

# Establishing mechanisms to clarify the fate and whereabouts of missing persons: A proposed humanitarian approach

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\* The content of this article reflects the views of the authors and not necessarily those of the organizations with which they are or have been associated.

humanitarian law, international criminal law and transitional justice, including on processes related to the missing.

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## Abstract

*This article examines the different types of mechanisms which can contribute to addressing the issue of the missing, including providing answers on the fate and whereabouts of missing persons. It looks in detail at one approach that the authors have observed in the field. It argues that an approach based on humanitarian objectives which does not look into who is responsible for the disappearance, with proper management of confidential information, could be a powerful instrument for searching for and collecting relevant information on the missing in certain contexts. The article also proposes avenues for further research, with a view to enhancing the global capacity to provide meaningful answers for the missing and their families.*

**Keywords:** the missing, missing persons, humanitarian approach, accountability, protection of personal data, humanitarian law, human rights law, transitional justice, participatory process, mechanism, truth commissions, confidentiality, right to know, right to justice, right to truth, Central Tracing Agency, national information bureaux.

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## Introduction

People have gone missing as long as humanity has been fighting wars or has been facing natural or man-made disasters. They might be captured or abducted and then held incommunicado in secret locations (enforced disappearance) or die in custody. They might be victims of executions, thrown into unmarked graves (summary executions). Sometimes they are civilians fleeing combat, children separated from their families, elderly people or persons with disabilities who are unable to flee and are left behind. Civilians and weapon bearers might be killed during fighting and their remains improperly managed or disposed of. A growing number of people feel forced to flee their homes because of violence, insecurity, destruction, endemic poverty, poor governance and changing climate conditions. And this is not likely to change. Today the phenomenon has taken on an even more global dimension in its overlap with migration. A significant number of migrants go missing along global migration routes; their locations are never traced and, if they have died, their bodies are never found. In all these situations, families are left in despair, not knowing the fate and whereabouts of their loved ones.

The trends are appalling. It has been conservatively estimated that more than a million people went missing in Iraq between 2003 and 2013,<sup>1</sup> and more than 10,000 are still missing in relation to the armed conflict that affected the Western Balkans in the 1990s and early 2000s.<sup>2</sup> Tens of thousands of persons have disappeared in current conflicts around the world, as well as in situations where there is a high level of violence and portions of States' territories are simply lawless and often left to the control of gangs and cartels. The number of missing migrants is even more difficult to assess. The International Organization for Migration (IOM) estimates that around the world, at least 7,760 migrants lost their lives in 2016, many of them unidentified.<sup>3</sup>

People who go missing remain one of the most damaging effects of past war, current armed conflicts or violence,<sup>4</sup> migration and natural disasters, adversely affecting the individuals who disappear, their families and the community at large. Today, layers of contemporary missing persons join others for whom no information has been found for years, even decades, leaving families in anguish and uncertainty and jeopardizing prospects for reconstructing the social fabric of affected communities and societies.

International law, in particular international humanitarian law and international human rights law, contains a significant number of rules and principles aimed at preventing, remedying and, where appropriate, punishing the disappearance of persons as a result of armed conflicts or violence. International law recognizes the right of the families of such persons to know their relatives' fate and whereabouts, which entails, *inter alia*, the correlative obligation of public authorities under human rights law to carry out an effective investigation into cases of disappearance in order to clarify the fate and whereabouts of persons unaccounted for, and to inform and assist the families accordingly, as well as to protect the dead and restore their identities. This article does not address the legal framework applicable to the missing in international humanitarian law and in human rights law or the applicable legal norms protecting the dead and restoring their identities.<sup>5</sup>

1 See, for instance, the International Commission on Missing Persons (ICMP) estimates available at: [www.icmp.int/where-we-work/middle-east-and-north-africa/iraq/](http://www.icmp.int/where-we-work/middle-east-and-north-africa/iraq/).

2 See International Committee of the Red Cross (ICRC), "Missing Persons in the Balkans", June 2015, available at: [www.icrc.org/en/document/missing-persons-western-balkans](http://www.icrc.org/en/document/missing-persons-western-balkans).

3 IOM, "Migrant Deaths and Disappearances Worldwide: 2016 Analysis", Data Briefing Series, No. 8, 2017, available at: <https://publications.iom.int/books/global-migration-data-analysis-centre-data-briefing-series-issue-no-8-march-2017>.

4 The term "armed conflict and other situations of violence" will be shortened in this document to "conflict and violence" for ease of reading, noting that "other situations of violence" (hereinafter "violence") is used to refer to situations of collective violence perpetrated by one or several groups, which do not reach the threshold of an armed conflict, but may have significant humanitarian consequences.

5 For more on the legal framework, see ICRC, *ICRC Report: The Missing and Their Families*, 2003, Annex A, "Legal References", Annex B, "Special Protection to which Children are Entitled: Legal References", and Annex C, "Legal Protection of Personal Data and Human Remains: Commonly Accepted Principles", available at: [www.icrc.org/eng/assets/files/other/icrc\\_themissing\\_012003\\_en\\_10.pdf](http://www.icrc.org/eng/assets/files/other/icrc_themissing_012003_en_10.pdf). For developments since 2003, see, for instance, International Convention for the Protection of All Persons from Enforced Disappearance, UN Doc. A/RES/61/177, 6 February 2007 (entered into force 23 December 2010) (ICPPED); Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International*

Over the last two decades, mechanisms and processes have been established after (or even during) armed conflicts and violence with a view to providing answers and assistance to the families of missing persons. Even though they took different forms and achieved variable results, such mechanisms and processes were often useful to ensure effective protection and assistance to the missing and their relatives in post-armed conflict or post-violence situations.

Based mainly on the experience that the International Committee of the Red Cross (ICRC) has developed since 2003 in the field of missing persons,<sup>6</sup> this article examines the different types of mechanisms which can contribute to addressing the issue of the missing, including providing answers on the fate and whereabouts of missing persons. It looks in detail at one mechanism with which the ICRC has experience in the field. It argues that an approach based on humanitarian objectives which does not look into who is responsible for the disappearance, with proper management of confidential information, could be a powerful instrument for searching for and collecting relevant information on the missing in certain contexts. This proves to be particularly true, for instance, in situations where relevant authorities<sup>7</sup> are identifiable, institutions are weak and information providers are not inclined to talk because of fear of reprisals or criminal prosecution.

The proposed approach is intended to be complementary to other mechanisms or processes that exist and that have proved efficient in the aftermath of armed conflict and widespread violence, including those that are contributing to the fight against impunity. For instance, tribute should be paid to the rich history and experience developed in Latin America, where family associations have struggled and managed to help establish mechanisms aimed at disclosing all information on missing persons and bringing to justice those responsible for causing the disappearance. The challenge lies in the identification of the conditions necessary to make these mechanisms function and in finding ways to strengthen all approaches, taking advantage of their complementary nature.

In the first section, this article examines certain preliminary requirements that need to be met to ensure an adequate and effective treatment of all questions relating to missing persons in post-conflict settings, including frozen conflicts or situations of violence. The second section describes various forms that mechanisms may take at the coordination and national levels, and provides

*Humanitarian Law*, Vol. 1: Rules, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study).

- 6 In 2003, the ICRC organized an international conference on missing persons, which was a unique opportunity to take stock of what had been accomplished by relevant stakeholders up to then and to establish guidelines for more effective action in this domain. See ICRC, *The Missing and their Families: Documents of Reference*, February 2004, available at: <https://shop.icrc.org/the-missing-and-their-families-documents-of-reference-2691.html>.
- 7 Throughout this document, the term “relevant authority/ies” is used to refer to those identifiable as being in power (*de facto* or *de jure*) and on whom the responsibility lies to take the necessary action to clarify the fate and whereabouts of missing persons. This might include organized armed groups in certain armed conflicts or other violence that does not reach the level of armed conflict. This article always expressly mentions when it is referring to national authority/ies.

details on their respective mandates, capacities and power. The third section proposes means to be taken to create incentives for a successful exchange of relevant information relating to the missing. The fourth section explains how a mechanism with a humanitarian mandate and proper management of confidential data can be efficient without being an impediment to justice.

This article does not pretend to be exhaustive, although it adheres to an evidence-based approach, using as many relevant examples from the field as possible. In doing so, it should contribute to positioning the issue of the missing at the centre of the humanitarian agenda, including in transitional processes put into place after periods of armed conflict and violence. It should also provide elements to help better apply and explain the humanitarian approach for mechanisms tasked with resolving the fate and whereabouts of the missing. Finally, this article focuses on post-violence and conflict settings, including frozen conflicts, and does not cover other situations in which people are going missing, such as natural disasters and migration, although ICRC experience shows that the needs of missing persons and the families' suffering from such circumstances, as well as the basis for responding for the most part, could be quite similar.<sup>8</sup>

## Preliminary considerations

The mechanisms and processes that are discussed in this article are often established in particularly difficult environments where the social fabric has been totally torn, where hatred of the past still affects the minds of the people and where institutions responsible for ensuring the rule of law are unable to do so. Relevant authorities may well express sincere political will, but the barriers can be so insurmountable that, without outside support, they are just not able to make the mechanisms progress towards providing meaningful answers to the families of the missing. Furthermore, the treatment of the missing raises particularly sensitive questions which might easily turn the mechanisms away from their humanitarian objectives and may bring with them serious problems of security for those that are working on the issue. These considerations should be kept in mind at all times, as should the importance of a long-term commitment to ensuring a sustainable environment in which the relevant authorities are vested with the capacity and willingness to adequately address the issue of the missing. When working on a missing person file, each environment should be considered as unique and evolving, where progress may be positively influenced by long-term support aiming at, *inter alia*, building autonomous and independent capacities.

