for 7 years now. It was set up not through national law, but only by presidential decree. Despite this , it has been working relatively successfully. But in the case of adult disappeared people, there has been no official or state response to date.

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[7] See Agnes Callamard, United Nations Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions, El Salvador End of Mission Statement, 5 February 2018; available in English at http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22634&LangID=E and in Spanish at http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=22634&LangID=S [Declaración final de misión en El Salvador]. Specifically, the statement says that "mov[ing] forward in the search for justice for past violations […] not only contributes to repairing wounds from the past but it also helps set the conditions for combatting current impunity, as often patterns repeat themselves."

[8] *See Asociación Pro Búsqueda*, www.probusqueda.org.sv.

In early 2017, a group of relatives from El Salvador – people who had migrated to the U.S., but who had family members who had disappeared during the war – began to organize and look for new ways to pressure the U.S. government, and also to urge the Salvadorian government to create a national mechanism to search for the disappeared. The current government, particularly the current president, who took office in 2014, acknowledged that enforced disappearances had happened during the internal armed conflict in El Salvador, and personally committed himself to finding a solution. Family members took his promise seriously, and also urged some U.S. Congress members to [help] create this mechanism. So, finally, all these families' advocacy efforts here in the U.S. and in El Salvador paid off, and the government created a new commission, this time for searching for disappeared adults. Again, it was done by presidential decree. Although the decree was signed last August [2017], the commissioners were only recently appointed, and their installation is still pending in the coming weeks and months.

The challenges for this Commission: there are several, on several levels. Let me focus on three:

First is the amount of forensic anthropological work that is involved in a task like this one. There is not enough local expertise within national institutions in El Salvador. In the case of some massacres, we have had, for example, the support of outside independent forensic teams, such as the *Equipo Argentino de Antropología Forense*, or *EAAF*.[9] This time around we will need international support again, but it is not as simple as just using international support. At some point, that support should be used, and be useful, for creating national capacity.

Second, another challenge is how to get access to military records and national records in general. So far, the Armed Forces and every Defense Minister has persistently refused to release any kind of institutional information, even when this is requested by other public institutions. The El Mozote case judge, and the national public institute for access to information, have both asked for information, for archives, with no results. Sometimes there is just no answer; other times, they say the information has been destroyed. We know from experience that it is simply seems impossible to destroy all information coming from a regime that lasted two decades or more and committed systematic crimes in a planned way. Bureaucracies, and particularly military bureaucracies, just do not want to let go of their paperwork, in part because it relates to what they consider having been a very successful strategy. They continue to take pride in what they did. El Salvador, like many countries, has a specific access to information law, which allows [access] and prohibits the withholding, for any reason, of information related to human rights violations. But the law has not been sufficient to shift the will of the armed forces.

The third challenge is the very limited political support that a search for the disappeared of armed conflict has, whether from left or right. One of the strengths of this

[9] *See Equipo Argentino de Antropología Forense*, www.eaaf.org.

Commission is that it comes from the victims' struggle, from their will; the creation of this commission so far has been achieved working in tandem with civil society. And I think it will need to continue this process of dialogue, even while at the same time, the commission will be called on to 'manage' victims' many hopes and demands.

- **Question to Trudy:** In addition to the voices of Salvadoran experts, activists and victims in-country, what are the voices from within and around the United Nations, or the specialist human rights archivist community to which you belong, calling for with regard to the archives? What are their issues of concern?

- **Trudy:** I think we are talking about three separate things when we talk about access to the records of the El Salvador TC. First, we are talking about access for judicial purposes; that is one kind of access. Second, and separately, we are talking about general access by the public to know the truth. That is a separate kind of access as you could grant the first, without giving the second. Third, and underlying the others, is the question of where the physical records are located. And all of those three have to be solved, but they can be solved separately. Let me make a suggestion, which our friends at the U.N. may or may not wish to act on . . . . The U.N. Secretary General – who appointed the original Commissioner panel – in consultation with the government of El Salvador, names an expert panel, three members… to set the rules for access and cover all of the questions that relate to access by all the different interested parties. That takes it out of the realm of being either a U.N. decision or a government decision, and puts it on a neutral level, which was the purpose of the TC in first place: to take it out of solely governmental hands.

