

United Nations



Nations Unies

Executive Office of the Secretary-General
Cabinet du Secrétaire général

URGENT

To: CDC (through ODSG),

Please find for approval the draft **SG report on Missing Persons**, which focuses on missing persons in the context of armed conflict. This includes the estimated number of missing persons in, for instance, Abkhazia, Georgia (183), Bosnia (6,922), Cyprus (1,016), Kosovo (6,046), Lebanon (2,200), Ukraine (1,887). **Numbers rely on information already available in UN reports, or have been provided by Member States** themselves in their submissions or by ICRC. For instance, some references have been used in SG press statements (e.g. Nagorno-Karabakh), SG reports (e.g. Cyprus, Kosovo and Iraq), while others have been checked with relevant field colleagues by OHCHR (e.g. Ukraine). References to the conflicts in Georgia have been doubled checked by PU with DPA given the sensitivity on terminology.

The report details various initiatives, including national legislation and institutions, coordination mechanisms and truth-seeking mechanisms and criminal proceedings as well as the importance of archives and forensic recovery to address the issue of missing persons. ✓

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HUMAN RIGHTS
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EOSG/CENTRAL

INTEROFFICE MEMORANDUM • MEMORANDUM INTERIEUR

TO: Mr. Jan Eliasson
A: Deputy Secretary-General

DATE 26 July 2016

FROM: Kate Gilmore
DE: Deputy High Commissioner for Human Rights *KG*

SUBJECT: Report of the Secretary-General on missing persons – FOR APPROVAL
OBJET:

1. Please find enclosed a report, prepared pursuant to General Assembly resolution 69/184, in which the General Assembly requested the Secretary-General to submit to the General Assembly at its seventy-first session a comprehensive report on the implementation of the resolution, including relevant recommendations. The resolution deals with the issue of missing persons in connection with armed conflict.
2. The report was prepared by OHCHR on the basis of contributions received from States, intergovernmental and non-governmental organizations. It follows the same structure as the previous report on missing persons (A/69/293) and outlines the implementation of measures to address the issue of persons reported missing in connection with armed conflict, namely: prevention; clarification of the fate and whereabouts of missing persons; children; criminal investigation and prosecution; forensic recovery and identification of remains; and the legal status of missing persons and support for their families. The report also sets out a number of conclusions and recommendations.
3. In relation to the politically-sensitive nature of this report, please note that the report refers to several past or ongoing conflicts, including in Cyprus, Georgia, Nagorno-Karabakh, Iraq/Iran, Iraq/Kuwait, Ukraine and in the former Yugoslavia. Where the report refers to numbers of missing persons, or of sets of human remains that have been exhumed or identified, these are based on the country submission received (in which case this is clearly indicated), on data received from the ICRC, and/or cross-checked with public sources, including other UN reports.
4. The report is submitted to the Executive Office of the Secretary-General for approval. Please note that the deadline for the submission of this report to Conference Services is 4 August 2016.

cc : I. Šimonović, Assistant Secretary-General for Human Rights

FILED

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Approved on behalf of the Secretary-General.
Chef de Cabinet

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Item X (b) of the provisional agenda*

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Missing persons

Report of the Secretary-General

Summary

In its resolution 69/184 on missing persons, the General Assembly requested the Secretary-General to submit to the Human Rights Council at its relevant session and to the General Assembly at its seventy-first session a comprehensive report on the implementation of the resolution, including relevant recommendations. The present report is submitted pursuant to that request.

* A/71/139.

I. Introduction

1. In its resolution 69/184 on missing persons, the General Assembly requested the Secretary-General to submit to the Human Rights Council at its relevant session and to the General Assembly at its sixty-ninth session a comprehensive report on the implementation of the resolution, including relevant recommendations. The present report was prepared in accordance with that resolution. The report follows the same structure as the previous Secretary-General's report on missing persons (A/69/293) and covers the period between 1 July 2014 and 30 June 2016. To prepare the report, inputs were sought from Member States, international and regional organizations, national human rights institutions, and non-governmental organizations.¹ The report further draws on a diverse range of public sources.

