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**Requests addressed to the Advisory Committee
stemming from Human Rights Council resolutions**

**Requests currently under consideration by the
Advisory Committee: missing persons**

Report on best practices in the matter of missing persons

**Prepared by the drafting group of the Advisory Committee on missing
persons***

* Late submission.

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I. Introduction

1. In its resolution 7/28 on missing persons, the Human Rights Council decided to hold a panel discussion on the question of missing persons at its ninth session, and requested the United Nations High Commissioner for Human Rights to prepare a summary of the panel's deliberations with a view to subsequently charging the Human Rights Council Advisory Committee, at the same session, with the preparation of a study on best practices in the matter.
2. Pursuant to the resolution 7/28, the Human Rights Council held a panel discussion on the question of missing persons at its ninth session, with the participation of experts of the International Committee of the Red Cross (ICRC), and delegates of Governments and non-governmental organizations, national human rights institutions and international organizations. The Office of the High Commissioner (OHCHR) prepared a summary of the panel's deliberations (A/HRC/10/10).
3. The Human Rights Council subsequently adopted decision 9/101, in which it renewed its request to the Advisory Committee to prepare the study and to submit it to the Council at its twelfth session.
4. The Advisory Committee, at its second session, held from 26 to 30 January 2009, set up a drafting group with the task of preparing a study on best practices in the matter of missing persons, and designated the following as its members: Ansar Burney, Chinsung Chung, Wolfgang Stefan Heinz (Chairperson), Latif Hüseyinov (Rapporteur), Miguel Alfonso Martínez and Bernardas Andrews Nyamwaya Mudho. The drafting group was also requested to submit the results of its work on the study to the Advisory Committee at its third session with a view to submitting them to the Council at its twelfth session.
5. The Advisory Committee, at its third session, held from 3 to 7 August 2009, continued its deliberations on the issue of missing persons. As a result of those deliberations, it adopted recommendation 3/2 entitled "Missing persons", in which the Committee noted that considerable difficulties had been encountered by the drafting group in finding the necessary information and research resources, and requested the latter to submit the results of its work on the study to the Advisory Committee at its fourth session, with a view to submitting them to the Council at its fourteenth session.
6. In its decision 12/117, the Human Rights Council took note of recommendation 3/2 and requested the Advisory Committee to submit the study to the Council at its fourteenth session.
7. In order to continue its work on the above-mentioned study, the drafting group of the Advisory Committee elaborated a questionnaire addressed to Governments, which was transmitted by note verbale dated 2 November 2009 by the secretariat. A total of 22 replies were from States.
8. The Advisory Committee, at its fourth session, held from 25 to 29 January 2010, continued its deliberations on the issue of missing persons and held an exchange of views with a representative of the Working Group on Enforced or Involuntary Disappearances. The Committee endorsed the progress report prepared on the issue by its drafting group (A/HRC/14/42), which was transmitted to the Council for its consideration at its fourteenth session.
9. In its decision 14/118, the Human Rights Council took note of the above-mentioned progress report and requested the Advisory Committee to finalize the study on the best practices in the matter of missing persons and to submit it to the Council at its sixteenth session.

10. The Advisory Committee expresses its gratitude to OHCHR for the support in the process of collection of information, as well as to other partners, including ICRC, non-governmental organizations and Governments.

II. Scope of the study

11. The scope of the study is determined by Human Rights Council resolution 7/28. Accordingly, for the purposes of the present study, “missing persons” are to be construed as those whose families are without news of them, as well as those who are reported, on the basis of reliable information, as unaccounted for as a result of an international or non-international armed conflict. The report does not cover cases when people go missing as a result of other situations, for example, natural disasters or internal violence or disturbances. On the other hand, the term “missing persons” as used in the study is different from and broader in scope than “enforced or involuntary disappearance” as defined in the International Convention for the Protection of All Persons from Enforced Disappearance.¹

12. It is of great concern that armed conflicts continue to occur in various parts of the world, often resulting in serious violations of international humanitarian law and human rights law and, in particular, generating more and more persons reported missing. There are many reasons for people going missing. They may be forcibly displaced; they may be captured, arrested or abducted and denied contact with family or friends; they may be members of armed forces or armed groups whose fate is unknown (“missing in action”); or they be victims of massacres.

13. The issue of persons reported missing in connection with armed conflicts is today a harsh reality for countless families throughout the world, causing them tremendous suffering. The families of missing people face a whole range of problems arising from their situation of vulnerability. Very often, these families are unable to overcome their pain and rebuild their lives and communities, even many years after the events, a situation that can undermine relationships between communities for generations. Missing persons should therefore not be considered the only victims; all the members of their families, in the broadest possible sense, are victims too.²

14. The issue of missing persons also seriously hampers efforts to achieve peace and reconciliation in areas affected by armed conflicts. On the other hand, efforts to solve the issue of the missing can contribute to solving the conflicts and reducing hostility, mistrust and intolerance.

15. To illustrate the seriousness of the problem, some figures are adduced below. According to ICRC, more than 17,000 people are still registered as missing from the conflicts in the former Yugoslavia that broke out in the 1990s. In Croatia, more than 2,500 people remain unaccounted for following the armed conflicts between 1991 and 1995. In Bosnia and Herzegovina, more than 10 years after the end of the war, the fate of more than 14,000 people had still not been clarified, 5,500 of whom went missing in Srebrenica. In Kosovo, more than 2,000 people from all the communities have been reported missing by

¹ For the purposes of the Convention, “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law” (art. 2).

² “The missing and their families: Summary of the conclusions arising from the events held prior to the International Conference of Governments and Non-Government Experts (19-21 February 2003)”, ICRC, p. 11.

their families. Since the war in Iraq in 2003, tens of thousands of people have been seeking family members.³ Thousands of families do not know the fate of their missing relatives in Nepal (1996-2006),⁴ East Timor (1975-1999), Eritrea/Ethiopia (1998-2000), in the Chechen Republic of the Russian Federation (since 1994) and in Sri Lanka (since 1983).⁵ A total of 7,643 persons remain missing, including 4,604 Azerbaijanis and 947 Armenians from the conflict over the Nagorno-Karabakh region,⁶ 1,763 Georgians and 197 Abkhaz from the conflict over the Abkhazia region and 10 Georgians and 122 South Ossetians from the conflict over the South Ossetia region.⁷

16. The problem of missing causes particular suffering to women and children. Armed conflicts often result in them being displaced and separated from family members. Women and children go missing for different reasons, one of them being sexual exploitation. In its resolution 7/28, the Human Rights Council requested States to pay the utmost attention to cases of children and women reported missing in connection with armed conflicts and to take appropriate measures to search for and identify those children and women.