  What would they use for principles? Well, for national security you have the Tshwane Principles,[10] to look at what is reasonable to protect for national security purposes. My guess is that very little in this body of records would fall into that category, but there may be something. Then, the International Council on Archives has International Principles on Access to Archives[11] – with a technical report that lays out some of the kinds of protections you give, and specifically references the important Joinet-Orentlicher principles. Then, third, the International Council on Archives has a working paper, called 'Basic Principles on the Role of Archivists and Records Managers in Support of Human Rights'.[12] That is a working paper, but this past autumn the Association of Latin American Archivists, to which El Salvador belongs, adopted these

[10] *See* The Global Principles on National Security and the Right to Information (The Tshwane Principles), https://www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf (text in English) or https://www.opensocietyfoundations.org/sites/default/files/tshwane-espanol-10302014%20%281%29.pdf (text in Spanish).
[11] International Council on Archives. Principles of Access to Archives, https://www.ica.org/sites/default/files/ICA_Access-principles_EN.pdf.
[12] International Council on Archives. Basic Principles on the Role of Archivists and Records Managers in Support of Human Rights, https://www.ica.org/sites/default/files/ICA%20HRWG%20Basic%20Principles_endorsed%20by%20PCOM_2016_Sept_English.pdf.

as their Principles. So, we could very freely use this as a background document in dealing with anything from Mexico to Tierra del Fuego. Those three documents could form a set of working documents that a panel of experts could use to come up with principles for access to these materials.

Then, we move to the question of physical location. And as Leonor mentioned, the group that worked on the missing children question had a terrible fire at its offices – that I have always been convinced was arson, to destroy its records. That points to the need for safe haven documents. Whether or not the originals are in El Salvador, I believe the U.N. needs to keep a copy as a safe haven document. Right now, an International Working Group, of which I am a part of, is trying to create guiding principles regarding what safe havens do and do not do, with documents they hold. That is going through the international discussion process right now. But again: when we separate access from the physical custody question, we have different pathways to follow, but for each, we do have existing international discussions that could inform this.

- **Question to Kate Doyle:** Kate, you are also an expert on archives, although you approach this issue from a slightly different angle: that of U.S. declassified documents. First, how have U.S. declassified and other government documents served human rights purposes in Latin America generally? Then, more specifically, tell us a little about your work to declassify [US] government documents, and the evidence that comes from what the United States knew at the time of the Salvadoran conflict.

- **Kate:** If you want to think about what United States organizations could hold, think of the arc of the Cold War, and what role the U.S. played in Latin America during that very long period when the United States was concerned about its national security and economic interests there, and pursued a specific ideological project to counter or eliminate what they perceived as communist influence in the Americas. As a result of those policy objectives, as perceived by Washington throughout many presidencies, the U.S. allied with military regimes. And so, for decades you have U.S. officers – whether diplomatic personnel at U.S. embassies in Latin American capitals; or C.I.A. officers and their paid assets operating from C.I.A. stations; or defense attachés who were responsible for gathering intelligence from their military counterparts – collecting information throughout the region, analyzing it, and sending it back to Washington.

  This infrastructure of reporting that took place through our diplomatic and security relationships in the region resulted in a treasure trove of secret records held in agencies in the U.S., the U.S. State Department, etc. that not only reflect U.S. policy and budgets and training, but also in a very detailed and rich way, reflected the core military and police intelligence apparatuses of the countries with which we were working. Why does that become important when examining contemporary efforts to understand the past, to effect justice, to preserve the historical memory of periods of state repression and violence? Because if [Latin American] truth commissions, prosecutors and judges cannot get their hands on the archives of their own security institutions, the U.S.

declassified documents do offer a window into how those institutions functioned, and why and how they carried out violent operations against their own citizens.

So those records that the [ÙS-based NGO] National Security Archive[13] has obtained over time – using the Freedom of Information Act (FOIA), and research at archives and presidential libraries – we have worked with those records, with groups of human rights organizations and families/victims, but also with truth commissions, with judges, with prosecutors. They have served many functions in Latin America in this post-Cold War period as countries experiment with ways of grappling with their own histories.

In El Salvador, the U.S. footprint was huge. There was an extensive relationship with the military during the 10 years plus of the civil war, but the CIA also set up informant networks to help the repressive regime and institutions of that country eliminate incipient armed opposition organizations or what they perceived to be communist influences in the country. That initial support, through early forms of military and intelligence assistance, blossomed into a full-blown support for the military and then mixed civilian-military regimes during the war. We spent something near USD $4 or $5 billion in El Salvador over 10 years [in the 1980s] – which even by today's standards is an enormous amount for a tiny country.

