



Enforced disappearance (ED): 'chain of events' in search, identification and restitution - Case of Chile



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Cath Collins, PhD cath.collins@mail.udp.cl
Directora, Observatorio de Justicia Transicional, UDP
and Professor, Ulster University, Northern Ireland

Characteristics ED dictatorship-era Chile ('73-90)

- **State-perpetrated; targeted** (at political opponents, mostly urban). Non linear
- **Period of highest incidence '73-76**. Latest recognised case: 1987
- **Politically motivated executions also took place** ('ejecución política', EP). The two categories overlap: category of 'politically motivated execution with remains withheld'
- **Official figures relatively reliable** (estimated margin of error $\leq 5\%$)
- **Organised, vocal relatives' associations**. Best known 'AFDD', 'AFEP'
- **303 IDs since 1990** (incl DD y EP, and two cases of disappeared persons found alive, both IDd in Argentina as adults. 9 women detained-disappeared ('DD') known to be pregnant.
- No known cases of abducted grandchildren **but** 2023: 'irregular' adoptions with state collusion recognised

DD- 1,200



Ejecutados politicos – 2,000



Survivors of political imprisonment and torture – 40,000

'other' victims



Exilio y retorno



Characteristics post-dictatorship disappearance

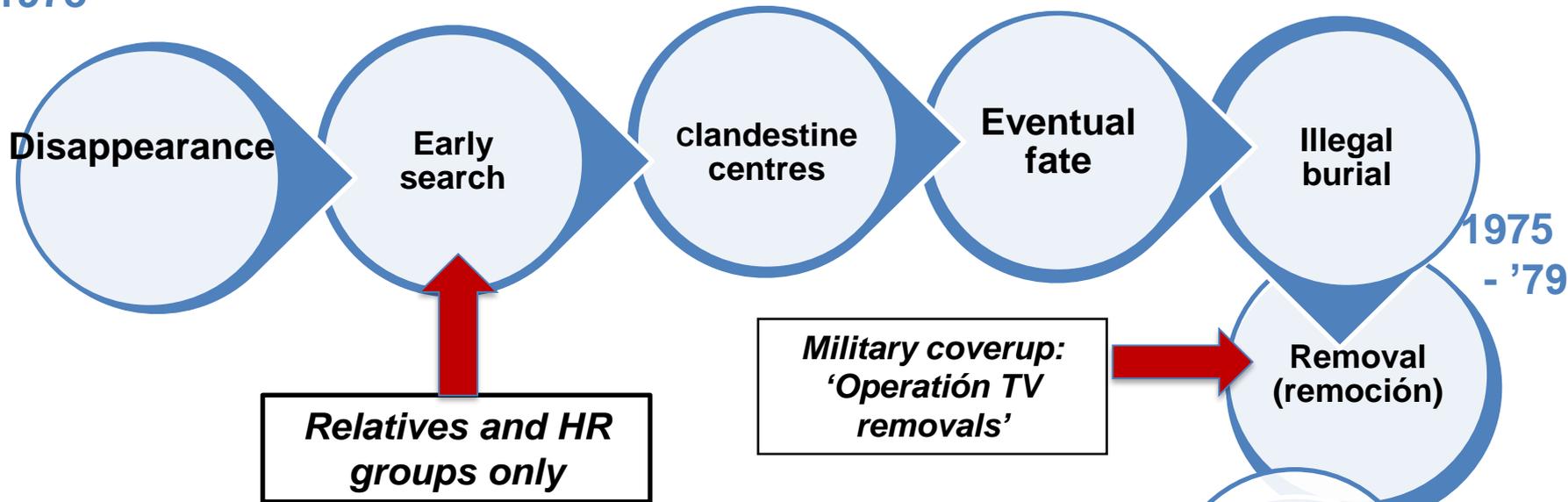
- **Five recognised cases** but authorities dispute terminology
- Cases are all ED, all by uniformed police. Don't meet crime v humanity threshold. Paris Principles institution (Instituto Nacional de DDHH) has taken action
- Perpetrators convicted and sentences in one case (Jose Vergara), but unduly lenient (non custodial) due to charge utilised (ordinary kidnap).
- Crime of ED as such was introduced by 2009 law but **only** when committed in contexts of crimes v humanity. Needs typification as ordinary crime
- Other related phenomena:
 - (i) 'desapariciones express' ('express disappearances') since 2016 approx student protesters kidnapped (illegally 'detained') by police, driven around in police vehicles for hours, then abandoned in out-of-the-way places. Detentions not registered, no records kept.
 - (i) Illegal adoptions (theft and sale of babies) during and immediately after dictatorship, no direct political motive
Theme emerged onto public stage in 2015