2. In resolution 69/184, the General Assembly focuses primarily on the specific issue of missing persons in connection with international or non-international armed conflicts. However, persons go missing in many other circumstances as well, including situations of violence, insecurity, organized crime, disaster and migration. Enforced disappearance, a human rights violation and crime under international law, also results in missing persons. Initiatives taken by Member States, intergovernmental and other organizations to address the issue of persons who are unaccounted for are not necessarily defined by the cause or context in which they go missing. As in previous Secretary-General's reports, this report therefore also reflects information received regarding the implementation of measures to address the issue of persons who are unaccounted for in contexts other than armed conflict, to the extent that they can be relevant for missing persons in connection with armed conflict.

II. International legal and institutional framework

3. Earlier Secretary-General reports on missing persons have set out the international legal framework applicable to the issue of missing persons, drawing on international human rights law and international humanitarian law (see A/67/267, paras. 4-7; A/69/293, paras. 4-6). These reports have also laid out how the right to the truth underpins the obligations of States to determine the fate and whereabouts of persons who are unaccounted for. The new Fact Sheet of the International Committee of the Red Cross (ICRC) on "Missing persons and their families", published in 2015, clearly outlines the obligations of States to prevent people from going missing, to search for missing persons, and to deal with the consequences of such events.²

4. The legal framework includes the International Convention for the Protection of All Persons from Enforced Disappearance. As of 1 July 2016, there were 52 States parties to the Convention. Since the previous Secretary-General report, ten States have acceded to or ratified the Convention (Belize, Greece, Italy, Malta, Mongolia, Niger, Slovakia, Sri Lanka, Togo and Ukraine). In the submissions received following calls for contributions to the

¹ Contributions were received from Algeria, Argentina, Azerbaijan, Bahrain, Colombia, Cyprus, El Salvador, Georgia, Greece, Guatemala, Kuwait, Montenegro, Niger, Panama, Senegal, Serbia, Spain, Switzerland, and Ukraine, as well as from the Offices of the Ombudspersons of Ecuador and Moldova, the Ariel Foundation International, the International Centre for Justice and Human Rights, the International Committee of the Red Cross, and the International Commission on Missing Persons.

² <https://www.icrc.org/en/document/missing-persons-and-their-families-factsheet>

present report, several States provided an update on their efforts to become party to the Convention (El Salvador, Senegal and Switzerland)³.

5. The legal framework relevant to issues pertaining to missing persons also includes regional agreements, instruments and texts. For example, in a March 2016 thematic report, the Commissioner for Human Rights of the Council of Europe provided an overview of the situation regarding missing persons and victims of enforced disappearances in Europe, including an overview of applicable European standards and mechanisms.⁴

6. In December 2014, Belgium, Luxembourg, the Netherlands, Sweden and the United Kingdom signed an "Agreement on the Status and Functions of the International Commission on Missing Persons" (ICMP), to establish the ICMP as an international organization with headquarters in The Hague. The Agreement was subsequently also signed by Chile, Cyprus, El Salvador and Serbia. Article 2 of the Agreement describes the ICMP's purpose and functions, which is "to secure the co-operation of governments and other authorities in locating persons missing as a result of armed conflicts, human rights abuses, natural and man-made disasters and other involuntary reasons and to assist them in doing so".

7. On 27 January 2016, the Security Council held an Arria-formula open debate on the global challenge of accounting for missing persons, including presentations by the United Nations High Commissioner for Human Rights, the ICMP, the International Center for Transitional Justice, the Mayor of Lampedusa (Italy), and the Executive Director of the Mexican NGO CADHAC (Ciudadanos en Apoyo a los Derechos Humanos). At the debate, and in its contribution to this report, the ICMP proposed the establishment of an Inter-Agency Committee on Missing Persons to "coordinate efforts with international organizations, civil society and scientific organizations, as well as governments, to address the broad range of circumstances in which persons go missing".

III. Measures to prevent persons from going missing

8. In resolution 69/184, the General Assembly stresses the importance of measures to prevent persons from going missing in connection with armed conflict. Preventive measures should ideally be adopted in peacetime to ensure they are in place before they may be required.