It is necessary to recognize that certain preliminary requirements need to be met to ensure an adequate and effective treatment of all questions relating to missing persons in post-conflict or post-violence situations. First and foremost, there must

8 This article should be read together with Monique Crettol and Anne-Marie La Rosa, "The Missing and Transitional Justice: The Right to Know and the Fight Against Impunity", *International Review of the Red Cross*, Vol. 88, No. 862, 2006, in which the interaction between transitional justice processes and the missing persons issue is considered.

be political will. Secondly, the issue of missing persons cannot be dealt with in isolation: willing authorities need to make it part of a broader agenda in which a humanitarian, multidimensional and integrated approach is adhered to. Further, if it is highly recommended to look at similar experiences in other contexts, the model retained should be tailored to the context's own peculiarities. Finally, the participatory nature of the process is essential.

## Political will and external pressure

There is little hope of seeing the question of the missing properly addressed if no serious effort is made to build sustainable political will. In this regard, it is important to identify the internal and external factors which, within a given context, may influence decision-makers, with special attention given to those that might exert positive pressure on the relevant authorities.

There is always great interest from authorities in making known the actions and measures that they take to shed light on the fate and whereabouts of the missing when a link exists between implementing such measures and setting and achieving important political agendas and processes at the national, regional or international level. To name but a few cases where direct or indirect links were made between the missing and political processes led at the regional or United Nations (UN) level: Bosnia and Herzegovina, where the Dayton Agreements expressly refer to the Missing;<sup>9</sup> Kosovo and the recognition of its international status;<sup>10</sup> Iraq after the 1991 Gulf War;<sup>11</sup> the situation in Cyprus;<sup>12</sup> and the European Union's

9 See General Framework Agreement for Peace in Bosnia and Herzegovina, 1995, Annex 7, Article V, and Annex 1A, Article IX.

10 The Working Group on Missing Persons in Kosovo was set up in March 2004 as part of the Vienna Dialogue under the auspices of the Special Representative of the UN Secretary-General and in the context of UN Security Council Resolution 1244 (1999). The issue of the missing was explicitly included in the Comprehensive Proposal (Atthisaari Plan) that paved the way to Kosovo's independence.

11 The issue of prisoners of war (PoWs) and missing persons is explicitly mentioned in the Riyadh agreements (April 1991) and in several resolutions of the UN Security Council (UNSC Res. 687, §§ 30, 31; UNSC Res. 1284, §§ 13, 14). Compliance by Iraq with its obligations regarding the repatriation or return of all Kuwaiti and third-country nationals or their remains has been regularly examined by the Security Council on the basis of progress reports submitted to it by the Secretary-General. In 2009, this process was given a fresh impetus when the members of the Security Council supported a proposal for a "confidence and cooperation building period between Iraq and Koweit" in order to further encourage the parties to achieve visible and significant progress, and in particular, to continue their efforts to conclusively determine the fate of the Kuwaiti missing persons and PoWs and other missing third-country nationals, as well as to bring about the return of the Kuwaiti national archives (UNSC S/2010/300). In 2013, the Security Council decided to remove Iraq from its obligations under Chapter VII of the UN Charter, unanimously adopting Resolution 2107, which called on the Iraqi government "to give the ICRC any information available on the Kuwaiti and third-country nationals, and to facilitate the ICRC's access to them and their remains, as well as the ICRC's search for missing persons and property, including Kuwait's national archives". See: [www.un.org/press/en/2013/sc11050.doc.htm](http://www.un.org/press/en/2013/sc11050.doc.htm).

12 The Committee on Missing Persons in Cyprus (CMP) was established in April 1981 by agreement between the communities concerned and under the auspices of the UN (UNGA Res. 36/164, 1981). There were years when the CMP was not able to solve any case of missing persons and was at a standstill. It was only in 2003, when Recep Erdogan became prime minister of Turkey and the Turkish authorities expressed their interest in acceding to the European Union (EU), that the situation began to change. Certain judgments of the European Court of Human Rights, in 2001, requiring Turkey to properly investigate

incorporation of the issue of the missing in the so-called “Chapter 23” (“Judiciary and Fundamental Rights”) on the conditions to be met by Croatia to access the Union.<sup>13</sup> The issue of the missing is also addressed within the peace negotiations between the FARC and the government of Columbia,<sup>14</sup> as well as the Geneva International Discussions between Abkhaz, Georgian, South Ossetian and Russian participants, where the European Union, the Organization for Security and Cooperation in Europe (OSCE) and the UN act as mediators.<sup>15</sup>

## A broader agenda for transition processes

The right of families to know the fate and whereabouts of their missing relatives is rarely sufficiently addressed during armed conflicts or other violence at the time when the disappearance occurs. This complex issue often remains unresolved even long after the conflict or violence has ended, creating a permanent source of anguish for affected families and posing an obstacle to any peace-building or consolidation process.

When the issue is addressed by the relevant authorities, it is most commonly included as part of a transitional process which takes the country from a state of armed conflict or violence to one of stability. Today, this transitional process is often tackled from the point of view of transitional justice. This model, which was initially forged for post-authoritarian transitions, is now extended to post-conflict transitions without modification.<sup>16</sup> It pursues a number of laudable goals, such as truth-seeking, justice, reparations and guarantees of non-recurrence.<sup>17</sup> The issue of the missing needs to be seen, interpreted and applied as part of this broader agenda, where its humanitarian nature is fully recognized and other important objectives such as the fight against impunity play a pre-eminent role.<sup>18</sup> Even more ambitiously, addressing the issue of the missing

instances of missing persons in Cyprus also had a decisive impact. They prompted the Turkish authorities to endorse and implement the initiative taken by the UN Secretary-General (the Annan Plan for Cyprus).

- 13 For more information on the steps towards joining the EU, see European Neighbourhood Policy and Enlargement Negotiations, “Steps towards Joining”, available at: [https://ec.europa.eu/neighbourhood-enlargement/policy/steps-towards-joining\\_en](https://ec.europa.eu/neighbourhood-enlargement/policy/steps-towards-joining_en).
- 14 See, e.g., Lisa Haugaard and Virginia M. Bouvier, “Colombia’s Peace Accord on the Missing”, USIP, 25 July 2016, available at: [www.usip.org/publications/2016/07/colombias-peace-accord-missing](http://www.usip.org/publications/2016/07/colombias-peace-accord-missing).
- 15 For more information on the Geneva International Discussions process, see Organization for Security and Cooperation in Europe (OSCE), press releases related to the Geneva International Discussions, available at: [www.osce.org/home/104211](http://www.osce.org/home/104211).
- 16 For a critical assessment of this extension, see the report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence presented at the 36th Session of the Human Rights Council, UN. Doc. A/HRC/36/50, 21 August 2017 (Report of the Special Rapporteur on Transitional Justice).
- 17 Transitional justice needs to be accompanied by institutional reforms, including vetting. For more information, see Anne-Marie La Rosa and Xavier Philippe, “Transitional Justice”, in Vincent Chetail (ed.), *Post-Conflict Peacebuilding: A Lexicon*, Oxford University Press, Oxford and New York, 2009.
- 18 Of the same opinion, see Report of the Special Rapporteur on Transitional Justice, above note 15, para. 82.

## Sri Lanka and the 2009 conflict

In October 2015, the Sri Lankan government embarked on an ambitious path of reform when it co-sponsored UN Human Rights Council Resolution 30/1. In this resolution, the government commits to taking a comprehensive approach to dealing with past violence, including persons who remain missing in relation to the most recent conflict in the north and east of the country, which ended in 2009. Of the more than 34,000 families who recorded information about their missing relatives with the ICRC, more than 16,600 remain without any news of their loved ones' fates and whereabouts, and also experience economic, administrative, legal and emotional difficulties as a result.

The Sri Lankan government's path to reform includes Parliament enacting a legal framework in September 2016 to create a "Certificate of Absence" which attests to the absence of missing persons and facilitates legal and administrative procedures for their families, including applications for State assistance.

Another significant reform was the government's decision to embark on a process of transitional justice to address past violence. An Office of Missing Persons (OMP) became operational on 15 September 2017, as one of four mechanisms prescribed by the government to deal with the consequences of past violence. The government has specifically provided the OMP with a mandate to search for missing persons, with the aim of clarifying the circumstances in which they went missing, and to identify and inform proper avenues of redress to which missing persons or their relatives may have recourse.

Other mechanisms within the transitional justice process include a truth and reconciliation commission, an office to deal with reparations, and a judicial mechanism (Special Court).

Source: ICRC, *Annual Report 2016*, Vol. 1, Geneva, 2017, available at: [www.icrc.org/data/files/annual-report-2016/ICRC-2016-annual-report.pdf](http://www.icrc.org/data/files/annual-report-2016/ICRC-2016-annual-report.pdf).

should be recognized as a fully fledged objective within any transitional justice process.<sup>19</sup> As two of the present authors have written before:

A multi-dimensional process of transitional justice aimed at taking stock of a violent past to open the way towards peace, democracy and respect for human rights should appropriately address the issue of missing persons with the community concerned, because violations of international humanitarian law and human rights account for most of such cases.<sup>20</sup>

19 For example, in October 2015, the government of Colombia and the Colombian Revolutionary Armed Forces concluded an agreement on the missing (Accord No. 62) which offers the chance to alleviate suffering and provide answers to families of the missing, thus making the latter a distinct objective of their peace discussions and transitional process.