17. Frequently, the majority of those missing in relation to armed conflict are men. The very fact that many women survive conflicts in which their menfolk have died or gone missing has enormous implications. Women in such situations desperately try to ascertain the fate of their loved ones and have to cope as head of household. Women whose husbands are missing experience many of the same problems as widows, albeit without official recognition of their status. In most contexts, there is no official acknowledgement of the status of “missing person”, which jeopardizes women’s rights with respect to property administration, inheritance, guardianship of children, entitlement to benefits and the prospect of remarriage.

18. The issue of missing persons is a humanitarian problem with human rights and international humanitarian law implications. It should be depoliticized and consequently should not be dependent on the political settlements of the conflicts concerned.

III. Respect for and implementation of international law

19. International obligations to prevent and resolve situations of missing persons in connection with armed conflict are based on both international humanitarian law and international human rights law. Whereas international humanitarian law is specifically designed for armed conflicts, human rights treaties apply at all times and in all circumstances to all persons within the jurisdiction of a State party. Strict observance of such fundamental rights as the right to life, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and security, the right to fair trial, and the right to respect for private and family life could, to a great extent, prevent persons from going missing, including as a result of armed conflict. On the other

³ See “The missing: a hidden tragedy”, the magazine of the International Red Cross and Red Crescent Movement (www.redcross.int/en/mag/magazine2008_1/4-9.html).

⁴ See “Nepal – Missing: the right to know”, ICRC (www.icrc.org/web/doc/siterf10.nsf/html/familylinks-nepal-2007-eng).

⁵ “The missing: action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence and to assist their families”, ICRC, June 2005, p.12.

⁶ Transliteration preferred by the Rapporteur of the drafting group. As of July 2010, the transliteration used in United Nations documents is “Nagorny Karabakh”.

⁷ See “Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions”, Parliamentary Assembly of the Council of Europe, doc. 11196, 7 March 2007.

hand, if, in armed conflict, protected persons were treated in conformity with the rules of international humanitarian law, there would be fewer missing persons and fewer families without information about the fate and whereabouts of their loved ones. In this context, the general obligation of States parties to the 1949 Geneva Conventions⁸ to respect and to ensure respect for the rules of international humanitarian law should be specifically mentioned.

20. International rules regarding missing persons apply in both international and non-international armed conflicts.

21. Obligations relating to the issue of missing persons are incumbent not only on States but also on the parties to an armed conflict. It should be emphasized that both States and parties to an armed conflict continue to be bound by certain obligations of international humanitarian law even if the conflict has ended; for instance, it is obvious that searches for missing persons should continue without any time limit until all feasible measures to account for the missing persons have been taken.

22. The rules of international humanitarian law, including those to prevent persons from going missing, cannot be respected if they are not known. Dissemination of international humanitarian law is therefore the responsibility of States and of the parties to armed conflicts. Thus, each party to a conflict must ensure that the forces, persons or groups under its command or control are aware of their obligations under international humanitarian law and of their responsibility for any failure to comply with the relevant provisions. The civilian population, including civil servants, should receive the necessary education in international humanitarian law. Likewise, members of the armed forces and the civilian population should receive the necessary education in international human rights law.

23. International humanitarian law must be duly incorporated into domestic legislation. Enacting domestic legislation is highly important when dealing with the issue of missing persons, preventing people from going missing, ascertaining the fate of missing persons, ensuring the proper management of information and supporting the families of missing persons. There may be good reasons for bringing together, into a single law, relevant provisions relating to missing persons.⁹ In this respect, a specific law on missing persons that was adopted in Bosnia and Herzegovina¹⁰ is noteworthy. National legislation concerning the punishment of grave breaches of international humanitarian law, the treatment of prisoners of war and the protection of civilians is also pertinent.

24. ICRC has prepared a draft model law on missing persons¹¹ containing the main elements to be taken into account by States when drafting legislation on the issue. The model law offers a framework legislation aiming to help national authorities to bring legislation into conformity with the requirements of international law.

IV. Measures to prevent persons from going missing

25. Under both international humanitarian law and human rights law, States are obliged to take measures to prevent persons from going missing. In its resolution 61/155, the

⁸ United Nations, *Treaty Series*, vol. 75, Nos. 970-973.

⁹ In a resolution on missing persons adopted at its 115th Assembly, the Inter-Parliamentary Union declared that national policies should entail the passage and enactment of a national law on missing persons, accompanied by the necessary regulatory and administrative measures.

¹⁰ See Official Gazette of Bosnia and Herzegovina, No. 50, 9 November 2004.

¹¹ See Guiding Principles / Model Law on the Missing, available from the ICRC website (www.icrc.org).

General Assembly called upon States that are parties to an armed conflict to take all appropriate measures to prevent persons from going missing in connection with armed conflicts and account for persons reported missing as a result of such a situation. Such measures, especially those of a legislative and institutional nature, must preferably be adopted in peacetime.

26. National authorities should establish strict lines of command within armed forces, security forces and armed groups so as to ensure effective supervision.

27. Proper identification of members of armed forces or armed groups is a key means of preventing people from going missing in armed conflict. Personal records, identity cards and identity discs are the only secure means of identification.¹² Measures should be taken to ensure that these means of identification are mandatory and properly used since they (in particular identity discs) can help to establish the status of the persons who fall into the hands of the adverse party and the identity of those who have been seriously wounded or killed. The issue of identification also involves other populations at risk, such as isolated populations, civilians in conflict zones, displaced persons, the elderly and children.¹³ Furthermore, the personal data of members of armed forces or armed groups, and of persons at risk, including in particular unaccompanied children, elderly and disabled persons, should be properly registered; this may assist in a later identification of mortal remains.

28. National authorities should register deaths and issue the appropriate certificates. Moreover, an information bureau and graves registration service, as provided for under the Geneva Conventions,¹⁴ should be set up. More particularly, national information bureaux should be tasked to collect and forward information (documents and objects) on individuals protected by international humanitarian law (principally prisoners of war and civilian internees) who have fallen into enemy hands. Registration of such persons is fully in keeping with the objectives of humanitarian law, one of which is to protect persons not or no longer taking part in hostilities. By setting up an information bureau in accordance with the provisions of the Geneva Conventions, a party to an armed conflict provides itself with a means of obtaining information about individuals who have gone missing either on the battlefield or in enemy-controlled territory, and hence of easing the anguish of their families and relatives.