A. Enacting national legislation

9. It is critical that in dealing with the issue of missing persons, States develop a national legal framework that incorporates their obligations under international humanitarian law and international human rights law. This is important both from a preventive and a reactive perspective as it can help to ascertain the fate of missing persons, ensure the comprehensive collection, protection and proper management of information, and realize the right to the truth of victims' families and provide them with necessary support. Domestic legislation should provide appropriate regulatory frameworks for data collection and protection. Personal data should be collected and processed lawfully and in compliance with international human rights law, including the right to privacy.

³ The Ombudsperson of Moldova also reported that a feasibility study for the ratification of the convention had been prepared in the country.

⁴ <https://wed.coe.int/com.intranet.InstraServlet?command=com.intranet.CmdBlobGet&IntranetImage=2920606&SecMode=1&DocId=2376300&Usage=2>

10. The ICRC "Guiding Principles/Model Law on the missing" proposes and explains model legislative provisions to be used by States as guidance in the drafting of legislation for the protection of missing persons and the prevention of such situations.⁵ In its submission for this report, the ICRC also reported that it has continued to work with a number of States on draft legislation on issues relating to missing persons, including in Guatemala, Lebanon, Nepal, Peru and Ukraine. In Guatemala, for example, Bill 3590 intends to provide families of victims of the armed conflict with solutions regarding the legal status of missing relatives. In Ukraine, a draft law on "the prevention of disappearance and facilitation in tracing the missing" was prepared under the auspices of the Ministry of Justice.⁶ In Nepal, the ICRC published a report on the "civil legal issues related to families of missing persons", highlighting the legal and administrative issues faced by families of the missing and proposing a set of recommendations.

11. In other countries, the ICRC continued to conduct and support studies on the compatibility of domestic law with international humanitarian law as it affects the issue of missing persons. In addition to those countries listed in previous reports (see A/67/267, para. 11; A/69/293, para. 9), such a study is now also being carried out in Brazil. In its submission, Georgia reported that its 2014-15 "III National Action Plan" included an analysis of its legislative framework regarding the issue of missing persons, to be carried out together with the ICRC. Furthermore, following the 32nd International Conference of the Red Cross and Red Crescent, held in Geneva in December 2015, five States have officially pledged to take measures to guarantee and protect the rights of missing persons and their families (Austria, Belgium, Costa Rica, Guatemala and Peru).

12. Several submissions received for the preparation of this report provided information regarding the adoption of legislation to deal with issues pertaining to missing persons and their families. In Colombia, for example, it was reported that the Government issued Decree 303 in 2015, regarding measures to contribute to the localization, identification, exhumation and commemoration of victims of enforced disappearance. The decree creates a databank of genetic profiles of the disappeared. It also encompasses specific measures to provide economic and psychological support to the relatives of disappeared persons during the process of return of the remains. However, institutional strengthening and adequate funding are needed to ensure effective implementation. In December 2015, the Mexican government submitted to the Senate a Draft General Law for the prevention and sanctioning of crimes related to disappearance. In Peru, in May 2016, Congress approved the draft Law on the Search of Disappeared Persons, which covers the period of armed conflict from 1980 to 2000. It confers on the Ministry of Justice and Human Rights, and on the Public Ministry, a central and leading role in the search for disappeared persons, and establishes a National Registry of Disappeared Persons.⁷ In June 2016, the Government of Sri Lanka approved a cabinet paper following which draft legislation has been tabled in Parliament to grant a certificate of absence to relatives of missing persons.

⁵ <https://www.icrc.org/en/document/guiding-principles-model-law-missing-model-law>

⁶ See also OHCHR, Report on the human rights situation in Ukraine - 16 February to 15 May 2016, noting that while the draft law marks an important step toward streamlining national procedures and the implementation of international law, it requires further development, such as the establishment of a centralized entity or institution dealing with missing persons. See:

http://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HIRMMU_Report.pdf

⁷ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20046&LangID=E>

B. Other preventive measures

13. In time of armed conflict, the production and proper use of means of identification by armed and security forces play an important role in terms of preventing persons from going missing. States have the primary responsibility for the production and compulsory use by their armed forces of such items as identification tags. International humanitarian law also requires the establishment of national information bureaux and grave registration services. Examples of national information bureaux can be found in Armenia, Azerbaijan, Iran (Islamic Republic of), Iraq and the United Kingdom of Great Britain and Northern Ireland.