A lot of that was poured into the armed forces: training and military grant programs and technical and intelligence assistance. All of this is reflected in the documents of the U.S. government. That is why these documents can serve as a rich source of information, whether as corroborative information in trials, as it has been in Peru, the trial of Alberto Fujimori, and Argentina, trials of the military for *Plan Condor* and in Chile and Guatemala. And perhaps it will in El Salvador someday soon.

- **Question to Leonor:** from your perspective, what relevance, if any, do U.S. declassified documents have to Salvadoran survivors' search for truth and in finding missing persons?

- **Leonor:** The success of the search efforts will rely upon access to Salvadorian government information. Yet efforts to obtain files from Salvadorian government records have been fruitless to date, as I have explained. Due to the extensive United States involvement in the conflict in El Salvador, as Kate has explained, U.S. records may help fill this knowledge gap, from the Salvadorian information that we do not have.

  The U.S. documents are also important to underscore and address the relatively underacknowledged responsibility of the U.S. government in providing assistance to this repressive government. It can perhaps help El Salvador and Salvadoran Americans to heal. I want to tell you a little bit about the work of Angelina Snodgrass Godoy, the director of the Human Rights Center of the University of Washington in Seattle.[14] Angelina conducts a project that is analyzing the declassified information that has

[13] *See* National Security Archive, www.nsarchive.gwu.edu.
[14] *See* Human Rights Center, www.jsis.washington.edu/humanrights/

already been released on El Salvador over many years. With local groups in El Salvador, Angelina is leading a very novel, pioneering effort in the case of El Mozote. They have developed a methodology to work with victims and their communities to show declassified information, taking to the community level what declassified information is, and what you can find in these documents. It has been an enlightening experience for victims. They feel their memories, and the truth that they have, is being confronted with another kind of truth – the truth that is official or undeniable, because it is in the U.S. records. This project is showing that even people in El Salvador who are elderly, or who are peasant farmers, still have a need to know what is in the U.S. declassified information.

At the same time, through her research, Angelina has found that there is still a great deal of information that could help that remains declassified. Of course, a lot of the already declassified information still needs to be made use of, in current prosecutions moving forward, but beyond that there is still information that needs to be declassified, in particular, held by military and intelligence agencies. So, advocacy and efforts to obtain more U.S. declassified documents are important for Salvadoran efforts to find disappeared people and for access to justice. It is important for victims to feel their truth is acknowledged, recognized, and placed alongside, compared with, official records.

- **Question to Kate:** What advice does the archival community give to archivists handling records – like those of truth commissions – that contain information of importance for human rights? How do you balance the right to information and other individual rights, including privacy rights?

- **Kate**: A number of the previous panelists have addressed these issues: there are standards that can be used to address that question, yet also it is very specific to each country. While the International Council of Archives (ICA) has produced very useful principles, each country has its own needs and demands. Some countries, for example, have decided in favor of opening wholesale access to records of former secret police or national police that contain an infinite amount of extremely private information (*e.g.* Guatemala and Paraguay). There, those countries decided that the social right, the collective right to know what happened during the period of repression, superseded the individual right to privacy. Of course, that can be debated, and it is.

  There is a growing regime or body of principles, and sometimes law, both at national or international level, pointing to obligations on states to make information about human rights atrocities open and available to victims, which means to society. There are many ways that has filtered into national laws. So, for example, the equivalents of FOIA legislation that are now on the books in various Latin American countries, often have specific clauses that prohibit hiding or keeping secret information about grave human rights violations or crimes against humanity.

  At the regional level, the Inter-American Commission of Human Rights and Inter-American Court on Human Rights have made a number of groundbreaking

pronouncements and rulings around the right to know of victims and societies, whether for purposes of prosecution or for historical reasons.

So, there are principles and laws. On the other hand, when you have confidentiality questions – when there are testimonies, as in the Salvador TC, from individuals who took tremendous risk, where people are genuinely concerned today 25 years later for their safety or that of their families, it is not a difficult dilemma. There is a review process, and you separate out records that can be freely and openly accessed from more sensitive records that can be redacted in some way and placed at the disposal of justice officers . . . there are already practices in place to do that.