29. Administrative rules and regulations in keeping with the internationally recognized norms regarding such matters as arrest, detention, imprisonment and captivity should be adopted. The security and physical integrity of all those who are not or are no longer taking part in hostilities, in particular of persons deprived of their liberty, should be ensured. For this to function effectively, clear responsibilities should be established on all levels of military, police and other relevant State agencies, with a clear information and reporting system established before armed conflict starts.

30. National authorities should grant unhindered access to national and international bodies working in the area of human rights and humanitarian law, including ICRC, to any place where people are being deprived of their liberty.

¹² Information in this regard was found in the replies to the questionnaire from Armenia, Germany, Guatemala, Jamaica, Mexico, Serbia and Spain.

¹³ See A/63/299, para. 16.

¹⁴ For the national information bureau, see first Geneva Convention, arts. 16 and 17(4); second Geneva Convention, arts. 19(2) and 20; third Geneva Convention, arts. 120-123, fourth Geneva Convention, arts. 130, 136-138; Additional Protocol I, art. 33(3); and the 1907 Hague Regulations, art. 14. For the graves registration service, see first Geneva Convention, art. 17(3); second Geneva Convention, art. 20(2); third Geneva Convention, art. 120(6); and fourth Geneva Convention, art. 130(3).

V. Missing persons and the restoration of family links

31. Families have the right to communicate with their family members and to know the fate of their relatives. Respect for the right to exchange family news is essential to prevent individuals from becoming unaccounted for.

32. The population groups most at risk of losing contact with their relatives are members of the armed forces and armed groups, isolated civilians in conflict areas, displaced people and refugees, persons deprived of their liberty, and vulnerable persons, such as children, the elderly and persons with disabilities. In armed conflicts, when the usual means of communication are disrupted, ICRC together with national Red Cross and Red Crescent societies help to maintain and restore contact between family members through the worldwide Red Cross and Red Crescent Family Links Network. The Network facilitates the exchange of personal news between family members everywhere in the world, using all available means, subject to agreements with the authorities. Red Cross messages are collected and distributed, satellite or mobile phones are provided to those who have the telephone number of their relatives, and the Internet is used to trace people via the Family Links website. With the consent of those concerned, lists of people either providing news or looking for news from relatives are published on paper (in newspapers or ad hoc print) and on the ICRC website, and broadcast on radio or television.

33. In order to facilitate searches, the parties to an international armed conflict must transmit all relevant information concerning people reported missing by an adverse party and their requests concerning their own missing persons. This information must be transmitted directly to the Central Tracing Agency established by ICRC under the Geneva Conventions.

34. During an armed conflict, ICRC and national Red Cross and Red Crescent societies collect tracing requests and all available information on people unaccounted for and the circumstances under which they disappeared from their families, direct witnesses, the authorities and any other reliable source. This information is crucial when tracing persons, establishing their fate and, where necessary, aiding in their identification. Using this information, ICRC tries to locate the person in, inter alia, places of detention, hospitals, camps for internally displaced persons or refugees, morgues and remote villages. Tracing activities also include supplying the authorities with lists of people unaccounted for together with information on the circumstances in which they went missing, requesting information on the location of graves, asking authorities to allow the recovery and identification of human remains. ICRC lists on missing persons are often published, widely distributed among authorities and the public at large, and used by all those engaged in the process of tracing missing persons. This allows for constant dialogue with and making confidential representations to the authorities or armed groups in order to clarify the fate of missing persons.

35. There are other humanitarian organizations involved in activities linked to restoring family links. The Office of the United Nations High Commissioner for Refugees and the International Organization for Migration are regular partners of ICRC and interested national societies. Other agencies, such as the United Nations Children's Fund, and non-governmental organizations, like the Save the Children Fund, cooperate with ICRC and interested national societies in specific cases, for example in assisting unaccompanied children.

VI. Mechanisms established to clarify the fate of missing persons

36. The efficient treatment of missing persons requires the establishment of competent mechanisms at various levels. When such mechanisms are set up, particular attention should be given to their mandate, which should focus on their humanitarian objectives, namely, to trace persons unaccounted for as a result of an armed conflict, and to inform their families accordingly. They should be granted sufficient capacity and powers in order to be able to carry out their mandate effectively. For instance, the constitutive documents should ensure that they are granted the cooperation and assistance of all authorities, within their respective competences, and other organizations in order to receive all relevant information in their possession that can help tracing, recovering and identifying missing persons. They also need to have access to gravesites and human remains in order to be able to proceed to exhumation and identification. Sufficient attention should be paid to creating an environment that is conducive to information-sharing, including the possibility of working in a confidential manner. Confidentiality is essential for the said institutions to function. While searches are ongoing, resorting to judiciary and penal alternatives could prevent witnesses to cases of missing persons from disclosing what they know.

37. It might be necessary to put into place mechanisms ensuring coordination and information-sharing process between the parties concerned. They are usually set up in the period following the end of the conflict and might be included in documents aiming at settling the situation, such as ceasefire and peace agreements. For example, in Cyprus, the Committee on Missing Persons was established in April 1981 by agreement between the communities concerned under the auspices of the United Nations. The Committee, one of the only institutionalized, bicomunal committees in Cyprus, comprises a member appointed by each of the two communities; the third member is selected by ICRC and appointed by the Secretary-General. The Committee's mandate is to establish the fate of missing persons. It does not attempt to establish the cause of death or attribute responsibility for the death of missing persons. An agreement signed in July 1997 by the leaders of both communities provides for the exchange of information regarding known burial sites and the return of remains of Greek Cypriot and Turkish Cypriot missing persons. The primary objective of this project is to allow relatives of missing persons to recover the remains of their loved ones, to arrange for a proper burial and to close a long period of anguish and uncertainty. To date, the remains of 850 individuals have been exhumed from different burial sites located across the island. More than 290 burial sites have been visited and opened by the Committee. The remains of 196 individuals have been identified and returned to their families. In the Middle East, the Tripartite Commission was put in place in 1991 to resolve the fate of missing persons in connection with the Gulf War of 1990/91. The Commission, which is composed of Iraq, Kuwait and four members of the 1991 coalition (France, Saudi Arabia, the United Kingdom of Great Britain and Northern Ireland and the United States of America), meets regularly (the whole Committee or its subtechnical committee) and works on gravesites and the identification of human remains. Since 2003, it has resolved 304 cases of missing persons. Furthermore, ICRC chairs the Working Group on Missing Persons in Kosovo in accordance with its mandate and in its capacity as a neutral and independent intermediary accepted by all the parties. The primary objective of the Working Group, established in March 2004 as part of the Vienna Dialogue under the auspices of the Special Representative of the Secretary-General, is to clarify the fate of the persons who are unaccounted for as a result of the events in Kosovo, and to inform their families accordingly. Through their delegations to the Working Group, the authorities in Belgrade and Pristina have pledged to search for and provide information on alleged gravesite locations and determine the identity of human remains exhumed. They have also made a commitment to address the legal and administrative needs of the families of the missing. At the time of the establishment of the Working Group, there were more

than 3,000 persons missing from the Kosovo conflict; at the end of 2009, the total number of missing persons stood at 1,869.