14. Ensuring appropriate training of, and oversight over, security and law enforcement officials is another example of a preventive measure, as it can prevent misconduct leading to persons going missing and ensure adequate responses when such situations occur. In its contribution to this report, Bahrain highlighted the adoption of a general strategy to develop its security apparatus, in an effort to ensure greater respect for human rights.

VI. Measures to clarify the fate and whereabouts of missing persons

15. In resolution 69/184, the General Assembly reaffirms the right of families to know the fate of their relatives reported missing in connection with armed conflicts, and calls upon all States that are parties to an armed conflict to take all necessary measures, in a timely manner, to determine the identity and fate of persons reported missing. The fate and whereabouts of missing persons should be clarified on the basis of transparency, accountability and public involvement.

A. Tracing and restoration of family links

16. The ICRC reported that it continued its extensive tracing activities, including the collection of information about persons unaccounted for and the circumstances under which they went missing. Updated lists of missing persons that have been reported to the ICRC in a given context can be shared in the framework of a confidential dialogue with concerned parties, or published and widely distributed among authorities and the public at large to be used by all stakeholders, in line with instructions and consent of the sources of information. The work also involves maintaining a dialogue and making representations to the relevant authorities or armed groups to determine the whereabouts of missing persons, provided that families of missing persons have made such request or have agreed to such intervention.

17. The ICRC and national Red Cross and Red Crescent societies assist with the maintenance and restoration of links between family members during conflict and other emergencies. This work involves tracing relatives, exchanging family messages, reuniting separated families and seeking to clarify the fate of those who remain missing. The ICRC has expanded the scope of its work in relation to the restoration of family links to persons separated as a consequence of migration, in recognition of their particular vulnerability in this regard. Other organizations also continue to be involved in the tracing and restoration of family links, including the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration. The United Nations Children's Fund continues to work on assisting unaccompanied children, for example through the introduction of RapidFTR, a mobile phone application and data storage system that seeks to expedite the process of family tracing and reunification during and after crises.

B. Coordination mechanisms

18. Parties to a former conflict may agree to take specific measures under the auspices of a neutral actor. One example is setting up coordination mechanisms to exchange information; provide mutual assistance in locating and identifying missing persons, and in the recovery, identification and return of human remains; and keep family members informed about progress in determining the fate and whereabouts of missing persons.

19. In Cyprus, the Committee on Missing Persons, which is composed of a Greek Cypriot member, a Turkish Cypriot member and a member of the United Nations, continued its forensic recovery and identification activities, with forensic advice from the ICRC and technical assistance from the Argentine Forensic Anthropology Team, a non-governmental organization. As of 31 May 2016, the Committee had excavated 1,060 sites located across the island and exhumed the remains of 1,111 missing persons. Of those exhumed, 641 have been identified and returned to their families. The number of Greek Cypriots still missing is estimated at 1,016 and the number of Turkish Cypriots still missing at 344.⁸ The Secretary-General has previously underscored that, in light of the advanced age of both relatives and witnesses, it is critical that the Committee be given the means and the information required to accelerate its work.⁹ Cyprus expressed similar concerns in its contribution to this report.

20. Efforts to locate and identify missing persons in Kosovo¹⁰ missing persons have been carried out primarily by the United Nations Interim Administration Mission in Kosovo (UNMIK) and, ~~as of XX~~ since 2009, now the European Union Rule of Law Mission in Kosovo, in cooperation with the ICRC and the ICMP. The Working Group on Missing Persons, chaired by the ICRC and bringing together representatives of the authorities in Belgrade and Pristina, continued its work to account for missing persons. According to information received from the ICRC, out of the 4,381 cases that were closed as of April 2016, persons were located alive in 1,373 cases. It was estimated that the number of persons still unaccounted for stood at 1,665. The total number of missing persons related to the 1998-1999 events ~~is estimated at~~ was 6,046.¹¹

21. In Croatia, bilateral exchange of information pertaining to missing persons between Croatia and Serbia was ongoing through a working group mechanism in which the ICRC and ICMP participate as observers. In its contribution to this report, Serbia reported that arrangements were made for concrete mechanisms in view of future exchange of data and information aimed at the further harmonization of lists of missing persons. Arrangements were also made for joint field reconnaissance, exhumations and identifications. The fourth edition of the "Book of missing persons on the territory of the Republic of Croatia" was published in 2015. Serbia also reported that it had supported regional meetings organized by the ICMP to prepare a "Joint List of Missing Persons" in the region and promote bilateral and multilateral cooperation.