With regard to the UN Truth Commission files, this is a manageable project. With people who know the truth commission records, who know El Salvador and who know archives, we can come up with a set of practices to make those records available in a way that still protects vulnerable informants. To be clear: it is not as though anyone expects the solution to a crime to be revealed by the U.N. Truth Commission files 25 years later. Certainly, they will contribute potential evidence. But in a much larger sense, it is important for the U.N. to acknowledge the demand for justice in El Salvador by saying: "We are going to take a look at the records and provide them to prosecutors to the extent possible, in recognition of your call for justice." We can find a way to do this.

- **Question to Benjamín:** Why is it particularly important to get access to the contents of the files on the 32 cases the Truth Commission investigated, in depth summaries of which appear in the final report, published on 15 March 1993?

- **Benjamin:** For 23 years, the parties to the conflict who were responsible for atrocities were comfortable because they were protected by amnesty laws. That was the pretext not to do anything. And now that the amnesty has been overturned, the excuse is that there is no information. But the information is there. I talked to Reinaldo Figueredo, one of the Truth Commissioners, about the TC records on the massacre that took place at the Universidad Centroamericana in 1989 – what's often called the "Jesuits Massacre," although the victims included two women, as well as the Jesuit priests. He confirmed that although there is only a 10-page summary in the final TC report, the actual length [of the case file] is 300 pages. So, we talked to the Attorney General [of El Salvador], and he asked us to write a letter asking the U.N. to open the file to him so he can also know what is in the archive. This request is in the process of being worked out with the problem and the risk that his mandate is finishing next year in January. So, I think we need to hurry: us there [in El Salvador] and you here [in the US].

  The Inter-American Commission on Human Rights, which held a special public thematic hearing on 26 January this year to mark the 25th anniversary of the publication of the TC report, is also showing interest. When the wall of impunity was defeated - *via* the declaration of unconstitutionality of the amnesty law - both parties reacted negatively, but the former guerrilla [the *Frente Farabundo Martí de Liberación*

Nacional, *FMLN*, now a political party currently in government] was the one that reacted more strongly. They spoke about the demands as revenge, the problems of a "flood of cases," a witch hunt. Because they did not do what they should have done at the time to get the institutions working properly, El Salvador currently is beset by three wars: a war between gangs; a war between state agents and the gangs; and a dirty war against the population that lives on the front lines.

The final paragraph of the introduction to the Truth Commission report makes reference to a "Foundation for Truth." Let me read a brief extract: "The [Truth] Commission has already engaged in a search for international co-operation, from academic institutions, governments, foundations etc., on the explicit understanding that we have a personal responsibility to guarantee confidentiality, before the archives are definitively transferred to their legitimate owners." [15] So, two things: one is confidentiality. We need to see whether this is still demanded by those who gave testimony to the commission. We should ask those people. Confidentiality could also be respected by withholding the actual names but extracting any clues or evidence that may lead to truth and justice for the victims. The other thing is the mention of the "definitive transfer of the archives to their legitimate owners." Who are they? The victims, which does not necessarily mean that the archives have to be physically taken to El Salvador. There might be another mysterious fire, like the previous one at the Interior Ministry . . . .

But as we have also discussed here, there is also information in documents that are declassified by the U.S. government; there is more information. The biggest challenge is not about inside or outside El Salvador, it is about not letting the mission kill off the passion and imagination.

As well as the cases that have already been mentioned here, that are in the TC report and therefore archive, there are other cases. One year on from the declaration of unconstitutionality? We filed three more criminal complaints:

1. One for a Salvadoran who is also a U.S. citizen, since she was born in the U.S. She was forcibly disappeared along with her father and their maid. In that case, there is information in the TC archive.
2. The second two cases have been worked on by the Center for Justice and Accountability [a US-based NGO]. These cases are against the two Salvadoran military officials, one a former Defense Minister, who were sued for torture in the U.S., found liable, and deported from the U.S. back to El Salvador. There is information about that too in the TC archives. We have to give these suggestions to the prosecutor, and demand that he requests that information as well.

- **Question to all:** A final question to all of you, which some of you have already partly addressed: what would you each recommend the United Nations do with the Salvadoran Truth Commission archives? Would you change the current status? Why or why not?

[15] Unofficial translation.

- **Eduardo:** I am fully behind Trudy's suggestion: the most practical way would be for the U.N. Secretary General to convene a group of experts, working on the basis of existing best practice. There is also role for activism and academia to help. The organizers of this event, for example, and others interested in the fight against impunity, should perhaps write to the U.N. Secretary General and emphasize our support for some change.