38. The above mechanisms should benefit from all relevant information, and the cooperation of their constitutive members should be ensured in this regard. Moreover, they should explore the possibility of access to archives of the national, regional and international bodies that have collected relevant information (such as international tribunals, regional organizations, international and national military contingents). In 2005, ICRC, as chair of the Working Group on Missing Persons negotiated access to the archives of the international organizations that had worked and/or were still working in Kosovo, particularly those that might possess documentation related to gravesite locations and exhumations carried out in Kosovo immediately after the conflict. Formal requests have also been forwarded to the Governments of countries whose military contingents operated in Kosovo within the Kosovo Force. All retrieved information is being carefully processed and analysed in full respect of its working modalities based on confidentiality, and in close cooperation with the relevant national entities, in the hope that it might lead to the identification of more human remains and potential gravesites.

39. An independent and impartial national institution could play a crucial role in clarifying the fate of missing persons. States should ensure the establishment and day-to-day functioning of such an institution (commission or committee for missing persons) through adequate structures, such as working groups or other appropriate mechanisms. The commission for missing persons should have a clear humanitarian mandate established by law, focusing on the tracing of persons that are unaccountable for as a result of an armed conflict, and the resources and powers necessary to fulfil that mandate. It should, *inter alia*, (a) receive tracing requests and, on the basis of them, request, collect, check and provide to the applicant and State authorities available information and facts on persons reported missing, as well as any information on the whereabouts and fate of such persons in accordance with the national legislation and with standards pertaining to the protection and management of personal data; (b) be responsible for the operation of a registry of data, and adopt necessary regulations to that end; (c) take appropriate measures to ensure the right of persons deprived of liberty to inform their relatives of their condition, whereabouts and circumstances of their detention/imprisonment; (d) take measures to ensure the enjoyment of rights by the relatives of missing persons; (e) perform any other tasks required for the performance of its duties. The said body should provide mechanisms such as telephone hotlines and web pages for relatives and witnesses to register missing persons and trace potential burial sites.

40. In the light of the information available, including the replies given by States to the questionnaire, such bodies have been established in a number of situations.¹⁵ Their mandates, level of activities and resources vary widely. In Bosnia and Herzegovina, the Missing Persons Institute was established in 2004 on the basis of the Law on Missing Persons. Its purpose is to provide Bosnia and Herzegovina with a sustainable national mechanism to address all aspects relating to the issue of missing persons as a result of the conflict in Bosnia. It also ensures that mass gravesites are protected, catalogued and properly excavated and that relatives of the missing are able to participate in the search process. In Colombia, two mechanisms are in charge of coordinating efforts to provide answers to the families of missing persons on the fate and whereabouts of their relatives, as well as to repair them for their loss: the Commission for the Search of Missing Persons and the National Commission on Reparation and Reconciliation. The law establishing the

¹⁵ In, *inter alia*, Argentina, Armenia, Azerbaijan, Bosnia and Herzegovina, Colombia, Croatia, Cyprus, Greece, Guatemala, Iran (Islamic Republic of), Iraq, Kosovo, Peru and Serbia.

Commission for the Search of Missing Persons provides for the representation of human rights non-governmental organizations through the Colombian Commission of Jurists and the Family Association of Missing Detainees.

41. It should be borne in mind that the longer it takes to establish functioning mechanisms to deal with the issue of the missing, the less likely it will be that the missing will be identified and returned to their families.

42. The institution for missing persons should work closely with the judiciary and other governmental and non-governmental entities, employing a strong coordinating mechanism. Furthermore, it should cooperate closely with a team of forensic specialists for the recovery and identification of missing persons, both alive¹⁶ and dead.

43. The said institutions need to be as depoliticized as far as possible, work in a transparent manner and include, alongside members of Government bodies, representatives of civil society and also of the families of missing persons.

44. It is essential that the above-mentioned institutions deal with the issue of missing persons on both sides of the conflict and not condition their work on the results achieved by any other side. Their mandates should make it clear that they also have responsibility – insofar as they have information or control over the relevant territory – for clarifying the fate of the missing on the other side or sides as well. In addition, the institutions need to cooperate with their counterparts.

45. When there is no cooperation between respective commissions of the parties to the armed conflict, they should consider establishing an international commission for looking into the issue of the missing, with persons on the commission acting in an individual capacity but coming from the region and chosen by the different parties to the conflict.

46. Apart from commissions (or committees) for missing persons, other instruments and mechanisms could be explored when dealing with the issue of missing persons. For example, bodies such as human rights commissions and ombudsmen may be useful. Both usually have a broad mandate to address human rights violations and should therefore include missing persons within their authorities.

47. Furthermore, all justice and rule of law mechanisms, including the judiciary, parliamentary commissions or truth-finding mechanisms, are of key importance for solving the issue. Judicial process might, for instance, permit victims' families to intervene at various stages of proceedings and exercise their right to know. Also, when tribunals are investigating the deaths of missing persons, it should be ensured that their work is conducted in a manner that serves the best interest of the families, in that the latter are provided with an answer, including the identification of the deceased, and brings the persons responsible for those crimes to justice.

48. Lastly, truth and reconciliation exercises may have a role to play in clarifying events and helping communities move forward. Such exercises would undoubtedly benefit families of the missing persons waiting for answers about the fate of the missing. In its resolution 12/11, the Human Rights Council emphasized that truth-seeking processes, such as truth and reconciliation commissions, that investigate patterns of past human rights violations and their causes and consequences are important tools that can complement judicial processes and, when established, such mechanisms have to be designed within a specific societal context and to be founded on broad national consultations with the inclusion of victims and civil society, including non-governmental organizations.

¹⁶ Forensic science has proved essential for the identification and restitution of missing children to their legitimate families in Argentina.