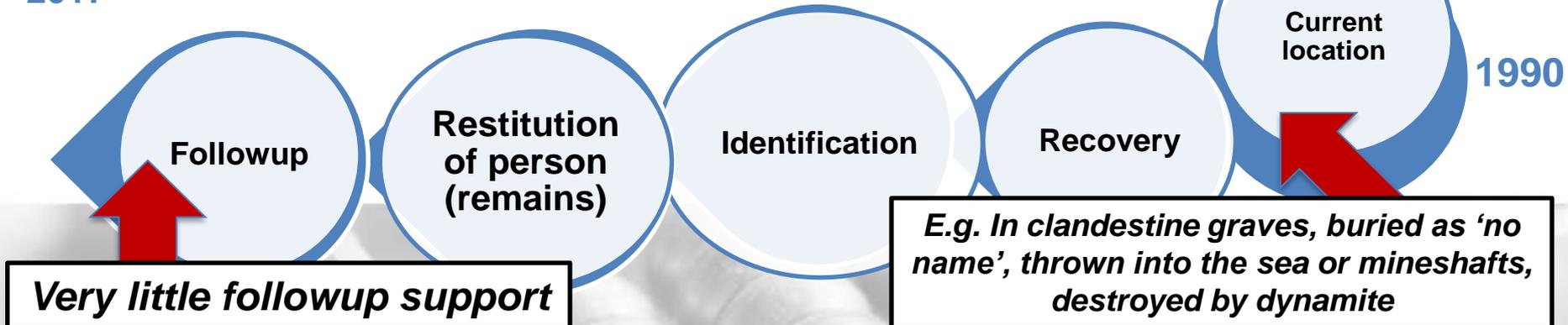
Typical chain of events, ED during dictatorship (Chile)



1973



2017



Modes of search for disappeared persons over time



Dictatorship

TRANSITION

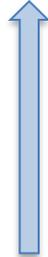
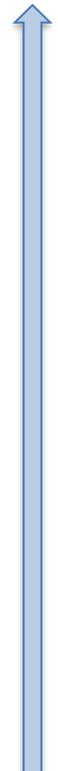
1973

1990

2000

2004

2023



Plan Nacional de Búsqueda
Verdad y Justicia

Administrative:
National Search Plan



Judicial
Amnesty overcome interpretively, case by case, using crimes against humanity argument



'Administrative with anonymity :
Roundtable with Armed Forces ('Mesa de Diálogo')
(controversial due to concessions and lies)



'Administrative':
State Human Rights Programme
(followup body to the first Truth Commission)
Amnesty prevents prosecution



'Resistant':
Relatives and the human rights movement

Learning post-2006*

* *Date when previous errors of ID and restitution came to light*

- The responsibility for search, sanction, identification, restitution and accompaniment rests with the State
 - But ‘civic trust’ and participation are essential
- The Forensic Service (SML), judicial Branch, and State as a whole need to rebuild trust with families and relatives’ associations
- Need for accompaniment throughout and beyond ID and restitution
- Urgent need for better day to day coordination between relevant state agencies
 - (2022 judicial branch ‘protocol’ for coordinated action in cases of accidental discoveries; 2023 National Search Plan)
- Victims of extrajudicial execution not restored, also need to be searched for (creating new, merged, category of ‘victims of ED’)