- **Kate:** I would only add that the United Nations, with the support of other organizations, should consider a bifurcated process:
  1) Respond to the urgency of prosecutors' requests regarding cases occurring right now, such as El Mozote and behind it, the Jesuits massacre and other cases.
  2) Another, broader, process: to review the entire collection, folder by folder, for its possible disclosure in totality to the public.

- **Leonor:** We need to work on the issue in a coordinated way. Expertise is important, to make consultations and work together. Everyone here in the U.S. needs to work together; and in El Salvador we need to coordinate to create a strategy on how to engage the Attorney General, or other officials in El Salvador, to finally make an official request to open the archives for specific cases.

- **Benjamín:** The U.N. had the main role in the negotiations that led to the end of the war in El Salvador. After that, they presented the U.N. role in the Salvadorian peace process as a successful one. But now, over the course of less than a year, two U.N. Special Rapporteurs – on Extrajudicial Executions, and on Forced Displacements – have needed to visit the country. That is to say, 25 years after the U.N. Truth Commission report was buried under the gravestone of amnesty, the country is not the model that they liked to present it as. So, they should help us to do the work that still needs to be done. Justice needs to be seen to be done, with no exceptions. As Montesquieu used to say: "Justice must be like death: admitting no exceptions."

Questions & Public Comments:
Due to lack of audio amplification for questions from public there may be some gaps or inaccuracies in this section of the report:

- **Question [from a postgraduate researcher working on disappearances in Chechnya] for Eduardo:** What about when there is weak political support for prosecution . . . . How do we interpret the demands of justice and the right to truth when comes to search for disappeared?

- **Eduardo:** This question made me go and review the General Comment[16] and you are right: the General Comment says the obligation of the state is to investigate until the

[16] The UN Working Group on Enforced and Involuntary Disappearance's General Comment on the Definition of Enforced Disappearance included in the International Declaration for the Protection of All Persons against Enforced Disappearance, adopted by UN General Assembly Resolution 47/133 of 18 December 1992.

fate and whereabouts of the disappeared person are established. And then there is language saying that in contrast, the clarification of the circumstances is not an absolute duty. But it explains that this has to do with the fact that in some cases, is order to obtain this information, you have to offer certain guarantees to the informants. And also, that you may impose a secret over the names of the persons who may be involved in a disappearance.

I think that has to do with a very practical issue, that is, the obtaining of information. We are facing that question right now in Sri Lanka, because the Office on Missing Persons, OMP, is being established, and they are trying to establish the extent of the implication of the OMP law – how much information and what kind of information can the OMP forward to the prosecutorial authorities. The key question here of course is what to do with persons who have the information because they participated [in the crime]. I think that this has to do with the requirement to get the information, and an issue that is critical in the search for the missing, that is, its double nature. There is a humanitarian focus, if you will, that has to do with facilitating the families achieving a resolution of their grief and on the other, the principle of establishing accountability. And there may be cases in which you have a difficult choice there. In those cases, what you are seeing in practice, as in Sri Lanka, is the attempt to guarantee that at the very least families are going to have the opportunity to get to the fate and whereabouts. But still this a very controversial issue, and I don't think there is a complete solution yet developed.

- **Question from Priscilla Hayner [expert on TC issues who has consulted to the UN]:** Given all of the questions that Trudy outlines, there seems to be a question about what legal world we are operating in. It seems to me that the three original commissioners could be consulted; an entity of three could come together to make recommendations or review their original decision. It would be unusual, but everything we are considering is being made up *ad hoc*. I am wondering if that has been considered: What their role may be?

  A second part to that is, it seems listening to this panel that the worst-case scenario in this case would be for nothing to be done. A change seems reasonable. A good part of the archive should or can be released. But have we any previous experiences, best practice on this to draw upon? And do we know, if there were to be a *post hoc* change to confidentiality in this case, what that would mean for future TCs? Will it limit what is special about them, what differentiates them from other kinds of commissions of inquiry, if people cannot give information under the promise that it will not be shared, of confidentiality? Would that inevitably lead future truth commissions to change the rules of the game or to preserve information in a different kind of way?