49. In Peru, for instance, in a common effort of the Truth and Reconciliation Commission, the Ombudsman's Office, the Human Rights National Coordination Entity and ICRC, a list of missing persons who disappeared as a consequence of the violence in Peru between 1980 and 2000 was drawn up. In its final report in 2003, the Commission made a series of recommendations focusing on four main domains: institutional reforms; the establishment of a comprehensive reparations programme; the establishment of a national plan of forensic anthropological intervention; and the institution of follow-up mechanisms.¹⁷

VII. The right to know

50. The right to know is the pillar of the protection that ought to be afforded to missing persons and their families.

51. The right of family members to know the fate of missing relatives as a result of armed conflict, including their whereabouts or, if dead, the circumstances and cause of their deaths and the correlative obligation to carry out an effective investigation into the circumstances surrounding a disappearance, is provided by both international human rights law and international humanitarian law.

52. The right of the relatives to know the fate of their family member is explicitly laid down in article 32 of Protocol I to the Geneva Conventions. Article 33 of the Protocol further provides that "[a]s soon as circumstances permit..., each party to the conflict shall search for the person who had been reported missing by an adverse Party". The same was recognized to apply in non-international armed conflict.

53. The right to know also includes the right to information about the place of burial of a missing relative, if known.

54. In addition to international instruments that lay down obligations in relation to missing persons, there is also a wealth of relevant case law that has been built up by regional supervisory bodies over the past 20 years. Thus, it has been generally recognized that a person's becoming unaccounted for can cause grievous suffering not only for the person who has gone missing but also for that person's family, and that that this suffering can amount to inhuman treatment. Relevant examples from case law of the Inter-American Court of Human Rights include the cases relating to Velásquez Rodríguez (1988) and Blake (1998). The African Commission on Human and Peoples' Rights took a similar line in the case of *Amnesty International and others v. Sudan* (1999). Reference should also be made to the case law of the European Court of Human Rights: in a number of its decisions, the Court has emphasized the obligation of States to take adequate measures to trace missing persons and satisfy families' right to know.¹⁸

55. The Human Rights Council has discussed on various occasions the right to the truth, although in a broader context. In its resolution 12/12, the Council reaffirmed the importance of respecting and ensuring the right to the truth so as to contribute to ending impunity and to promote and protect human rights. The Council noted that the right to the truth may be characterized differently in some legal systems as the right to know or the right to be informed or freedom of information.

¹⁷ See the website of the Truth and Conciliation Commission at www.cverdad.org.pe/ingles/ifinal/index.php.

¹⁸ For example, see *Aziyev and Aziyeva v. Russia* (2008).

56. The right to know must be clearly recognized in domestic law and regulations. States and parties to an armed conflict are under an obligation to take the necessary measures to clarify the fate of missing persons and to inform the family thereof. Family members must be regularly informed about the progress and results of investigation concerning the fate or whereabouts of a missing relative. Effective remedies, including adequate compensation, should be provided for any violation of this obligation. The systematic and deliberate denial of the right to know the fate of one's relative should be punished as a criminal offence under domestic law. Moreover, any available information must be provided not only to the families but also to relevant institutions tracing missing persons.

57. In armed conflicts, protected persons must be allowed to inform, or require the competent authorities to notify, their families (or any other person of their choice) of their capture or arrest, address and state of health. The systematic and deliberate denial of this right should be criminalized under domestic law.

58. In armed conflicts, regular access and visits to all protected persons deprived of their liberty for reasons related to the conflict must be granted to ICRC immediately after their capture or arrest and until their release.

59. No punishment should be imposed for maintaining private or personal contact with relatives or for seeking information regarding the fate or whereabouts of a relative who is detained or interned. The right must be upheld no matter the nature of the act the person is suspected of having committed, including criminal acts and against State security.¹⁹

VIII. Criminal investigation and prosecution of human rights violations linked to missing persons

60. While focusing on the humanitarian dimension of missing persons in armed conflict, it is also necessary to bear in mind the fact that cases of missing persons may also constitute criminal offences sometimes amounting to war crimes or crimes against humanity. States should ensure effective investigation and prosecution of all human rights violations linked to missing persons.

61. Comprehensive national policies on missing persons to be adopted and duly implemented by States should entail, *inter alia*, criminalization under national criminal legislation of violations of international humanitarian norms and international human rights standards applicable to the issue of missing persons, and the establishment of a mechanism for investigation and prosecution to guarantee the enforcement of the said legislation.

62. It should be possible for a criminal investigation into a case of missing persons to be conducted for as long as the fate and whereabouts of the missing persons have not been clarified. This obligation also includes the duty to provide full protection to witnesses, relatives, judges and other participants in any relevant proceedings.

63. Domestic legislation should provide for the possibility of conducting independent forensic investigations in cases of persons unaccounted for during an armed conflict.

64. The findings of criminal investigations into cases of missing persons should be made available upon request to all interested persons, unless doing so would jeopardize an

¹⁹ See Guiding Principles / Model Law on the Missing, available from the ICRC website (www.icrc.org).

ongoing criminal investigation. The relatives of the victims should be closely associated with an investigation into a case of missing persons.

65. National authorities should immediately hand over any official documentation in their possession containing information on the activities of their own armed forces or those affiliated with them that may be relevant to investigations and prosecutions for crimes under international law. Legal provisions relating to State secrets or national security should not be invoked to obstruct the handing over of such documentation. In particular, military officials should provide unconditional cooperation in investigations on missing persons, including full details of events relating to missing persons, and the whereabouts of military officers, whether in active service or retired, who are suspected of involvement in missing persons or who may possess information on individual cases.

66. In cases where there is a suspicion or prima facie evidence that a deceased person may have been victim of an extrajudicial execution or other human rights violations, a prompt, thorough, independent and impartial investigation should be conducted on the circumstances surrounding the death of the person, in accordance with international standards, including the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.²⁰

67. As a general principle, there should be no recourse to pardon, amnesty or similar political measures to terminate the criminal prosecution or punishment of crimes linked to missing persons. Pardon or amnesty should not, however, be excluded for the purposes of finding the truth and facilitating the peace process. In any case, blanket amnesty laws must not be enacted and the above-mentioned measures must be applied in accordance with international law.

68. The progress achieved in recent years in combating impunity for crimes against humanity and war crimes is important insofar as it increases respect for international humanitarian law and therefore helps to reduce the number of missing persons. However, this might also lead to difficulties in obtaining information about the fate of missing persons through the mechanisms provided for by international humanitarian law, since the responsible authorities would fear criminal prosecution. In this regard, a delicate balance needs to be struck between the putting into place of effective means to collect relevant information on missing persons and the general recognition of the importance of prosecuting grave offences. In the words of Crettol and La Rosa, “such mechanisms would need... to generate greater incentives for those with information on the fate of the missing to speak out, rather than to remain silent and be an obstacle to the fight against impunity”.²¹

IX. Legal status of missing persons and support for families of persons unaccounted for

69. The question of missing persons entails consequences not only for the victims themselves, but also for their families, especially dependent women, elderly persons and children, who are more directly affected owing to social and cultural constraints. States must ensure that families do not suffer from any stigmatization related to the disappearance of their relative. The specificity of their situation should be publicly recognized.