22. The tripartite coordination mechanism set up by the authorities of Georgia and the Russian Federation, and the de facto "authorities" in South Ossetia, ~~Chechnya~~ Georgia, to exchange information and clarify the fate of persons unaccounted for during and after the August

⁸ See also: <http://www.cmp-cyprus.org/facts-and-figures/>

⁹ Report of the Secretary-General on the United Nations Operation in Cyprus, S/2016/11, para. 39.

See also OHCHR report on the question of human rights in Cyprus, A/HRC/31/21, para. 12-19.

¹⁰ Reference to Kosovo should be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

¹¹ See also the latest Report of the Secretary-General on the United Nations Interim Administration in Kosovo, S/2016/407, para. 44. See also A/HRC/30/38/Add.1.

2008 hostilities, met eight times between February 2010 and November 2013, which resulted in the exhumation of 14 sets of human remains among which six were identified and handed over to their families. Following a two-year gap, the ninth meeting took place in February 2016, reviving the discussions on the clarification of the fate and whereabouts of a total of 183 persons still unaccounted for. In its submission for the present report, Georgia reported that it also continued to hold regular meetings regarding the issue of missing persons in the context of the Incident Prevention and Response Mechanism, which is mediated by the Organization for Security and Cooperation in Europe and the European Union Monitoring Mission and involves the Georgian and Russian authorities as well as the de facto "authorities" in South Ossetia. Georgia

23. A similar mechanism in relation to the 1992-1993 Georgia-Abkhazia, Georgia conflict, established at the end of 2010, met for the eighth time in December 2015, while its forensic working group met 11 times in total. The dialogue led to the exhumation of 64 sets of human remains in 2013, and an additional 98 sets in 2014 and 2015. So far, 81 bodies were identified and handed over to their families. For 2016, search and recovery of human remains was planned for three additional sites.

24. The Independent Commission for the Location of Victims' Remains, established in 1999 by an intergovernmental agreement between the Republic of Ireland and the United Kingdom of Great Britain and Northern Ireland, has a mandate to obtain information which may lead to the location of the remains of those killed and buried in secret by illegal organizations prior to 10 April 1998, as a result of the Northern Ireland Ireland conflict. As of June 2016, 10 bodies have been recovered (out of 16 persons who disappeared).¹²

25. In 2013, the Security Council adopted resolution 2107 on the situation between Iraq and Kuwait, requesting the Secretary-General to periodically report to the Security Council on efforts regarding the repatriation or return of all Kuwaiti and third country nationals or their remains. These reports provide detailed accounts of progress regarding the determination of the fate and whereabouts of missing persons in Iraq and Kuwait (see most recently: S/2016/87 and S/2016/372). The ICRC-chaired Tripartite Commission, which was established in 1991 to resolve the fate of missing persons in connection with the 1990-1991 Gulf War, regularly meets and works on gravesites and on the identification of human remains. The Commission continues to study different options that could help localize new gravesites. According to information received from ICRC, the Commission has so far resolved 316 cases of missing persons and 149 sets of human remains have been repatriated from Kuwait to Iraq. In its contribution to the present report, Kuwait reported that efforts had led to 317 remains being brought from Iraq to Kuwait, and the identification and determination of the fate of 232 persons. In 2014 and 2015, however, no remains were found.