- **Kate:** On the question of whether the original Salvador Truth Commissioners could re-enter this conversation . . . I believe from having spoken to one of the commissioners and former senior staff that their attitudes about this have changed. There is some openness to, and strong feeling that, something has to change and there has to be way of providing access to these records. However, it gets tricky with regard to the issue of

ownership. If the three commissioners were to feel that, no matter what, these records should stay secret for a continued period of time, do we want to invoke them – heads of a truth commission that operated two and a half decades ago – as being the ones who make that decision? Perhaps they do [now] have different attitudes. I think they do. However, these records are now at the United Nations, so, though it is a question for debate, I do think the U.N. could be responsive to requests for this information whether or not the former commissioners believe this to have been part of their initial intent.

I have interviewed perhaps a dozen people who worked on the TC's staff, and not a single one of them recalls any flat-out promise of confidentiality overarching the entire Commission's work. I think there were specific testimonies given by specific people who were very frightened, and felt themselves to be at risk, but wanted to make that they made a contribution. But those can be identified and treated in a special manner. To do that, we need to create a review board of some kind that works in conjunction with the U.N. archivist. Together, they can ensure the confidentiality of the small amount of sensitive information that exists in the archives. Working with the U.N. to protect the testimony of a certain limited number of informants is very different from starting the process with the assumption that entire collection is confidential unless otherwise stated.

So, I would give benefit of the doubt to publicity, and then find those specific points within the collection for which confidentiality has to be protected. That makes this manageable, and better reflects the nature of the records themselves.

- **Trudy:** I would add that the Commissioners were appointed, selected, for their judicial expertise and demeanor. A very different expertise is needed now to decide, 25 years later, what can be released and what cannot. I do think it is important that Truth Commissions as they start up, think through what kind of disposition their records are going to have.

  In Canada, you have had what I consider to be a bad decision by a court, which said that all of the records of what was called the Independent Assessment Process [with regard to Residential Schools for Aboriginal People][17] involving people who said "I was harmed and wish to be compensated" – the court decided that the records of that process will be destroyed unless the individual specifically asks that his or her claim file be preserved. And if the claimant has since died, the file will be destroyed; heirs cannot order it to be preserved.

  That harms Canada's history, the history of its indigenous peoples, and their relationship with the government. This was decided, [flying] in the face of much testimony, due to the argument that these testimonies were given with the promise of privacy and on the understanding that individual's families would not see the information. Well, we have other ways to protect that – testimonies can be held for a hundred years, or until a certain amount of time has passed since the testimony, a length of time that can be specified by the person. So, I think that what we need to do is have

[17] See the Truth and Reconciliation Commission of Canada, www.trc.ca.

a different kind of process, rather than a purely judicial process or a process driven by the former Commissioners.

- **Leonor:** As some of you probably know, the Due Process of Law Foundation, the human rights organization that I also represent, was founded by the members of the TC of El Salvador. So, over the years we have had the opportunity to discuss this issue with the former Commissioners and some staff. And they do keep changing their minds. But there are two important things that I think they are reconsidering now. One is the purpose: why, and for what, should the archive be opened? There now seems to be a useful purpose: prosecution in El Salvador. Another useful purpose could be the search for a disappeared person. The second thing that appears all the time is: "Who is asking for this?" Is there really will from someone in El Salvador – I mean a serious request from a serious institution; the Attorney General, the President – is there somebody in El Salvador willing, and interested in, opening these archives and using their contents for a legitimate purpose? A third thing – and this is my own view, rather than a concern that I have heard the commissioners express – I do think that the international commissioners at some point should be consulted, they should have an opinion, but not necessarily the final word. I think they are kind of expecting the UN to give them a methodology on how to do this, an idea on how the archives could be opened, taking account of all the concerns. So, they are not opposing, right, and that is progress compared to previous conversations with them.

- **Benjamín:** The three former Commissioners have already "met," in person or by Skype, recently at an anniversary conference held at the University of Minnesota. And yes, they did show that they were open to reviewing this matter. However, Belisario Betancur, former president of the Commission, is now 95 years old . . . . But taking advantage of the fact that I have Leonor here beside me, I think there are three principal challenges facing us, that perhaps the new Commission to Search for Adult Victims of Disappearance is uniquely placed to resolve:

  First, the Commission's existence needs to be established by legislative disposition, not solely [as at present] by executive decree; to avoid the risk that a subsequent president could simply dissolve it.

  Second, the law at present does not seem to include disappearances committed by the guerrilla forces, and it should.