20 M. Crettol and A.-M. La Rosa, above note 7, p. 356.

If not fully recognized as a distinct objective, the issue of the missing should at least fall within the purview of one of the more common core objectives of transitional justice, such as truth-seeking or reparation. As regards the former, the high prevalence and disastrous consequences attached to disappearances in post-conflict settings justify that truth-seeking processes focus as a matter of priority on finding answers on the missing.<sup>21</sup> As regards the latter, and because the relevant actors often lack the resources to put satisfactory reparation schemes into place, stronger links should be built between transitional justice processes and humanitarian programmes aimed at responding to the needs of the missing and their families, because “satisfying needs ... may be the first step in a process leading to a more complete realization of rights”.<sup>22</sup>

A lot remains to be done to better connect the missing to transitional justice processes. Today, the objectives usually associated with transitional justice have been too often understood and promoted from a perspective that is not broad enough to accommodate the issue of missing persons, particularly the necessity for families to receive a concrete individual answer on the fate and whereabouts of their missing relatives. These objectives are often limited to judicial remedies involving criminal investigations and prosecutions, do not take humanitarian objectives into consideration, do not include incentives for obtaining relevant information on the missing, and do not include follow-up processes able to tackle the issue of the missing on a long-term basis. The same can be said of processes established by relevant authorities to enable victims to assert their right to the truth.<sup>23</sup> Regrettably, these processes often do not effectively implement the victims’ right to know the fate and whereabouts of their relatives or their right to a remedy.<sup>24</sup> Fortunately there has been some openness shown in recent political discussions towards including the missing persons issue and tackling its multidimensional perspectives in transitional justice processes.

It is clear that seriously addressing the issue of the missing and trying to give answers to the families cannot be done in an isolated manner. The issue of the missing bears a different quality years after the society concerned has made progress towards rebuilding its institutions and social fabrics. As observed by the UN Secretary-General in his 2008 report on the missing to the 63rd General Assembly:

The issue of missing persons thus becomes part of the process of delivering good governance, including democratic governance, and of implementing

21 Of the same opinion, see the position expressed in the Report of the Special Rapporteur on Transitional Justice, above note 15. The Special Rapporteur further argues that “ensuring that truth commissions do a proper job on the issue of the missing and that they lay the foundation for continued work on it, including sound recommendations on the establishment of an effective national mechanism to resolve outstanding cases, would constitute a significant accomplishment” (para. 80).

22 *Ibid.*, para. 86.

23 Office of the United Nations High Commissioner for Human Rights, Study on the Right to the Truth, UN Doc. E/CN.4/2006/91, 8 February 2006.

24 See, in this regard, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Res. A/RES/60/147, 21 March 2006 (Basic Principles and Guidelines on Reparation), available at: [http://legal.un.org/avl/pdf/ha/ga\\_60-147/ga\\_60-147\\_ph\\_e.pdf](http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf).

the rule of law, including ending impunity. It is important that, as part of the process of ending suffering, the families of the missing receive answers. In the context of rebuilding societies affected by conflict, it is also important for such answers to be provided by the very institutions that will be protecting the rights of citizens in the future. By providing answers, law-based local institutions demonstrate that progress has been made and can contribute to rebuilding trust in public institutions. The missing are often victims of heinous crimes, and the location[s] from which their remains are recovered are often the sites of crimes. Beyond the criminal justice dimension, the families of the missing have entitlements under civil and public law, and society at large has an interest in establishing the truth of what happened and making use of its democratic, administrative and judicial institutions for that purpose. The families of the missing want their pain and anguish to be addressed by their Governments and legal institutions so that, eventually, a sense of justice can be delivered.<sup>25</sup>

The issue of the missing cannot be addressed in a short period of time or without setting priorities by which the most urgent needs of victims are responded to without delay. To do this, stakeholders should adopt a “sequencing approach” to show some responsiveness in terms of guaranteeing that the most pressing needs of the families are addressed and met. Such careful sequencing (or prioritization), where objectives are identified, prioritized and linked to a time frame and available resources, would ensure that the priority need often expressed by the families to know what happened to their loved ones and to retrieve the remains, if the person is dead, is rapidly addressed. And this would not be in conflict with the search for and sanction of those who are responsible for the disappearances.<sup>26</sup> Authorities should take advantage of recent advances in humanitarian forensics when setting their priorities, should ensure a proper system is in place to take care of the dead and identify human remains, and should not hesitate to seek technical assistance in order to move forward in their search for answers on the missing.<sup>27</sup>

## A contextualized approach that truly addresses the needs of the families

The effectiveness of any action or process undertaken by relevant authorities to address the question of missing persons is also directly affected by the extent to which the social, legal, economic and political specificities of the environment are

25 See Report of the Secretary General, *Missing Persons*, UN Doc. A/63/299, 18 August 2008, para. 40.

26 In Sri Lanka, there is debate among different interest groups, including some civil society members, about the merits or demerits of sequencing the four proposed transitional mechanisms. At the heart of the sequencing debate is a concern that an opportunity to address the most serious human rights abuses will be missed during the current window of political openness should a “truth first, justice later” approach be adopted. Some have argued that the Office of Missing Persons should have provided a “one-stop shop” for families, addressing both their need to know the fate and whereabouts of missing relatives and their need for justice at the same time. See South Asian Centre for Human Rights “The Politics of Sequencing: A Threat to Justice?”, 29 November 2016, available at: <http://sacls.org/resources/publications/reports/the-politics-of-sequencing-a-threat-to-justice-2>.

27 Report of the Special Rapporteur on Transitional Justice, above note 15, para. 105.

taken into account. It would be wrong to believe that one model can be used in all scenarios or that it can be replicated without paying strict attention to the context, including the nature of the conflict or the roots of the violence.<sup>28</sup>

To be truly contextualized, such actions or processes should address the diverse fundamental individual needs and expectations of the families of the missing. According to needs assessments conducted by the ICRC,<sup>29</sup> families of missing persons are usually seeking, as a priority, an individual response on the fate and whereabouts of their missing relative(s) and the retrieval of the remains if the person is dead, as well as responses to their economic problems, recognition of harm suffered and public memory. As time elapses, the need for accountability, through trials and prosecutions, can become stronger.<sup>30</sup>

### A participatory process

As already noted, the effectiveness of any action is largely dependent on the degree to which it is contextualized. To be properly contextualized, any process addressing the issue of missing persons must be participatory: the voices of all those concerned, particularly the families of the missing persons and their representatives, must be heard and taken into consideration.

A participatory process guarantees a real and visible engagement with victims and civil society. Civil society should be encouraged and supported in its efforts to create grass-roots associations, with a view to empowering and mobilizing the families of missing persons and the affected communities, as well as establishing a solidarity network. These associations should then be in a position to influence actions and processes and ensure sustainable responses to the needs of those affected. The positive impact of an organized civil society has been observed in cases such as Argentina,<sup>31</sup> the

28 Some economists and organizational sociologists call this “isomorphic mimicry”: the tendency to replicate institutional forms regardless of context and even of the specificities of the ends sought. See Lant Pritchett, Michael Woolcock and Matt Andrews, “Capability Traps? The Mechanisms of Persistent Implementation Failure”, Center for Global Development Working Paper No. 234, December 2010, available at: [www.cgdev.org/publication/capability-traps-mechanisms-persistent-implementation-failure-working-paper-234](http://www.cgdev.org/publication/capability-traps-mechanisms-persistent-implementation-failure-working-paper-234).

29 ICRC, *Families of Missing Persons in Nepal: A Study of Their Needs*, Kathmandu, 2009; ICRC, *Needs of the Families of the Missing in Timor Leste*, Dili/Djakarta, 2010. See also ICRC, *Living with Uncertainty: Needs of the Families of Missing Persons in Sri Lanka*, Colombo, 2016; ICRC, *No los olvidamos*, Bogotá, 2016.

30 Where incomes are higher and education greater, trials and criminal prosecution might well be one of the priorities of the families, besides the others mentioned above.

31 The Grandmothers of the Plaza de Mayo is a unique organization of Argentine women who have become human rights activists in order to fight for the right to know the fate and whereabouts of their children and grandchildren. The organization was formed by women who had met while trying to find their missing relatives abducted by agents of the Argentine military dictatorship during the years known as the Dirty War (1976–83). Through their political action (publications, demonstrations, marches, conferences, etc.) they forged their campaign to demand that the Argentine dictatorship account for the whereabouts of their disappeared children and grandchildren. Three decades since the return to democratic rule, they have managed to keep the memory and spirit of their disappeared relatives alive, and they continue large public campaigns to recover the identity of their missing grandchildren and to combat the silence and indifference of various government administrations. See Jill Stockwell, *Reframing the Transitional Justice Paradigm: Women’s Affective Memories in Post-Dictatorial*

Balkans<sup>32</sup> and Cyprus, in the latter case after many years of inaction.<sup>33</sup> More recently, in Georgia, committees of missing persons' families are striving to become more capable of helping their members support each other and of raising public awareness of their concerns.<sup>34</sup>

For a process to be truly participatory, the relevant authorities should keep the families and the communities concerned informed about their work, their constraints, their chances of success, and the probability of finding relatives alive or of identifying and recovering their remains. They should also keep the families and communities informed about their access to assistance and remedy, and the possibility of rendering those responsible for their relatives' disappearance accountable. It is important to make sure that when families take direct part in processes such as recovery of human remains or information-sharing, they do so in consonance with local customs and values. Relevant authorities should also, in all circumstances, be careful not to unnecessarily prolong the families' suffering or to give them false expectations or hope.