²⁰ Economic and Social Council resolution 1989/65, annex.

²¹ 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*, 2006, vol. 88, No. 862, pp. 355-362.

70. States are obliged to take measures to respond to the material, financial, psychological and legal needs faced by families of persons unaccounted for. In this context, a mechanism for needs assessment and the processing of requests for assistance should be established to which the persons concerned would have ready access.

71. First and foremost, the legal situation of persons reported missing as a result of armed conflict and of their relatives should be established in domestic legislation. Specifically, the law should envisage the circumstances and the procedure within which a person can be declared absent or missing. Furthermore, the legal consequences of a declaration of absence and a declaration of death, including in terms of property administration, guardianship and parental authority, should be clearly prescribed by law.

72. The main principle is that the rights and interests of missing persons, including their civil status, property and assets, must be protected at all times until their fate has been ascertained or their death recognized.

73. Missing persons should be presumed to be alive until their fate has been ascertained. The foremost right of a missing person is that of search and recovery. A person should not be declared dead without sufficient supporting evidence. The death of a missing person may be determined through the identification of his or her remains or presumed as a result of other evidence, events or certain defined situations, or may be presumed after a period of time. The issuance of a death certificate should have all of the effects to a missing person as it does with regard to any other person.

74. With regard to the assistance to be provided to the families of persons unaccounted for, it is essential the steps be taken to ensure that the dependents of such persons are entitled to the same social or financial benefits provided for other victims. States should adopt a gender-sensitive approach to ensuring the rights of relatives. Such matters as the custody of the children of the missing person, inheritance rights, the right to remarriage, pension rights and entitlements to public assistance should be properly addressed in domestic legislation. In this regard, recommendation CM/REC(2009)12 on principles concerning missing persons and the presumption of death, adopted by the Committee of Ministers of the Council of Europe on 9 December 2009 is noteworthy. In its recommendation, the Committee of Ministers states that a fair balance must be struck between the interests of missing persons and of the beneficiaries as well as others with a legitimate interest, particularly with regard to property and inheritance rights, pension and life insurance rights, the right to enter a new union (marriage, registered partnership or similar union), legal affiliation and parental rights.

75. If needed, material and financial assistance should be provided to the dependents of missing persons. States should ensure that the families can benefit from support programmes aiming to improve their situation and helping them to deal with the ongoing psychological suffering related to the disappearance of their relatives. The interests of children and women and the situation of single heads of families should be given special attention. In particular, measures should be taken to reunite unaccompanied children with their families or to prevent them from being separated from their direct relatives (parents or siblings). Community and psychological support, including therapeutic when necessary, should also be provided to all those in need. Moreover, families should be supported in their will to commemorate and restore the memory of their missing relatives within society or in their community of belonging. Assistance should be provided to relatives of missing persons in order to reintegrate them into social life.

76. States should consider recognizing missing civilians as war victims and including their families in the system of social benefits, as provided for families of missing servicemen.

77. The right of relatives of missing persons to be granted reparation should be ensured.

78. States should provide support for civil society initiatives in favour of the families of missing persons and those linked with solving the issue of missing persons.²² Furthermore, they should facilitate contacts, including cross-border contacts, between families of missing persons.

79. The international community and national authorities could play a more proactive role in assisting the families of missing persons to organize themselves, including through the provision of funding, the provision of premises and equipment for communication. It is important that this support not be politicized and that the families of missing persons are allowed to run their own independent organizations.

X. Management of the dead and identification of human remains

80. National legislation should contain provisions governing the situation of the dead and human remains.²³ All suspicious deaths should be investigated and the deceased identified.

81. The main principle is that the dead should be searched for, recovered and identified without distinction. Proper recovery, management, examination, identification, storage or burial, and repatriation of human remains and corpses should be ensured. The dead should be treated with respect and dignity throughout. They should be buried in clearly marked graves in sites that are identified and registered and which allow for the tracing and recovery of the individual remains when required. Once identified, the remains should be promptly returned to their families. Missing persons' relatives have the right to demand that places of burial of their loved ones be marked and protected. Adequate training and information on the management of the dead and their identification should be provided to members of the armed forces as well as relevant services involved in the collection and management of the dead.

82. The identification, mapping and preservation of burial sites are an important step. As time passes and those with information move away or die, it becomes increasingly important that this aspect of the issue of missing persons be addressed. Information needs to be collected from different sources, including from high-ranking officers, combatants and civilians, who may have information concerning burial sites. Cross-border agreements should be established with neighbouring countries where there is reasonable suspicion that gravesites may exist. The discovery of burial sites can be important not only in tracing missing persons but also in the identification of the commission of crimes and their possible subsequent prosecution.

83. International humanitarian law prohibits the despoliation and mutilation of the dead. All acts of mutilation and despoliation must be criminalized. The fact that intentional mutilation may also be an element of concealing separate criminal offences that resulted in the deaths must be borne in mind. Moreover, the act of mutilating or despoiling the dead may constitute the war crime of committing outrages upon personal dignity, in particular

²² Information on civil society organizations, family organizations and relevant networks were provided in the replies to the questionnaire submitted by Bosnia and Herzegovina, Guatemala, Jamaica, Mexico and Serbia.

²³ Information on forensic capacities, the management of the dead and the identification of human remains was given in the replies to the questionnaire submitted by Argentina, Armenia, Bosnia and Herzegovina, Guatemala, Mexico, Serbia and Spain.

humiliating or degrading treatment, as identified in articles 8(2)(b)(xxi) and 8(2)(c)(ii) of the Statute of the International Criminal Court for both types of armed conflict.

84. Criminal sanctions should also be established for the non-respect of burial sites and the desecration of graves.

85. For a family of missing persons, the return of the body for burial is essential for the mourning process and an important step towards obtaining justice. If it is not possible for the remains to be returned (for example, when they are unidentified or are unclaimed), they should be buried properly, as specified above. Also, all necessary measures should be taken to ensure proper handling of the personal effects of the deceased.

86. The main responsibility for the proper handling of the dead and for providing information to the families lies with the authorities and armed groups.

87. The forensic recovery of human remains constitutes part of the right to know the truth and contributes to the knowledge of the whereabouts of the missing person. It also dignifies the victims whose remains are thus recovered, and helps to ensure the right to bury the dead and to carry out ceremonies for them in accordance with each culture, which is inherent in all human beings.