26. Joint efforts were taken by the authorities of Iran (Islamic Republic of) and Iraq to determine the fate of persons still unaccounted for in relation to the 1980-1988 war between the two countries, with the ICRC chairing the tripartite committee that was created in 2013. In 2014 and 2015, a total of 1,053 sets of human remains were recovered from Iraqi sites and handed over to Iranian authorities, and a total of 55 sets of human remains were transferred from Iran to Iraqi authorities.¹³

¹² <http://www.iclvr.ie/en/ICLVR/Pages/TheDisappeared>

¹³ See ICRC annual reports of 2014 and 2015.

C. National institutions

27. National institutions, such as national commissions on missing persons, can play a crucial role in clarifying the fate of missing persons and providing support to the families of the missing. National information bureaux and grave registration services, as provided for in international humanitarian law, also fulfil this role. The following paragraphs highlight some recent developments regarding the establishment of national institutions, based on information received during the preparation of this report.

28. Many families still do not know what happened to relatives who went missing during the Nagorno-Karabakh conflict. In December 2015, ICRC provided the concerned parties an updated list containing the names of 4,496 people registered as missing by its delegations in Baku and Yerevan, and its mission in the affected area. In this endeavour, ICRC worked closely with the Azeri and Armenian Commissions on Prisoners of War, Hostages and Missing People and with families of missing persons. In its contribution for the present report, Azerbaijan stated that its State Commission on Prisoners of War, Hostages and Missing Persons had registered 3,803 persons as missing as of 23 June 2016. It also reported that, together with ICRC, the State Commission was collecting ante mortem data on missing persons and compiling them in centralized databases in order to facilitate future identification of human remains.

29. In Bosnia and Herzegovina, a Missing Persons Institute was established in 2005 to address all aspects related to the issue of missing persons resulting from the conflicts in the former Yugoslavia. Over 19,496 persons had been identified in the western Balkans by March 2016, out of who over 14,767 related to Bosnia and Herzegovina. By March 2016, Bosnia and Herzegovina had accounted for two thirds of those missing in connection with the armed conflict (while 6,922 persons were still unaccounted for). Concerns have been expressed, however, that the work to exhume and identify remains has slowed down in recent years, with less information being made available on possible gravesites and reduced cooperation between government and justice institutions.

30. In the region of the former Yugoslavia, several agreements to intensify cooperation were concluded. Serbia reported that the Governments of Bosnia and Herzegovina and Serbia in November 2014 signed a protocol on cooperation in the search for missing persons. Montenegro reported that in 2012 a protocol on cooperation was signed between the national commissions of Montenegro and Serbia, and in October 2015 an agreement on cooperation was signed between the national commissions of Montenegro and Kosovo. In August 2014, the International Commission on Missing Persons presented in Bosnia and Herzegovina a "Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses", which was signed by the Presidents of Bosnia and Herzegovina, Croatia, Montenegro and Serbia.

31. In its contribution for the present report, Ukraine reported that it had formed an Interagency Centre for Assistance in the Release of Captives and Hostages and the Search for Missing Persons, within the Ukrainian Security Service. Ukraine further reported that the Interagency Centre's register, as of 11 April 2016, listed 3,021 persons as found and released, 115 as remaining in captivity of armed groups, and 681 as considered missing. Ukraine stated that criminal proceedings had been initiated on 4,162 cases of missing or abducted persons (931 military, 3,229 civilian) in Donetsk and Luhansk regions since the beginning of the security operation, and that the overall number of missing persons stood at 4,478 (1,026 military, 3,452 civilian). 2,578 missing persons had been found (508 military, 2,070 civilian) and 1,887 were still missing. Finally, Ukraine reported that 827 bodies were

pending identification.¹⁴ Both Ukraine and ICRC reported that they had discussed the creation of an independent/impartial coordination mechanism on the issue of missing persons in connection with the conflict in eastern Ukraine. Such a mechanism would greatly enhance the opportunities for families of missing persons to seek and obtain information about the whereabouts of their loved ones.