## Mechanisms and structures

The efficient treatment of the issue of missing persons requires the existence of competent humanitarian, political, judicial and non-judicial mechanisms at the universal, regional, national and local levels, with bridges between them to cover the range of needs expressed by the families of the missing and the communities involved.<sup>35</sup> When such mechanisms are set up, whatever their format, particular attention should be given to their mandate. They should include humanitarian objectives, including responding to the needs of the victims in terms of providing answers, in a non-discriminatory way, about the fate and whereabouts of missing persons. They should be granted sufficient capacity and powers to be able to

*Argentina*, Springer, New York, 2014. See also the interview with Estela de Carlotto, President of the Grandmothers of the Plaza de Mayo, in this issue of the *Review*.

- 32 In the Balkans, family associations have played an increasing role in putting pressure on the authorities and their respective national mechanisms for dealing with the issue of the missing. In Bosnia and Herzegovina, the advisory board of the Missing Persons Institute (MPI) is the direct channel of communication for the families of the missing with the body itself, and the families use it to voice their concerns and to put pressure on the MPI to address their needs. For a critical analysis of the MPI, see Kirsten Juhl, "The Problem of Ethnic Politics and Trust: The Missing Persons Institute in Bosnia-Herzegovina", *Genocide Studies and Prevention: An International Journal*, Vol. 4, No. 2, 2009.
- 33 In Cyprus, family associations have been distancing themselves from their authorities and are now better able to exert a significant amount of pressure on them. See Resources for Democracy, "Citizens in Action: The Search for Missing Persons – and the Truth – in Cyprus", October 2015, available at: [www.resourcesfordemocracy.com/audio/citizens-in-action-the-search-for-missing-persons-and-the-truth-in-cyprus/](http://www.resourcesfordemocracy.com/audio/citizens-in-action-the-search-for-missing-persons-and-the-truth-in-cyprus/). See also Iosif Kovras, "Unearthing the Truth: The Politics of Exhumations in Cyprus and Spain", *History and Anthropology*, Vol. 19, No. 4, 2008.
- 34 ICRC, "Georgia: Efforts to Clarify the Fate of Missing Persons", 2016, available at: [www.icrc.org/en/document/georgia-missing-persons-clarifying-the-fate](http://www.icrc.org/en/document/georgia-missing-persons-clarifying-the-fate).
- 35 The term "mechanisms" is used to refer to all institutions, organs, bodies and processes established – formally or not – by the relevant authorities to clarify the fate and whereabouts of missing persons and inform their families accordingly.

carry out their mandate effectively. They also need to have a clear role when it comes to ensuring access to information related to gravesites and human remains. Special attention should be paid to creating an environment that is conducive to information-sharing, including the possibility of working in a confidential manner, as will be further explained below.

Sometimes, former adversaries agree to take specific measures in the form of agreements that might be concluded at the end of a conflict or violence under the auspices of a neutral party. These agreements might include the setting up of coordination mechanisms to exchange information and to keep each other informed of the progress achieved in resolving the fate and whereabouts of the missing and informing their families. They might also include explicit or implicit commitments to adjusting and changing the national setting or structure in order to ensure, at the national level, an effective treatment of the issue of missing persons and the respect of international obligations. In all cases, particular care should be put into making sure that there is a proper channel of communication with already existing mechanisms, such as tribunals and truth commissions, in order to contribute to meaningful answers for families regarding the fate and whereabouts of their missing relatives. Even if these mechanisms carry out different mandates, they can hold and share information that is relevant to helping clarify the fate and whereabouts of the missing.

## Coordination mechanisms on the missing

During armed conflicts and other violence, information about the missing is often withheld or manipulated for a number of reasons: to exert pressure on the enemy, to leave its population in ignorance and distress, to avoid criticism for losses suffered, or to maintain hatred of the enemy or ethnic exclusion. After violence has ended, those individuals who might have been involved in the events leading to a disappearance often choose to remain silent, having no interest in being held accountable for their deeds. Others, such as witnesses and bystanders, may have knowledge of disappearances but will avoid speaking out due to fear of possible reprisals or stigmatization.

In such contexts, efforts and strategies are required to increase mutual pressure on the authorities involved in the conflict or violence in order to put an end to their resistance to providing information that might help to resolve the fate and whereabouts of missing persons. Means should be invested into developing an approach that mutually stimulates the authorities involved in the past conflict or violence to provide information. It is in this regard that recourse to coordination mechanisms dealing with the humanitarian dimension of the missing should be envisaged. Of course, authorities will need to see significant benefit to garner a positive response. Parties that had been fighting each other may indeed have an interest in cooperating, if that means obtaining results not achievable by themselves alone. For example, it may give them access to territories under the other side's control, where bodies of their own

missing nationals may be buried or where they can expect to find information of value.<sup>36</sup> Furthermore, showing goodwill and cooperation may improve authorities' public image and give them easier access to foreign support and assistance.

Such mechanisms established by former enemies may ensure coordination and information-sharing on issues such as lists of missing persons or the recovery, identification and transfer of human remains. They are usually set up in the period following the end of armed conflicts or violence, or during a long lull in the fighting. They refer to the provisions of relevant international instruments, such as peace or ceasefire agreements, if they exist, or international conventions, such as the Geneva Conventions and their Additional Protocols, UN resolutions, or relevant international human rights law instruments. Such coordination mechanisms were established, for example, after the conflicts in Bosnia and Herzegovina, between Croatia and Serbia; in Cyprus; after the 1998–99 conflict in Kosovo; after the 1991 Gulf War and the conflict between Iran and Iraq; after the 1992–1993 conflict in Abkhazia; and after the 2008 conflict in South Ossetia.

Experience has shown that in many instances the efficiency of a coordination mechanism for missing persons increases if its *mandate* focuses solely on humanitarian objectives that address the main needs of the victims. Concretely, this means the implementation of a process to:

- clarify, without discrimination, the fate and whereabouts of all persons that are unaccounted for in relation to the armed conflict or the violence;
- inform their families accordingly;
- put into place a coordinated system to ensure effective search for missing persons and, when human remains are found, a multidisciplinary process of recovery and identification of those remains;
- hand the bodies over to the families, if missing persons are found dead; and
- ensure support to the families of missing persons (covering psychological, legal, administrative and economic needs).

A humanitarian mandate is particularly relevant when the analysis of the environment shows that the institutions from the ex-warring parties are clearly identifiable but are not necessarily keen to share the information they possess for a number of reasons, including fear of reprisals or criminal prosecution.<sup>37</sup> In such cases, a powerful approach to consider is a combination of a mandate based on humanitarian objectives (meaning that the mechanism should not attempt to attribute responsibility) and ensuring the proper management of confidential information (see discussion below). It is believed that a clear separation between

36 This was the case, for instance, in the search for missing persons in relation to the conflict in Kosovo and the Iraq–Kuwait and Iraq–Iran international conflicts. See Additional Protocol I, Art. 34(2–4); Report of the Secretary-General on Missing Persons, UN Doc. A/71/299, 5 August 2016, paras 25–26.

37 Conversely, in a situation where governments or authorities have changed and the judicial system is independent and functioning, approaches that are more inclusive and contribute to bringing those responsible for the disappearance to justice might be more appropriate.

## The Coordination Mechanism on Persons Unaccounted for in Connection with the Events of the 1992–93 Armed Conflict and After (Abkhazia)

Civilians continue to feel the effect of the 1992–93 armed conflict in Abkhazia. In 2017, over 2,400 people were still unaccounted for. A coordination mechanism bringing Georgian and Abkhaz participants to the table was established at the end of 2010 to clarify the fate of missing persons in relation to the conflict. The ICRC agreed to chair this mechanism. The mechanism does not attempt to attribute responsibility for the deaths of any missing person, nor make findings as to the cause of such deaths. It is not linked to any political or judicial proceedings dealing with cases related to the conflict.

As of April 2018, the mechanism has been able to identify the remains of 148 missing persons and hand them over to their families. Local NGOs have also been able to provide psychological, legal and administrative support to the families of the missing persons.

Source: ICRC, “Where We Work: Georgia”, available at: [www.icrc.org/en/where-we-work/europe-central-asia/georgia](http://www.icrc.org/en/where-we-work/europe-central-asia/georgia).

the humanitarian mandate and the relevant justice institutions is the most efficient way to obtain information in such contexts.<sup>38</sup>

The members *stricto sensu* of a coordination mechanism should represent directly or indirectly the former parties to the armed conflict or violence. They should have decision-making power and the capacity to ensure efficient follow-up of the decisions taken by the mechanism at the national or local level. The mechanism should guarantee that the views of other important stakeholders are also considered through appropriate forms of participation, such as limited membership or status as observers or experts. If this is respected, relevant experts (e.g. in forensic sciences, information management, law or psychology), civil society, and in particular representatives of the families of missing persons and NGOs, as well as interested international actors and States, should be able to contribute constructively to the process. Such a set-up should have the ability and commitment to foster political will, to maintain the momentum for resolving the fate and whereabouts of missing persons, and to mobilize the necessary resources.