88. Ensuring adequate standards of forensic practice for investigations into missing persons serves several important purposes: (a) the recovery of remains for physical examination and analysis for their identification and determination of cause and manner of death, including the documentation of injuries and other evidence for legal proceedings and to uncover human rights abuses; (b) the release of remains to relatives, thereby facilitating funeral arrangements and emotional healing; (c) the search for clues, which may assist in the historical reconstruction of events and revelations to create awareness; and (d) acknowledgement that is necessary for healing and to draw lessons for the future of the community. Forensic investigations should be performed only with proper authorization, adequate standards of quality assurance and control, and in accordance with the conditions specified by law.

89. Forensic human identification of human remains is based on the comparison and matching of information obtained from the deceased (post-mortem data) with equivalent information from the missing person (ante-mortem data). The main methods of identification are fingerprints, dental traits, and unique medical, radiological or anthropological features and genetics – typically, forensic DNA analysis.

90. While there is a trend to use forensic DNA analysis for the identification of human remains, there are, however, certain difficulties associated with this process, including the costs involved, the facilities used and the expertise required for the analysis, interpretation and reliability of results. Laboratories performing such analysis should work to accredited standards of quality control and assurance. In some cases, there may be no DNA recoverable from the remains or suitable family members may not be available for comparisons. Therefore, identification should not be based solely on DNA analysis (or on any other primary method alone), but should take into account all available ante-mortem and post-mortem data.

91. Authorities must ensure that the examination of human remains and their identification are undertaken by qualified and competent professionals. An authority competent to issue and deliver death certificates must be designated.

92. According to ICRC, the procedures of forensic recovery and post-mortem examination of human remains should respect the following principles: (a) at all times, the dignity, honour, reputation and privacy of the deceased must be respected; (b) the known religious beliefs and opinions of the deceased and his or her relatives should be taken into consideration; (c) families should be kept informed of decisions in relation to recovery and

post-mortem examinations, and of the results of any such examination; (d) after post-mortem examination, the remains should be released to the family at the earliest time possible; (e) it is essential that all information required for the search for and identification of the remains, including ante-mortem and post-mortem data, be adequately collected and properly managed, including with the necessary professional advice, legal and ethical provisions, and with the support of appropriate databases and software where necessary.²⁴

93. Any forensic work on missing persons should be based on standards of forensic best practice (legal, ethical, scientific and technical) and conducted with the primary aim of identifying victims and returning their remains to their families. Direct contacts should be established between forensic teams and the relatives of the missing persons.

94. The case of Cyprus, where ICRC offered advice and support in establishing a sustainable all-Cypriot team of forensic scientists, may be considered a model of best practice. The Cypriot forensic team, comprising Greek and Turkish Cypriot forensic practitioners, works with the families of missing persons and integrates different disciplines, including archaeology, anthropology and genetics.²⁵

95. The International Commission on Missing Persons, an independent and impartial organization established in 1996 to support the Dayton Peace Agreement, and headquartered in Sarajevo, pioneered the use of DNA technology to identify large numbers of missing persons. By matching DNA from blood and bone samples, the Commission has helped identify 18,000 missing persons; today, its database houses 150,000 genetic samples relative to missing persons in more than 20 countries. Techniques developed by the Commission in the Western Balkans have revolutionized the search for missing persons in other countries, and Commission experts are now assisting the Governments of Chile, Colombia, Iraq and the Philippines, and provide assistance to Kuwait, Norway, Thailand and South Africa. The effective use of DNA as a means of mass identification has transformed the Commission from a small organization operating on an essentially political level into the world's largest identification programme that currently operates the world's biggest high-throughput DNA human identification facility.²⁶

96. Competent authorities must adopt adequate procedures for providing information on the identity, location and cause of death to the appropriate authorities and to families. In particular, information on deceased persons and the location of human remains and graves should be centralized and transmitted to the other party to the conflict.

97. The authorities must ensure that the dead, including burials, are recorded, as well as information on graves and the persons interred in them. This task might be entrusted to the State's official graves registration service; if not, it would require the establishment and functioning of a complementary system to record the details of death and internment of protected persons.

²⁴ See ICRC, *Guiding Principles/Model Law on the Missing*, op. cit.

²⁵ "Missing persons: a major humanitarian concern", interview with ICRC forensic doctor Morris Tidball-Binz, available on the ICRC website at www.icrc.org/eng/resources/documents/interview/missing-interview-280908.htm.

²⁶ See www.ic-mp.org.

XI. Information management and legal protection of personal data

98. The main purpose of collecting data on missing persons is to establish the identity, location and fate of persons unaccounted for (both living and deceased) and to give information to the families on the whereabouts and fate of their missing relatives.

99. Coordination of the activities of all those involved and the sharing of information would increase the effectiveness of any action taken to ascertain the fate of persons unaccounted for. States should ensure that information collected on persons unaccounted for is as comprehensive as possible. Information should be collected and processed fairly and lawfully. States should ensure respect for the relevant standards and principles with regard to the protection of personal data whenever information, including medical and genetic information, is managed and processed. Exchange of the information among those involved should take place without endangering victims, the persons collecting the information or the sources of information.²⁷

100. Locating missing persons and/or finding information about them requires searches of all possible records. The records of local government units, such as the police, are important, as is information that can be derived from cemetery and morgue records.

101. The issue of data management is also relevant to exhumation projects in the search for missing persons. While oral reports may provide information about possible burial sites or mass graves, records of military or other government personnel who, for example, may have been assigned to digging graves or who were involved in transportation to or from the site, may also provide or corroborate information.

102. State authorities should allow access to pre-war health and dental records to facilitate the identification process of mortal remains.

103. States should provide for adequate sanctions for destroying or unlawfully withholding information on missing persons.

XII. Cooperation

104. States should cooperate at the international level in order to effectively solve cases of missing persons by providing mutual assistance in terms of information-sharing, victim assistance, locating and identifying missing persons, and in exhuming, identifying and returning human remains. An international database for that purpose should be created.

105. International humanitarian law can only work in practice if belligerents, or former belligerents, cooperate with each other. Accordingly, the issue of missing persons cannot be settled unilaterally by one side to the conflict, and close cooperation and coordination are necessary between the different sides. Parties to an armed conflict should refrain from acting on the basis of reciprocity in dealing with the issue of missing persons. The sharing of information or the taking of steps, for example, should not be conditional on the other side also providing information or taking steps; in other words, cooperation should be unconditional. Humanitarian law is not subject to any principle of reciprocity.