  Third, they need to sit down with the President, who ordered the creation of the new Commission, and resolve the following contradiction: this person, the President, was at one time a member of the General Ruling Council of what was then the guerrilla force; and is now a less than a year away from completing his term as President of the Republic. In that latter capacity, he is currently titular commander-in-chief of the Salvadoran Armed Forces. What he should do, therefore, is order both his subordinates of yesteryear – the guerrilla – and of today – the Armed Forces - to open the archives and hand over the information that they have.

On the University of Seattle website, you can find analysis of what's known in El Salvador as the "Yellow Book" of the El Salvador Armed Forces. It is not a book, it is a file, a collection of surveillance documents, dossiers kept on certain individuals, with their names, dates of detention, and descriptions of political activities. The University Human Rights Centre has gone to the trouble of going through these records and comparing them to records of those who were subsequently killed or disappeared. This is the living proof that this information does exist, it dismantles the excuse that the information is not there. What has to be done is what we are already about: finding ways to reach the untouchables, to get to those people.

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Appendix 1: Speaker Biographies

Eduardo Gonzalez is a transitional justice expert. He works directly with stakeholders to move away from a history of conflict and oppression. He has conducted advocacy, education and research in about 50 countries with concrete results in places as complex as Colombia, Morocco, Tunisia, the Western Balkans and East Timor and has played a role in the world campaign to establish the International Criminal Court and in the work of Peru's Truth and Reconciliation Commission. He has taught different courses in the Catholic University of Peru, the New School for Social Research, New York University and Brooklyn College. For 7 years, he has taught a global Course on Truth and Reconciliation Commissions, organized by the International Center for Transitional Justice and the City of Barcelona.

Trudy Peterson is an archival consultant and certified archivist. She holds a Ph.D. in history from the University of Iowa. She spent twenty-four years with the U.S. National Archives, including more than two years as Acting Archivist of the United States. After retiring from the U.S. government, she was the founding Executive Director of the Open Society Archives in Budapest, Hungary, and then the director of Archives and Records Management for the United Nations High Commissioner for Refugees. She is a past president of the International Conference of the Round Table on Archives (1993-1995) and the Society of American Archivists (1990-1991) and is currently the chair of the International Council on Archives' Human Rights Working Group and chaired the ICA working group on a standard for access to archives.

Kate Doyle is a Senior Analyst of U.S. policy in Latin America at the National Security Archive. She directs several major research projects, including the Guatemala Project, which collects declassified U.S. and Guatemalan government documents on the countries' shared history from 1954, and the Evidence Project, connecting the right to truth and access to information with human rights and justice struggles in Latin America. Since 1992, Doyle has worked with Latin American human rights groups, truth commissions, prosecutors and judges to obtain government files from secret archives that shed light on state violence. She has testified as an expert witness in numerous human rights legal proceedings, including the 2008 trial of former President Alberto Fujimori of Peru.

Benjamín Cuéllar is a Salvadoran lawyer and political scientist who studied in El Salvador and Mexico. Since 1992, he has headed the Human Rights Institute of the Universidad Centroamericana "Jose Simeon Canas" (IDHUCA) in San Salvador. He was a promoter of the social movement in his country during the 1970s and founder and executive secretary of the Center "Fray Francisco de Vitoria" in Mexico City, from 1984 to 1991.

Leonor Arteaga Rubio is a Salvadoran attorney, joined the Due Process of Law Foundation (DPLF) team in January 2012, and heads the program on Impunity and Grave Human Rights Violations. As Senior Program Officer, she led investigations, advocacy, and monitoring and analysis on issues relating to memory, truth, justice,

and guarantees for non-recurrence of past armed conflicts and current situations of state violence in Latin America. She holds a law degree from the Universidad Salvadoreña "Alberto Masferrer" (USAM). In February 2018, the Salvadoran government appointed her as a Commissioner for the National Commission for the Search for Disappeared Persons (CONABÚSQUEDA) in the context of the armed conflict.

Jocelyn Getgen Kestenbaum is Assistant Clinical Professor of Law at Cardozo Law where she directs the Benjamin B. Ferencz Human Rights and Atrocity Prevention Clinic and the Cardozo Law Institute in Holocaust and Human Rights. Previously, she worked as Program Director of Virtue Foundation, a nonprofit implementing rights-based sustainable development projects in health, education, justice, and women's empowerment globally. Prior to her work at Virtue, she was the founding Women and Justice Fellow for the Avon Global Center for Women and Justice at Cornell Law School.