38 For example, the mandate of the Cyprus CMP is to establish the fate and whereabouts of missing persons; the CMP does not attempt to establish the cause of death or attribute responsibility for the death of missing persons. See Cyprus CMP Terms of Reference, Art. 11. Moreover, it is reported that a letter issued by the Attorney General of the Republic of Cyprus on 3 August 1990 specifies that it was not in the public interest, in the sense of Article 113.2 of the Constitution, to prosecute any witness who, in giving evidence to the Cyprus CMP during the course of its investigations, disclosed self-incriminating information. For more information on the Cyprus CMP, see the “Facts and Figures” page of the CMP website, available at: [www.cmp-cyprus.org/content/facts-and-figures](http://www.cmp-cyprus.org/content/facts-and-figures).

## **Sub-Working Group on Forensic Issues of the Kosovo Working Group on missing persons**

The Sub-Working Group on Forensic Issues of the Kosovo Working Group on missing persons was established in March 2005. Its purpose is to improve the management of the forensic process and to accelerate the recovery and identification of individuals found dead in relation to the conflict in Kosovo.

More specifically, the Sub-Working Group aims to foster cooperation and increase coordination among the various parties involved at the technical level (the security, forensic and health representatives of each concerned authority, international organizations, NGOs, etc.) and to facilitate the speedy return of remains that have been identified to the families of the deceased.

The Sub-Working Group tracks the process and keeps records of each organization's holdings in its facilities (number of cases, blood and bone samples collected and analyzed, etc.), thus providing an independent forum for conflict resolution, monitoring and reporting on the forensic process, including providing statistics, and minimizing the misunderstanding and distrust that can exist between the various parties involved. It reports to and works under the responsibility of the Kosovo Working Group.

Source: ICRC, "Missing Persons in the Western Balkans", 2 June 2015, available at: [www.icrc.org/en/document/missing-persons-western-balkans](http://www.icrc.org/en/document/missing-persons-western-balkans).

The mechanism should be granted sufficient competences, capacity and powers to be able to carry out its mandate effectively. This should include the capacity to establish subcommittees in which members and designated participants might meet on a more frequent basis in smaller groups to address specific issues such as recovery, analysis and identification of human remains. These subcommittees should receive their mandate from and regularly report to the coordination mechanism.<sup>39</sup>

Appropriate constitutive documents should be drafted and adopted for both the coordination mechanism and its subcommittees. These should include

39 In Georgia, a forensic working group was also established in 2010 under the coordination mechanism discussed above, with a mandate to establish priorities and coordinate the work of the forensic specialists involved in the process of the clarification of the fate and whereabouts of missing persons. Its work focuses on activities related to information on gravesite locations, as well as, based on agreed-upon protocols, the recovery, analysis and identification of the human remains of individuals who went missing in relation to the 1992–93 armed conflict. The working group met for the first time on 24 May 2011, and since then, twelve meetings have been held. It is chaired by the ICRC and is comprised of one Abkhaz and one Georgian representative of the coordination mechanism, and one Abkhaz and one Georgian forensic specialist. The group regularly reports to the coordination mechanism on the progress made on the forensic aspects of the process. See Report of the Secretary-General on the Missing, UN. Doc. A/71/299, 5 August 2016, para. 23.

rules and working procedures specifying *inter alia* the representatives' qualities and number, the quorum, the decision-making process, the working language(s), the venue, and the preparation and holding of meetings. However the coordination mechanism should not see its work hampered by the absence of such specific regulations if there is willingness from the parties to move ahead in providing answers on the missing. Quite often, it will be difficult for former adversaries to agree on such a text without importing into it elements of the dispute which led to the violence or conflict. It might be wiser, in the early stage of the process, to seek from the participants a non-formal agreement on the spirit, goal and mandate of the forum in order for its work plan to be implemented.<sup>40</sup>

The decision to hold meetings behind closed doors or to allow a wider audience to assist and be informed of the results needs to be addressed. Often parties to the coordination mechanism are inclined to adopt a mixed approach where confidential meetings are combined with a strategy for public communication. Information-sharing between former enemy parties might work more effectively if the issue of missing persons is kept away from the spotlight, because of the obvious risk of sensitive issues being brought to the fore. In the aftermath of an armed conflict or violence, former enemy parties are usually more inclined not to put too much publicity on their work and to establish an independent humanitarian mechanism that works in private sessions and on a confidential basis. Proceedings and findings are confidential in order to preserve the work of the mechanism. This is the case for the coordination mechanisms established in relation to the conflict in Cyprus,<sup>41</sup> the war between Iran and Iraq (1980–88),<sup>42</sup> the Gulf war (1990–91),<sup>43</sup> the conflict between Croatia and Serbia (1991–95), the conflicts in Bosnia and Herzegovina (1992–95)<sup>44</sup> and in Kosovo (1998–99),<sup>45</sup> and the 1992–93 and 2008 conflicts in Abkhazia and South Ossetia.<sup>46</sup> However, all of these mechanisms have had a duty to inform the families of the missing and the communities involved. They have also had an

40 According to these authors, alternatives to formal regulations need to be found in order to protect the process, particularly when it comes to the confidential management of information related to the exhumation of human remains, or collection of *ante mortem* data and biological reference samples. More precisely, bilateral exchanges or agreements on standard operating procedures for such topics with all participants could be explored.

41 See Cyprus CMP Terms of Reference, Art. 9.

42 See Rules of Procedure for the Tripartite Committee on Missing and Human Remains of the Iran–Iraq War 1980–1988, Rule 14.

43 See Rule 9 constitutive documents of the Technical Subcommittee on Military and Civilian Missing Prisoners of War and Mortal Remains, which stipulates that (a) the Subcommittee shall meet in closed session and that its deliberations shall remain confidential unless it decides otherwise, and (b) apart from the representatives of Subcommittee's members and the ICRC, no other person may be present at its meetings, unless the Subcommittee decides otherwise.

44 See Rules and Procedures of the Bosnia and Herzegovina Working Group, Rule 10 ("Privacy and Confidentiality").

45 See Working Rules of the Kosovo Working Group, Rule 11 ("Privacy and Confidentiality").

46 See Article 17 of the terms of reference of the Coordination Mechanism on Persons Unaccounted for in Connection with the Events of the 1992–93 Armed Conflict and After, which states that the mechanism shall meet *in camera* and that all those taking part in the meetings of the mechanism shall respect the confidentiality of all information and of all the documents generated or circulated within or by the mechanism and that, apart from the participants and the chair, no other person may be present at the

interest in linking the issue of the missing to existing political initiatives, and thus treat it partially in the public domain. Therefore they all have rules on reporting and communication. It is usually the responsibility of the parties to the mechanism to decide whether to issue public statements and to report without prejudice on the work of the mechanism, but this is also a responsibility of the chair. As mentioned above, a link between such coordination mechanisms dealing solely with the humanitarian dimension of the issue of the missing and a political process might help the issue to remain on the political agenda, boosting also the political will required for ensuring progress. The above-mentioned examples have all rendered some of the results of their work public through different means, so as to inform the communities and the families concerned.

Furthermore, the parties to the mechanism will usually look for the support of a trusted third-party neutral mediator or facilitator, in order to ease negotiations and collaboration between them and help move the information-sharing process along. As a neutral, independent and impartial organization, the ICRC has been asked to play this role in the past and has agreed to do so.<sup>47</sup> Other organizations, such as the UN, have also accepted this role.<sup>48</sup>

Finally and in a nutshell, the real challenge of such coordination mechanisms is to build a process, an environment and a relationship that are conducive to obtaining and sharing information on missing persons step by step. Working on concrete cases according to an action plan which includes indicators that are decided by the members of the coordination mechanism might help to improve results.

## Mechanisms at the national or local level

Once it is established that national authorities are willing to engage in the resolution of the issue of the missing, there is a need to address a number of policy issues and draft an all-encompassing strategy at national level which takes into consideration issues such as the appropriate legal framework – which shall include reference to applicable law, information-gathering, data management and protection, the process of recovery and identification of the remains, the rights of the victims, the sources of financing and the budget, etc. According to the present authors, it is fundamental that a lead exists, at high level, which is trusted by all parties concerned.<sup>49</sup>

meetings of the mechanism, unless it decides otherwise. Furthermore, Article 18 specifies that deliberations shall remain confidential.

47 This was the case in Bosnia and Herzegovina and Kosovo, the 1980–88 war between Iran and Iraq, the 1990–91 Gulf war, and the 1992–93 and 2008 conflicts in Abkhazia and South Ossetia.

48 In Cyprus, the third member of the CMP is selected by the ICRC and appointed by the UN Secretary-General. *A contrario*, the coordination mechanism between Croatia and Serbia functions autonomously, without the intervention of a mediator. The ICRC and the ICMP have observer status.

49 For example, in Iraq, the Ministry of Human Rights has the leading role for dealing with the issue of missing persons. Related policy issues are discussed in inter-ministry sessions. In Bosnia and Herzegovina, the Ministry of Human Rights and Refugees led the drafting of the Law on Missing Persons. The Ministry was given that task by the Bosnia and Herzegovina Council of Ministers in 2003

Furthermore, there should be a designated official body responsible for coordinating the strategy's implementation, the details of which will be further explained below. The mechanism at national level should also allow the authorities to fulfil and follow up on their commitments taken in the frame of the coordination mechanism, including access to sites or locations where the remains of the missing persons are presumed to be buried.