Current situation in truth, justice and reparation

- Two Truth Commissions (Rettig Commission plus 'CNR' followup, ('91-96), and Valech II (2011) recognised cases of detained-disappeared persons. Those lists are currently closed to new entries, but 2023 National Search Plan will supposedly recognise cases newly come to light
- Immediate relatives have rights to some economic reparations (monthly pension), and free access to the public health system, plus some specialised mental health support, via the 'PRAIS' reparation programme since '91
- State Human Rights Programme provides social work support (since '96) and criminal lawyers (since 2009) for criminal cases (NOT civil claims) against perpetrators
- Specially designated senior judges for dictatorship-era human rights cases since 2001. Investigative magistrate system (written procedure)
- Some symbolic reparation sought by relatives in civil claims, with uneven responses from judges



Current situation in search and ID

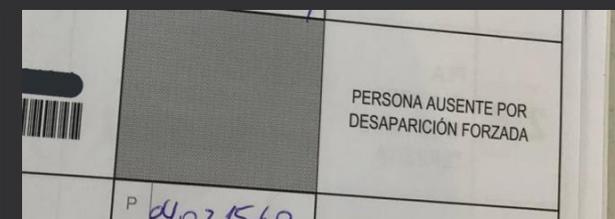
- **Chile has ratified both Conventions (International, Interamerican)**
UNWG mission 2013, followup 2016; 1st state report to UN Committee 2019
- **Civic status of the disappeared is “absent by reason of enforced disappearance” Has to be requested case by case, by a relative**
Law 20.377 of 2009. State entities do **not** activate this status automatically, even once declared.
Electoral register activated it for all, only in 2022.
Status of ‘missing presumed dead’ has historically been strongly resisted in Latin America
- **Search is entirely state-led, and was entirely judicial 2004-2023**
(an incipient non-state forensic team is (re)-forming, since 2022, and National Search Plan 2023 on)
approx. 303 IDs since 2009, from both ‘DD’ and ‘EP’ categories. > 1,000 disappeared persons still to be found
600+ convicted perpetrators (300+ imprisoned) since 1998
Discussion 2017 on, about need for a separate search entity or plan. Presidential announcement 2022, enacted 2023 .
- **Historic Errors in ID**
‘90s errors, discovered 2006, led to reorganisation of the state forensic service (SML).
Panel of international experts appointed for Neruda case
- **ID currently accepted = nuclear DNA results at 99.9% threshold**
- **Tasks of recovery, ID and restitution undertaken by SML (to judicial order)**
DNA testing by external laboratories. SML laboratory is in process of accreditation
Samples reference database is with the Red Cross in Geneva for safekeeping
- **National Search Plan from 2023.** Administrative, in parallel with judicial, not universally popular. Small team



Current situation in prevention, legislation and other Convention duties

No known advances in:

- Proactive management of current public registers of detainees
- Reining in uniformed police violence and arbitrary detention
- Typification of enforced disappearance as an autonomous crime in contexts other than crimes against humanity
- Supervision of actual completion of sentences
- Creation of a single, central, permanent, public record of recognised victims of enforced disappearance
(National Search Plan will supposedly undertake this for dictatorship era)
- Annulment of the 1978 Amnesty Decree Law, elimination of the application of 'half statutes of limitation' to slash sentences



Relatives' perceptions (varied)

Some value advances in outcomes and treatment. But have concerns about:

- **Slow pace**
“Im going to die without finding him” “justice has come too late”
- **Dispersion**
Absence of a single state entity overseeing recognition of cases, search, restitution and reparation. Disappearances post-1990 are not dealt with by the Human Rights Programme or the National Search Plan
- **Lack of trust, uncertainty**
“I don't believe anything they tell me any more”; because of past ID errors.
Will the Search Plan mean benefits or impunity for perpetrators who inform?
Will it have access to Armed Forces files?
- **Impunity**
Perhaps not as unmitigated as before, but: lenient sentencing, post-sentencing benefits, presidential pardons
- **Stalemate**
No new finds since 2006. Remains already found, not yet identified



'Ecosystem' of main actors and functions

PRIMARY RESPONSIBILITY FOR:

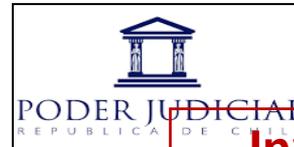
Generating new hypotheses

Producing answers, recognising new cases

Search Plan



Plan Nacional
de **Búsqueda**
Verdad y Justicia



**Investigate, sanction,
notify IDs, supervise
police and forensics**



Acts for prosecution

SML
SERVICIO MÉDICO LEGAL

Search, exhume, ID,
restore persons/
remains



Londres 38
espacio de memorias



Resolve civic status,
provide
accompaniment
and reparation



Relatives' and survivors'
associations: Bring
complaints, assert rights,
campaign, lobby,
participate

Emerging Themes

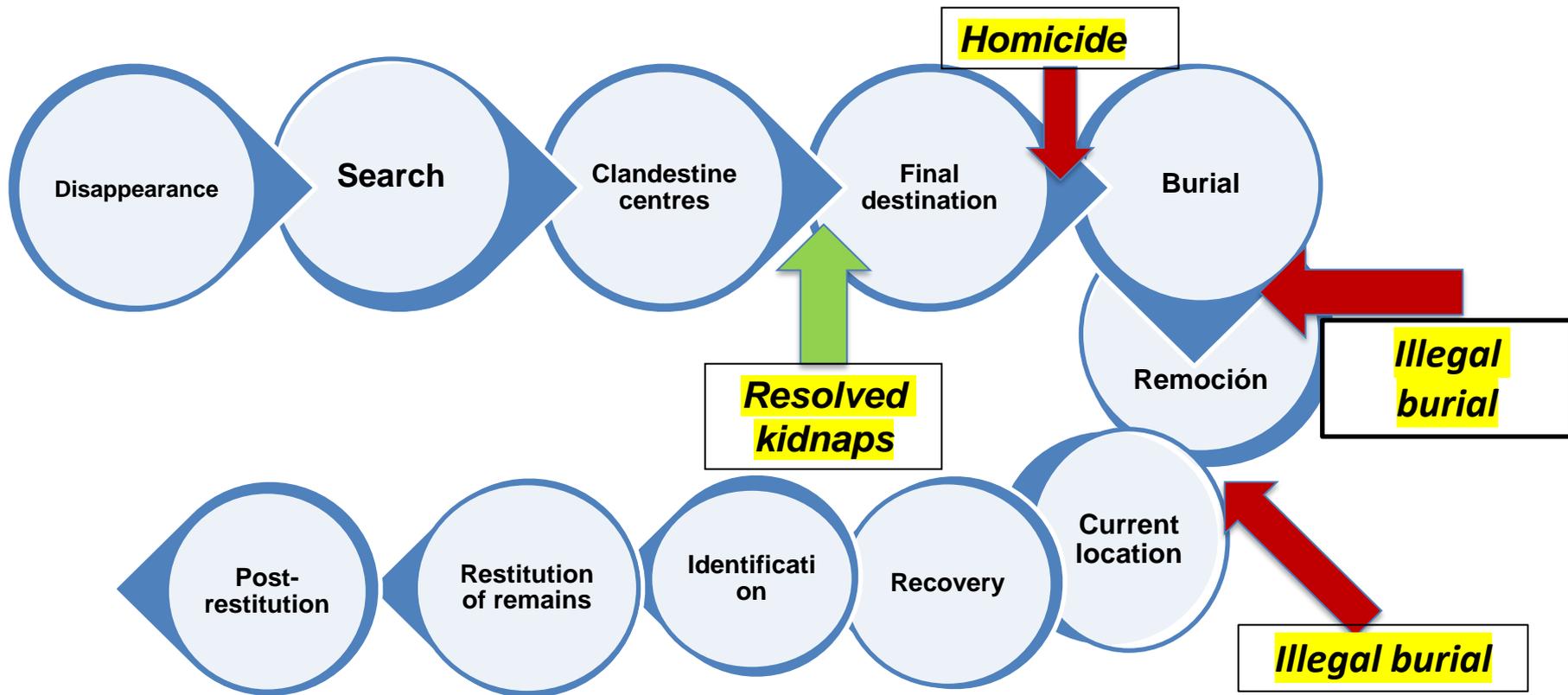
- **Levels of representativity of organised relatives' groups** different wishes
- **'The right not to know'**
e.g. when fragments appear repeatedly
- **Incomplete or inaccurate scientific understanding**
among judges, lawyers, relatives and the public
- **Impossible or incompatible demands**
Complete justice, all remains restored, no incentives
- **Need for ongoing coordination and participation**
- **Need for 'post-restitution' accompaniment**
- **What to do with unidentifiable or unclaimed remains**
- **'Irregular adoptions' with state collusion**