²⁷ Information on information management regarding missing persons was included in the replies to the questionnaire submitted by Albania, Argentina, Armenia, Bosnia and Herzegovina, Germany, Guatemala, Jamaica, Mauritania, Mexico, Paraguay and Serbia.

106. Following an armed conflict, bilateral and multilateral cooperation among States in conjunction with humanitarian organizations can lead to more effective assistance to families. States should endeavour to address the humanitarian nature of the problem independently of other inter-State issues so as to avoid causing further distress to the families of missing persons pending the resolution of political issues.

107. Intergovernmental organizations and ICRC, acting in conformity with their respective mandates, should be available to support Government authorities and armed groups in fulfilling their responsibilities.

108. International and regional organizations should encourage inter-State cooperation. They may also have an important role to play on their own.

109. International and regional organizations involved in solving the problem of missing persons should develop cooperation further within their respective mandates while ensuring synergy and avoiding duplication.

110. There is a pressing need to develop cooperation agreements and partnerships not only at intergovernmental level, but also with national Red Cross and Red Crescent societies, civil society structures and, in particular, with the associations of families of missing persons.

111. Civil society organizations play an important role in addressing different issues such as tracing missing persons, and in providing material, social and psychological rehabilitation for affected family members. They should be provided with adequate financial and technical assistance.

XIII. Conclusions

112. International obligations to prevent and resolve situations of missing persons as a result of an armed conflict are based on both international humanitarian law and international human rights law.

113. Enacting national legislation is highly important when dealing with the issue of missing persons, preventing people from going missing, ascertaining the fate of missing persons, protecting their rights, ensuring the proper management of information and supporting the families of missing persons. In this respect, a draft model law on missing persons prepared by ICRC is of great importance.

114. States and parties to an armed conflict are obliged to take all appropriate measures to prevent persons from going missing. In particular, members of armed forces or armed groups, as well as other populations at risk, such as isolated populations, civilians in conflict zone, displaced persons, the elderly and children, must be properly identified. An information bureau and graves registration service, as provided for under the Geneva Conventions, should be set up. In armed conflicts, ICRC must be granted access to all persons deprived of their liberty for reasons relating to the armed conflict as well as to all particularly vulnerable individuals.

115. All parties to an armed conflict have an obligation to search for the persons reported missing. They should also facilitate enquiries made by members of families, encourage the work of organizations engaged in this task and provide lists showing the exact location and markings of graves, together with data on the deceased interred therein.

116. The right to exchange family news in all circumstances should be recognized. In armed conflicts, when the usual means of communication are disrupted, ICRC together with national Red Cross and Red Crescent societies help to maintain and

restore contact between family members through the worldwide Red Cross and Red Crescent Family Links Network. In order to facilitate searches, the parties to an international armed conflict must transmit all relevant information concerning people reported missing by an adverse party and their requests concerning their own missing persons. This information must be transmitted directly to the Central Tracing Agency established by ICRC under the Geneva Conventions.

117. States and parties to an armed conflict should ensure the establishment and day-to-day functioning of an independent and impartial national institution, which could play a crucial role in clarifying the fate of missing persons. Such institutions (commissions or committees on missing persons) should deal with the issue of missing on both sides to the conflict and not condition their work on the results achieved by any other side. They should work closely with governmental and non-governmental entities, family associations and the families of the missing.

118. The right of family members to know the fate of missing relatives as a result of armed conflict, including their whereabouts or, if dead, the circumstances and cause of their deaths, is provided for under both international humanitarian law and human rights law. States and parties to an armed conflict are under an obligation to take the measures necessary to clarify the fate of missing persons and to inform families thereof. Family members must be regularly informed about the progress and results of investigation concerning the fate or whereabouts of missing relatives.

119. While focusing on the humanitarian dimension of missing persons in armed conflict, it is also necessary to bear in mind that cases of missing persons can sometimes constitute criminal offences, including war crimes or crimes against humanity. States should ensure effective investigation and prosecution of all human rights violations linked to missing persons.

120. The legal situation of persons reported missing as a result of armed conflict and of their relatives should be clearly established in domestic legislation. The rights and interests of missing persons, including their civil status, property and assets, must be protected at all times until their fate has been ascertained or their death recognized.

121. States are obliged to take measures to respond to the material, financial, psychological and legal needs faced by the families of persons unaccounted for. States should adopt a gender-sensitive approach to ensuring the rights of relatives. They should support initiatives from key actors and organizations in civil society involved in providing support for families of missing persons. The right of relatives of missing persons to be granted reparation should be ensured.

122. The dead should be searched for, collected and identified without distinction. They must be identified and buried in properly marked graves in sites that are identified and registered. All acts of mutilation and despoliation of the dead must be criminalized.

123. The competent State authorities are obliged to take all necessary measures to recover human remains, which should be returned to the family as soon as possible. If it is not possible for the remains to be returned, a proper burial should be ensured.

124. The forensic recovery and identification of human remains help to ensure the right to know the truth and contribute to the knowledge of the whereabouts of missing persons. Forensic investigations should be conducted only with proper authorization, following standards of best practice, and in accordance with the conditions specified by law. Families should be kept informed of the decisions in relation to exhumations and of the results of any such examination. After post-mortem examination, the remains should be released to the family at the earliest time possible.

125. Information on persons unaccounted for, including ante-mortem data, should be collected and processed fairly and lawfully. States should ensure respect for the relevant standards and principles with regard to the protection of personal data whenever information, including medical and genetic information, is managed and processed.

126. States should cooperate at the international level to effectively solve cases of missing persons by providing mutual assistance in terms of information-sharing, victim assistance, locating and identifying missing persons, and in exhuming, identifying and returning human remains. Parties to an armed conflict should refrain from acting on the basis of reciprocity when addressing the issue of missing persons.

127. States that are parties to an armed conflict should fully cooperate with ICRC in order to establish the fate and whereabouts of missing persons.

128. Financial and technical assistance should be provided to the countries and/or official bodies concerned for exhumation and identification processes.

129. International and regional organizations involved in solving the problem of missing persons should develop cooperation further within their respective mandates while ensuring synergy and avoiding duplication. Cooperation agreements and partnerships should be developed not only at the intergovernmental level, but also with national Red Cross and Red Crescent societies, civil society structures and associations of families of missing persons.

130. States should raise public awareness of the problem of missing persons as a fundamental concern of international humanitarian law and human rights law, and encourage the mass media to draw the public's attention to this problem and to the needs of families of missing persons.

131. The establishment of a special rapporteur on missing persons with a relevant mandate would significantly enhance the existing international mechanisms protecting the rights of missing persons and their families.