As is the case with the coordination mechanisms discussed in the previous section, national mechanisms for missing persons should pursue a humanitarian objective and should not be given the task of ascertaining responsibility for wrongdoing. Adding an accountability objective to the humanitarian one can, in certain cases, hinder the mechanism's ability to obtain information necessary for clarifying the fate and whereabouts of missing persons. The information gathered by the mechanism should remain confidential and should be used exclusively for the purpose for which it was obtained – i.e., to clarify the fate and whereabouts of missing persons. To make sure that it is understood by all, it is recommended to expressly specify that the mechanism is not entrusted with the task of looking at responsibility for disappearances.<sup>50</sup>

The mechanism in charge of the missing should be granted the necessary resources and powers. It should be able to coordinate, support and supervise the process of tracing missing persons and informing the families accordingly. A process of recovery and identification of human remains and their handover to the families should exist. The mechanism should also include support to families of the missing.<sup>51</sup>

In practical terms, the role of the national mechanism should be, *inter alia*, to:

- receive and register tracing requests from the families and the relevant authorities;
- collect, verify, update and provide to the applicant and relevant authorities all appropriate information on missing persons (including *ante mortem* data), on events and circumstances having led to disappearances, and on unidentified dead bodies (*post mortem* data), in accordance with national legislation, the right to privacy and internationally recognized standards on the protection and management of personal and sensitive data;

(in 2001 the Bosnia and Herzegovina Parliament passed a resolution on persons unaccounted for, which requested the presidency and the Council of Ministers to engage actively in determining the whereabouts of the missing persons). In Kosovo, the Office of the Prime Minister has the leading role and the issue is discussed in inter-ministerial sessions of the Governmental Commission on Missing Persons.

50 The government of Sri Lanka has provided the OMP with a humanitarian mandate and it will not be empowered to carry out any search activities for the purpose of a criminal investigation. However, the mechanism does have the power “to inform victims, relatives, witnesses and other informants who provide information to the OMP, of their right to directly refer matters to relevant authorities, including their right to report serious crimes to the relevant law enforcement or prosecuting authority”: OMP Act, Section 12(i). In other words, the OMP's humanitarian mandate is independent of, yet complementary to, the Sri Lankan domestic judicial processes that families may wish to undertake in order to address their needs for justice.

51 When it comes to efficient support for families of the missing, links should be established with existing support mechanisms such as schemes for social protection.

## State practice on missing commissions with a humanitarian mandate

When created, national mechanisms in charge of the missing should have a clear mandate established by law focusing on their humanitarian objectives – i.e., the tracing without discrimination of persons unaccounted for. They should investigate the cases and clarify the fate and whereabouts of the missing from all sides and not focus only on their “own” missing persons; neither should they condition their work on the results achieved by any other side. Where a commission on the missing relates to an armed conflict, it should cover all persons protected under international humanitarian law.

Such commissions have been or are in the process of being established in Bosnia and Herzegovina, Colombia, Croatia, Kosovo, Lebanon, Montenegro, Serbia and Sri Lanka, amongst others.

Other countries, such as Mexico, have initiated the process of creating a State commission on the missing.

Source: ICRC, *Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War*, 2nd ed., Cambridge University Press, Cambridge, forthcoming.

- carry out or request to have carried out any measures necessary to investigate and verify any information, including recovery and identification of human remains;
- be responsible (or be in direct connection with the body responsible) for the operation of a unique registry of missing persons and adopt necessary regulations to this end (consolidation of a list of missing persons);
- take measures to ensure the enjoyment of rights by relatives of missing persons; and
- keep the families and communities abreast of the process and the results achieved.<sup>52</sup>

The *members* of the mechanism should be representative of and able to reflect all actors who were involved in the conflict or violence. The mechanism should comprise, alongside members of government bodies, representatives of civil society, including representatives of the families of missing persons and, wherever feasible, the relevant National Red Cross and Red Crescent Society (National Society).<sup>53</sup>

The mechanism in charge of missing persons should be able to obtain from the relevant governmental and non-governmental entities, including the judiciary, all information that may help to clarify the fate and whereabouts of missing persons,

52 In the same vein, see ICRC, *Guiding Principles/Model Law on the Missing*, 2009, Arts 12–14, available at: [www.icrc.org/en/download/file/1066/model-law-missing-icrc-eng-.pdf](http://www.icrc.org/en/download/file/1066/model-law-missing-icrc-eng-.pdf)

53 If National Societies participate, the issue of the form that participation will take – status, tasks and responsibilities, etc. – should be addressed.

such as the circumstances of the disappearance, the names of witnesses and perpetrators, and information on persons who died or were wounded or detained. In particular, links should be established with national forensic institutions recovering the dead and conducting recovery, examination and identification of human remains of missing persons, where they exist. Forensic work on protection, recovery and identification of the dead is often an apolitical entry point allowing the mechanism to tackle extremely sensitive issues and progress in providing information and answers on the missing.<sup>54</sup> Where the investigative and/or forensic capacity is insufficient or non-existent, links should be established with actors mandated to carry out forensic work in a given context.<sup>55</sup> In addition, building capacity should be a priority for the long term. Forensics has become a key component of efforts to resolve the issue of the missing. While one has to acknowledge that not all cases of missing persons from an armed conflict or violence may be solved, without proper forensic management of human remains, the likelihood of the families receiving answers on the fate and whereabouts of their loved ones – including the identification and return of related bodies – is greatly reduced.

The obvious challenge is to put in place a mechanism that is able to search for and collect the relevant information as soon as possible in the aftermath of the armed conflict or violence that generated the disappearances. The longer it takes to establish such a mechanism, the more difficult it will be to clarify the fate and whereabouts of missing persons, and to return their bodies and remains, if found, to their families. At the same time, the issue of missing persons is susceptible to political exploitation and obtaining necessary information is not easy immediately after the cessation of a conflict. While taking measures to establish a legal framework at the proper level, it is vitally important that all relevant actors, incentives and measures are mobilized and put into place without delay to enable information bearers to share reliable and valuable data, for instance for locating possible gravesites.

## Other mechanisms

In addition to the establishment of a body that would be specifically responsible for addressing the question of missing persons, it is important to recall that local and international or mixed tribunals, parliamentary commissions, human rights commissions, inquiry commissions, ombudspersons and truth-seeking mechanisms may also play a useful role in providing relevant information on the fate and whereabouts of missing persons. Thus, they may also be key actors and

54 In Africa, the ICRC works with, encourages and supports national forensic institutions in a number of countries, including Cote d'Ivoire, Algeria, Nigeria, Mali, the Central African Republic, Uganda, Morocco and South Africa, although no commission for the missing has yet been established in these countries. For more information, see ICRC, *Annual Report 2016*, Geneva, 2017, Africa section.

55 E.g. in Kosovo, the ICMP and the EU Rule of Law Mission in Kosovo. In Lebanon, the ICRC provides support for the collection of data from families, in preparation for future identification efforts. In Georgia, while local forensic capacities are being built to the extent that the realities of the context will allow, the ICRC carries out most of the activities related to the forensic process of recovery, analysis and identification of human remains. For more information, see *ibid.*

## The experience of Peru

In Peru, the families of some 15,000 people who went missing in relation to the past conflict remain without news of their relatives. In 2001, the authorities established a Truth and Reconciliation Commission tasked with examining gross violations of human rights law between May 1980 and November 2000. With the consent of the families concerned, the ICRC collaborated with the Commission and provided more than 400 cases which did not appear in any database. In its exhaustive conclusions, the Commission recommended the putting into place of follow-up mechanisms that would allow authorities to respond to the needs of the families of the missing.

On 22 June 2016, the Peruvian authorities enacted a new law on the search for missing persons that takes a humanitarian approach to the issue and seeks to relieve the suffering of affected families.

Together with the Peruvian Red Cross, the ICRC has been providing financial and technical support for families of missing persons and local associations, with a view to enabling these families to travel to exhumation sites and collect their relatives' remains, and to have better access to psychological care.

Source: Report of the Secretary-General on the Missing, UN Doc. A/71/299, 5 August 2016, paras 12, 58, 61; ICRC, *Annual Report 2016*, Vol. 1, Geneva, 2017, pp. 282–284.

directly contribute to addressing the families' right to know. Their contribution should not be underestimated, and it should be assessed to what extent it might be complementary to the tasks assigned to a specialized body responsible for tackling the issue of missing persons from a strictly humanitarian perspective. For instance, human rights commissions and ombudspersons usually have a broad mandate to address human rights violations, and it could be appropriate to ensure that the issue of the missing falls within their jurisdiction.

Furthermore, truth commissions, whose aim generally is to understand the extent and the patterns of past violence, can potentially address the needs of the families of missing persons in several ways: by acknowledging the fact of disappearance and the responsibility for it; by learning the fate and whereabouts of the missing; by instigating recovery of human remains; by providing a public forum in which families can present their testimonies; and by pushing for compensation and reparation schemes. Their mandate should therefore include the question of the missing, or at least that of enforced disappearance, and their recommendations should propose putting in place follow-up mechanisms that would allow them to respond to the needs of the families.<sup>56</sup>

<sup>56</sup> Such recommendations can be found, *inter alia*, in the final reports of the following truth and reconciliation commissions: Chilean National Commission for Truth and Reconciliation (Rettig

## Agreement between the ICRC and the International Criminal Court on the Missing

The ICRC and the International Criminal Court (ICC) concluded in early 2012 a general Memorandum of Understanding according to which the prosecutor undertakes to assist the ICRC in the identification of material in its possession that could be relevant in the determination of the fate and whereabouts of missing persons in countries where the ICRC is involved in the issue of missing persons.