Solutions:

1) Give a new impetus to judicial search

- Incentives or rewards for informants or confessions (controversial)
- New investigations or charges, for homicide or illegal burial
(in Chilean criminal code, these charges require remains to be present)

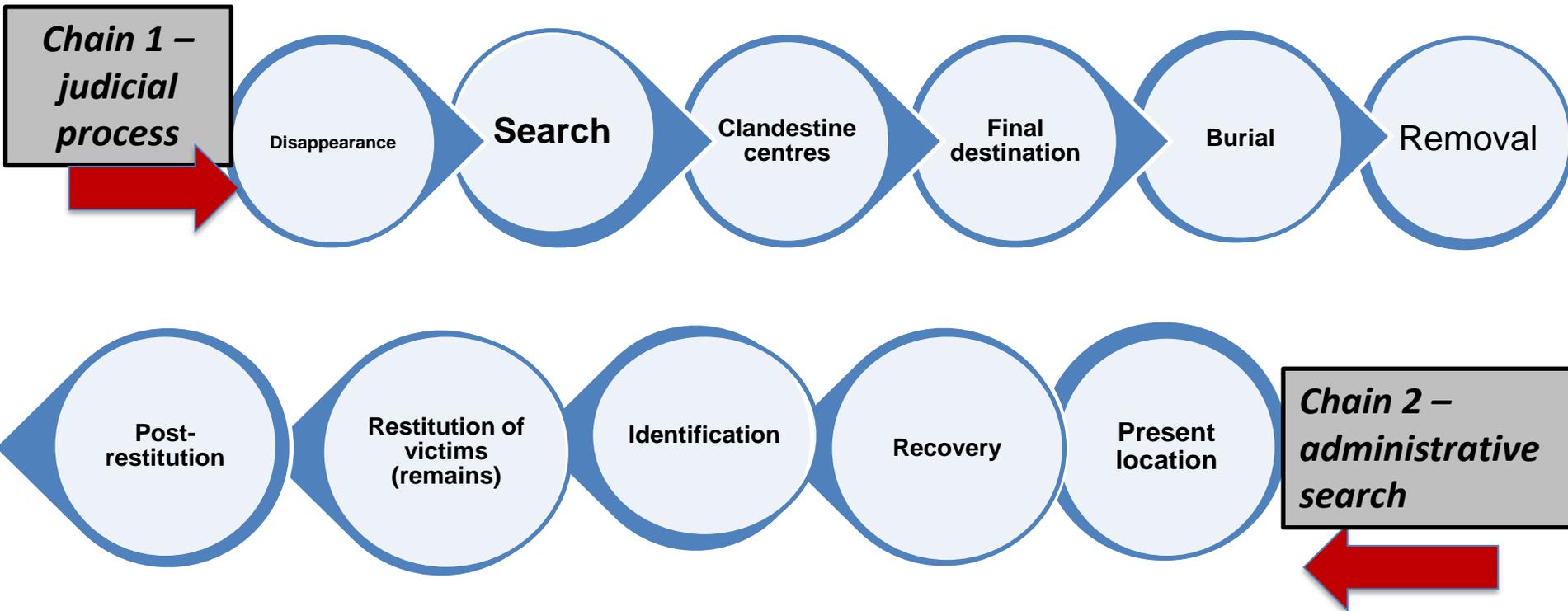


DIFFICULTIES:

- Risk of not getting convictions if victims are not found
- How to encourage information despite likelihood of sanction

2) Add national search plan (2023)

Complement (*WITHOUT REPLACING*) judicial action



Interdisciplinary team: Investigators, journalists, forensic experts, etc.

Sources: Judicial files supplemented by human rights archives, testimonials and memoirs, personal contacts, technology, etc

DOUBTS:

- Relationship between administrative entity and judicial search?
- Probability of acquiring institutional Armed Forces information?