Source: Report of the Secretary-General on the Missing, UN Doc. A/67/267, 8 August 2012, para. 47.

*Editor's note:* The inverse, however, is not true – the ICRC does not provide evidence to the ICC. In order to carry out its humanitarian mandate and fully assume its operational role in the protection and assistance of victims of armed conflict and other situations of violence, confidentiality is an essential tool that allows the ICRC to build the necessary trust to secure access, open channels of communication, influence change and ensure the security of its staff. To read about the legal bases for this privilege, including the ICRC's absolute privilege before the ICC, see "The ICRC's Privilege of Non-Disclosure of Confidential Information", *International Review of the Red Cross*, Vol. 97, No. 897/898, 2016.

Finally, it is important to stress the complementarity of domestic judicial processes which might permit victims' families to intervene at various stages and exercise their right to know. Also, when tribunals are investigating large-scale killings and setting in motion mass exhumations and forensic activities, it should be ensured that their work is done in a manner that best serves the interests of the families: they should be given satisfactory answers when possible and the persons responsible for these crimes brought to justice. Recovery and examination of human remains within a judicial process can reveal what happened to victims of such crimes and give families information about the fate and whereabouts of their loved ones. It is thus of the utmost importance that clear procedures are established at the outset to ensure the collection and protection of such information even if it is not directly used in court proceedings.

### Relevant information for resolving the fate and whereabouts of missing persons, proper data management and confidentiality

"Relevant information" is information that is reliable and pertinent for resolving the fate and whereabouts of missing persons. In practice, this means, first and foremost, information on the missing persons (including *ante mortem* data) and on the alleged

Commission), 1991, pp. 1060–1074, 1081–1082, 1099–1101, 1103, 1113, 1115–1117; Truth and Reconciliation Commission in Peru, 2003, Vol. 9, pp. 129, 219–225, and Annex 5; Commission for Historical Clarification in Guatemala, 1999, "Recommendations", Chap. 3, §§ 22–31; Commission for Reception, Truth and Reconciliation in East Timor, 2005, pp. 6–7, 31–33; Truth and Reconciliation Commission of South Africa, 1998, Vol. 5, p. 347, and Vol. 6, pp. 533–540.

circumstances of their disappearance, including information on the events having led to their disappearance, the names of witnesses and perpetrators, unidentified bodies (including *post mortem* data) and the location of graves.

Both the coordination and national mechanisms are looking for this information, which can be provided by a number of sources: national authorities and institutions such as police, army, hospitals, cemeteries and forensic institutions; witnesses, anonymous or not; members of the families concerned; victims; the adverse party or parties; or even the perpetrators themselves. Over the last decade, more and more *international* bodies – including multinational forces, international/regional organizations and entities, and international/foreign tribunals – have been involved in armed conflicts or violence in which persons have disappeared. These have proved to be excellent sources of information in the search for and identification of missing persons, and in the search for justice.

The greatest challenge in the search for information on missing persons is creating incentives and a protected framework that encourage individuals having such information to talk rather than to remain silent; these individuals will often choose to do the latter out of fear of criminal prosecution, stigmatization or reprisal. Organizations might be reluctant to share their information because of the negative consequences this could have on the carrying out of their mandate – for instance, lack of access or breach of confidentiality agreements. The present authors argue that the building of a protected framework is feasible if certain measures are taken.

Firstly, the mechanisms put into place should allow for the exchange of all information that is useful to the search for missing persons and their identification within each mechanism's framework. This means that relevant tools for managing the information that will be generated by the overall process should be set up,<sup>57</sup> and cooperation modalities with those bodies likely to possess relevant information should be ensured. In Bosnia and Herzegovina, for example, the 2004 Law on Missing Persons creates an independent institution for tracing missing persons and establishes an obligation for all entity authorities and relevant institutions to provide information and to cooperate with the Missing Persons Institute.<sup>58</sup>

Secondly, the handling and management of sensitive and personal data should be done in accordance with the rules and principles of international law, including the right to privacy and relevant regional and national laws on

57 Specific case management and forensic tools have been developed by different organizations in order to manage forensic information on the dead and on missing persons. These include, to name but a few, the ICRC Ante-Mortem/Post-Mortem Database; the CMP Database; the NamUS database (US National Institute of Justice); the SIRDEC Database (Colombian National Institute of Medicolegal and Forensic Sciences); the EAAF Database (Argentine Forensic Anthropology Team); the M-FISys Database (Gene Codes Corporation); Kenyon Response (Kenyon International Emergency Services Corporation); the ICMP Identification Data Management System); the DPAA Case Management System (US Defense PoW/MIA Accounting Agency); and the Interpol databases on forensics and missing persons.

58 Bosnia and Herzegovina Law on Missing Persons, *Official Gazette of Bosnia and Herzegovina*, No. 50, 9 November 2004, Arts 4–7. National information bureaux (further explained below) in Argentina, Canada, France, the Netherlands, Paraguay, Peru and the UK also possess the authority to request such information.

personal data protection. More precisely, and in order to avoid any misuse of the information that might be provided by various sources, there should be no acquiring nor holding of personal data without a legitimate basis or the informed consent of the source concerned – hence the importance of verifying consent when collecting the information. Sensitive personal data should be handled with particular care.<sup>59</sup> Furthermore, the data should be used only for the purpose for which it was gathered and not for any other purpose, unless consent to that end is obtained. If such consent is withheld, this information shall remain confidential and there can be no disclosure to a third party, except in order to meet statutory requirements defined in a very restricted manner and in accordance with international rules and standards. If such guarantees are respected, sources might be more willing to share information. In return, they should be informed in a transparent manner on how the information will be processed and used.

Thirdly, the conditions under which the information was provided should be respected during the entire tenure of its use. Often, relevant information is accessible only if confidentiality is guaranteed – i.e., the information will not be disclosed to unauthorized persons and will not enter into the public domain through its public use, for instance, in judicial proceedings. Normally this can be ensured by appropriate data protection management rules to be included in the relevant framework via the terms of reference of the mechanism, a decision of the executive, or laws and regulations; closed or private sessions; sensitization; appropriate instructions; or supervision and monitoring.<sup>60</sup>

Fourthly, it is not sufficient that the mechanism and its members alone guarantee confidentiality. The entire system put into place at the domestic level should ensure that all relevant organs respect such confidentiality if one of the following conditions is met: such a commitment was undertaken at the level of the coordination mechanism on the missing; the information was collected on that basis from individuals and organizations; or the information refers to personal and sensitive data.

Finally, and in addition to the above, protective measures to address the concerns of those who are afraid to talk should be foreseen, such as anonymization of data and witness protection schemes. It might also be appropriate to explore the extent to which information providers might benefit from mitigating circumstances if prosecuted. This could take a number of forms, such as reduced charges, penalties or time to be served. In addition, the constitutive documents for the mechanism might expressly state that the information given cannot be used against the information providers. This was done, for example, in Sierra Leone, where the prosecutor of the Special Court decided not to use the information gathered by the Truth Commission and searched for his own evidence and information.<sup>61</sup> It allows those who might feel some form of remorse

59 Sensitive personal data include information on genetics (DNA) and biometrics, race, political opinion, physical or mental health, religious beliefs, political affiliations, sexuality, and criminal offences.

60 See notes 35 to 45 above for specific examples of Terms of Reference, including confidentiality rules.

and are in possession of relevant information to express that remorse and at the same time contribute to the search for answers.

## **Valorizing complementarity between the right to justice and the right to know**

Clarifying the fate and whereabouts of missing persons is also part of the more global pursuit of justice. Providing answers on missing persons and fighting against impunity are distinct yet complementary objectives in this pursuit. When a gravesite, regarded as a crime scene, is discovered, criminal investigations are generally opened. Site assessments and the recovery of human remains cannot be carried out without proper authorization, including in most contexts court orders. The presence of competent authorities, such as the police officers investigating the case, is in most cases required by the applicable legal framework before any gravesite related to the criminal investigation can be opened. The judiciary might be in possession of pertinent information on the fate and whereabouts of the missing persons. Conversely, mechanisms for missing persons might have information of interest to judicial and quasi-judicial processes, because understanding the patterns of conduct and events that led to the commission of crimes can be extremely helpful in meeting judicial objectives.

While a mechanism mandated to work solely on the missing – meaning a coordination mechanism, or national or local mechanism – can under no circumstances hinder the work of the judiciary, it should also receive full cooperation from governmental bodies and structures, including the judiciary, in order to fulfil its objectives. This includes that these institutions respect the conditions under which the mechanism collected its information. The mechanism's terms of reference and working modalities should make it clear that it is not a substitute for the police, the prosecutorial authorities or the judiciary: their objectives are distinct though complementary, which implies differing working methods.

In mass killings, practice has shown that the information strictly necessary to establish the fate and whereabouts of missing persons may not be the information that will be investigated as a priority while establishing potential criminal responsibility. When facing a mass grave, a criminal investigation may generally collect as a priority information on the cause and circumstances of the death as well as any indicia that could help to find the perpetrator(s) and prove a pattern in the victims (depending on the jurisdiction and mandate of the investigating body), while the humanitarian mechanism will focus on data that will assist in

61 See Special Court for Sierra Leone, “TRC Chairman and Special Court Prosecutor Join Hands to Fight Impunity”, press release, 10 December 2002. This move may have reassured some participants who were concerned that any information they might provide to the Truth and Reconciliation Commission would be used to build a case against them.

the identification of the human remains. The data substantiating the clarification of the fate and whereabouts of missing persons would not therefore be collected systematically by default by a criminal investigator or a judge or be of interest in public hearings as part of the criminal prosecution process. In a nutshell, it is important to stress that all necessary measures should be taken to ensure the proper documentation and preservation of information used for locating, recovering and identifying missing persons is not used as direct evidence, thus entering into the public domain, unless the information providers consent to such a change in its nature and the purpose for which it was originally collected. This, of course, should not be interpreted as constraining the powers of the judiciary or as an impediment to the judicial authorities fulfilling their mandate. They may approach the information providers through their own channels, applying the rules governing the sharing of evidence and information with the judiciary, which also include, in most cases, measures to protect the information and the information provider(s).

In cases where authorities decide to sequence their actions in order to respond to the most pressing needs of the missing and their families, as discussed above, measures should be taken to ensure that nothing jeopardizes the full realization, in due time, of both the right to know and the right to justice. In his last report, the Special Rapporteur on Transitional Justice observed:

[I]t is essential that efforts are made to satisfy both humanitarian and judicial aims with regard to missing and disappeared persons. Once again, such an ambition is not feasible in the short run; but virtually all decisions create path-dependence. It is therefore important to be clear about the diversity of the ends to be reconciled.<sup>62</sup>

Hence, the importance of having clear procedures established at the outset between the humanitarian and judicial mechanisms in order to ensure the proper management of the information relevant for the fulfilment of both objectives. Also, particular attention should be brought to the information as well as support schemes that need to be provided to the families of the missing so that they are able to pursue the fulfilment of their rights.

## **Interaction between mechanisms on the missing, national information bureaux and the ICRC Tracing Agency**

The mechanisms on the missing discussed above will inevitably enter into contact with other bodies implemented by authorities to fulfil their obligations to search for missing persons under international law. Indeed, because of the undisputable importance of informing the next of kin of the fate and whereabouts of their relatives, the obligation to account and search for all missing persons has evolved into a rule of customary international humanitarian law, applicable in both

62 Report of the Special Rapporteur on Transitional Justice, above note 15, para. 82.

international and non-international armed conflicts.<sup>63</sup> The obligation extends also to situations amounting to serious violations of human rights law, regardless of the existence of an armed conflict or not.<sup>64</sup> There is also an emerging trend towards recognizing the right to know of families of missing migrants.<sup>65</sup>

When putting into place a mechanism on the missing, authorities should reflect on its complementarity and coordination with other existing bodies and processes in order to avoid, to the extent possible, duplication in mandates and tasks which would render more difficult the collection, management and protection of the relevant information. If such structures do exist, the possibility of extending their jurisdiction to encompass the issue of missing persons should be explored.

For instance, at the beginning of an armed conflict, national authorities are encouraged to set up national information bureaux (NIBs) for prisoners of war and protected persons who are in their power, and their relations with any mechanisms on the missing will need to be clearly defined at the outset.<sup>66</sup> NIBs are usually put in place to obtain and transmit relevant information and communicate with families.<sup>67</sup> Examples of NIBs can be found in, amongst others, Argentina, France, Paraguay,

63 See ICRC Customary Law Study, above note 4, Rule 116, which states that “[e]ach party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate”.

64 Under international human rights law this is linked in particular to the protection of the right to life, the prohibition of torture and other forms of cruel, inhuman or degrading treatment, and the right to family life. In the case of enforced disappearances, States must also take appropriate measures to uphold the right of victims to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the person who has disappeared. For enforced disappearance, see ICPED, Article 24. In general, for gross violations of international human rights law, see Basic Principles and Guidelines on Reparation, above note 23, paras 22(b), 24. See also Guiding Principles on Internal Displacement, Principle 16.1.

65 For instance, see the 2007 call of the Council of Europe’s Commissioner for Human Rights for the EU to account for and identify migrant deaths, or the Council of Europe’s proposal that European States set up a system of data collection for the mortal remains of lives lost at sea (Council of Europe Parliamentary Assembly, 8 June 2014). See also Bernard Duhaime and Andréanne Thibault, “Protection of Migrants from Enforced Disappearance: A Human Rights Perspective”, in this issue of the *Review*. The right to family life also supports the family’s right to know whether a body has been found and where it is buried. See, for example, the *Sabanchiyeva* case, where the European Court of Human Rights found a violation of the respect for family life in a case where the State prevented families from participating in funeral ceremonies and paying their last respects to the deceased. European Court of Human Rights, *Sabanchiyeva and others v. Russia*, 6 June 2013.

66 There is a strict obligation for States Parties to set up such bureaux in international armed conflict for prisoners of war and protected persons in their power: see Geneva Convention III (GC III), Art. 122; Geneva Convention IV (GC IV), Arts 136–139. For the corresponding obligation in non-international armed conflict, see, for example, ICRC Customary Law Study, above note 4, Rule 123.

67 The tasks of NIBs as set out in the Geneva Conventions are:

- a. Obtaining information: the NIB centralizes/processes the information collected by the services of the power to which it answers on certain categories of vulnerable persons who have fallen into that power’s hands.
- b. Transmission of information: the NIB functions as a relay for the urgent transmission of information to the other parties to the conflict and interested States, and to the ICRC Central Tracing Agency.
- c. Communication with the families: the NIB is also obliged to reply to and to make enquiries so as to obtain additional information.

Canada, the United States and the United Kingdom.<sup>68</sup> NIBs' mandate may cover prisoners of war only, or may be extended to all protected persons under the Geneva Conventions, or can even missing persons in relation to an armed conflict or violence. After the end of an armed conflict, such structures might be chosen to continue their work on the missing because they are already in possession of a wealth of relevant information and have developed relevant practice and expertise. NIBs might also be called to play a role within coordination mechanisms on the missing as discussed above, since they can be designated as active members within such bodies. In these cases, the NIB is tasked with finding and providing relevant information on the fate and whereabouts of those who have disappeared and of fully cooperating with the coordination mechanism.

Finally, mechanisms on the missing will most certainly interact with the ICRC and its Tracing Agency, whose first task is to collect information on vulnerable persons in the hands of the parties to the conflict or persons affected by the violence in order to inform the families concerned.<sup>69</sup> In parallel to any existing mechanism on the missing or NIB, the Tracing Agency often proceeds to its own collection of data. This is even more necessary if the data collected and transmitted by national authorities are non-existent or unreliable. While efforts should be engaged towards building local capacities for the ex-warring parties to acquire know-how and expertise in order to fulfil their responsibilities, the pressing need of the families to receive answers on the fate and whereabouts of their missing relatives may require that the Agency fulfils tasks assigned to national authorities, if the necessary bodies are not put into place or are not functioning properly.

## Concluding remarks

The humanitarian approach proposed in this article is not meant to be exclusive. It is suggested as one option for obtaining information on the fate and whereabouts of missing persons when sources of information are not inclined to share what they know. By advocating for the recognition of a legal status for missing persons and their families, this approach has proved particularly valuable for "institutionalizing" their voices in public debates and making them part of the search for appropriate remedies. It has contributed to linking programmes aimed at responding to the needs of the missing and their families with others

68 The State Commissions on Prisoners of War, Hostages and Missing People established in Armenia and Azerbaijan have similar characteristics to NIBs. Other countries, such as Germany, Croatia, Slovenia, Sweden and Norway, have assigned to their National Societies the task of setting up such bureaux.

69 See GC III, Art. 123; GC IV, Art. 140. Embedded in the ICRC's structures, the Tracing Agency is thus part of the ICRC, a neutral, independent and impartial humanitarian organization which has an international legal personality and a status equivalent, but not identical to that of an intergovernmental organization. Like the ICRC, the Agency is guided by humanitarian concerns, in contrast to other approaches which might focus on attributing responsibilities and collaborating with the judicial process.

advocating for the realization of their rights. The humanitarian approach has also contributed to establishing the importance of forensic work for humanitarian purposes, the information that such work might be able to provide on missing persons, and its crucial role in bringing the bodies of missing persons back to their families. Of course, a lot remains to be done, especially when it comes to the role of national and coordination mechanisms in the collection, gathering, centralization, management and protection of all relevant information, although elements of recent practice can raise hope and expectations.

While the practice so far experienced with coordination mechanisms on the missing has demonstrated the added value of such an approach in fulfilling the families' right to know, its implementation through national mechanisms on the missing would need to be tested further, with particular attention paid to identifying the factors that can make it more effective in providing meaningful answers to the families of missing persons. As mentioned, working on concrete cases according to an action plan which includes indicators that are decided by the stakeholders concerned might help to improve the achievement of meaningful results.

Additionally, the humanitarian approach's interaction with other mechanisms, including those that favour a retributive approach, should be examined in more detail, with a view to enhancing and strengthening their complementary responses to the needs of the missing and their families. Further reflections and discussions should also be held on the sequencing of responses to the priority needs of the victims, in light of needs assessments respecting a rigorous methodology.

Finally, working models should be developed to better appreciate and take advantage of the links between mechanisms aiming at providing answers to families of the missing and relevant programmes existing at national level whose purpose is to improve living conditions for those who are the most vulnerable – often the families of the missing – with a view to better matching their socio-economic needs, enhancing the realization of their rights and protecting their human dignity.