32. In Colombia, three mechanisms have been created to coordinate efforts to provide answers to the families of missing persons regarding the fate and whereabouts of their relatives, as well as to provide reparation: the National Commission for the Search of Disappeared Persons (which also coordinates the national registry of disappeared persons), the National Unit for Comprehensive Attention and Reparation to the Victims, and the National Centre of Historical Memory. Since 2007, the inter-institutional roundtable on support of victims of enforced disappearances, chaired by the National Unit for Comprehensive Attention and Reparation to the Victims, and composed of a number of State agencies, victims, human rights and forensic organizations, have continued to provide a platform for exchange between institutions and families at national level. A number of Colombian regions have created similar platforms at regional level. Importantly, at the end of 2015, as part of the peace negotiations between the Government and the FARC-EP, the parties reached an agreement that foresees the creation of an Independent Search Unit for persons missing in connection with the armed conflict. In its contribution to the present report, Colombia also referred to a number of preliminary humanitarian measures that are to be implemented before signing the final peace agreement and that are designed to build trust between the parties in the peace process. These include measures on the search, location, identification and dignified return of remains of missing persons in the context, and as a result of, the armed conflict.

33. In its contribution to the present report, Panama recalled that it had created in 2011 a National Commission to continue the investigations of enforced disappearances that occurred between 1968 and 1989.

34. In Lebanon, in the context of the possible establishment of a national commission on missing persons, the ICRC has registered detailed information about around 2,200 missing persons and is planning to start collecting biological reference samples from relatives of missing persons as soon as its project is formally approved.

35. In its contribution to the present report, Kuwait reported that it had created a National Committee for Missing and Prisoners of War Affairs, which inter alia established a register of prisoners of war and missing persons, prepared files for such cases, and established a genetic database to facilitate identification.

36. In Sri Lanka, in May 2016, the Government published a draft bill to create a dedicated Office of Missing Persons. The proposed Office will be a permanent structure that is intended to uncover the fate and whereabouts of the missing and to provide victims with access to legal, administrative and psychosocial services. Some concerns have been expressed regarding the draft law, including the lack of transparency during the drafting process and the limited public consultation with victims and civil society.¹⁵

¹⁴ See also OHCHR, Report on the human rights situation in Ukraine – 16 February to 15 May 2016, paras. 26-28 (http://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf), also referring to missing persons in eastern Ukraine.

¹⁵ See also UN High Commissioner for Human Rights, Oral Update at the Human Rights Council on 28 June 2016 (A/HRC/32/CRP.4).

D. Truth seeking mechanisms and processes

37. Truth-seeking mechanisms and processes also constitute valuable means to address the issue of missing persons, including through the clarification of the circumstances in which persons went missing. The following are examples of how recent truth-seeking mechanisms have dealt with the question of missing persons, notably in the context of enforced disappearances.

38. In December 2014, the National Truth Commission of Brazil presented its final report, which describes human rights violations committed between 1964 and 1985. Enforced disappearance and concealment of victims' bodies are listed among the worst violations. The third volume of the report is dedicated to 434 individual victims, of which 243 who have disappeared (33 bodies later found). The report called on the judiciary to end impunity for those involved in serious, systematic abuses. It also recommended the creation of an administrative body to continue gathering information and investigating cases, as well as to monitor activities aimed at localising, identifying and returning the remains of the disappeared to their families or other persons entitled to receive them for proper burial.

39. In March 2016, the "Commission of Investigation on Enforced Disappeared Persons" of Nepal became operational, with a mandate to "find out and record the truth and bring it out for the general public" regarding the fate of more than 1,000 people who remain unaccounted for following the 1996-2006 conflict. However, the enabling law of the Commission has been criticised for not meeting national constitutional guarantees and international law. Despite a Supreme Court order, to amend the law, no legislative or administrative action has been taken to address the concerns, including the Commission's powers to recommend amnesties for gross human rights violations.¹⁶

40. In its contribution to the present report, the Office of the Ombudsperson of Ecuador reported that following the Ecuadorian Truth Commission's final report in 2010 (which had found 17 cases of enforced disappearance), a "law for the reparation of victims and the prosecution of serious human rights violations" had been adopted in 2013. The law also provided for the creation of a programme for administrative reparation under the responsibility of the Ombudsperson.¹⁷

41. International commissions of inquiry and other investigations have made recommendations to relevant authorities regarding missing persons and victims of enforced disappearance. For example, the final report of the OHCHR investigation on Sri Lanka includes a thematic chapter on the issue and recommended that missing persons cases be transferred to a "credible and independent institution developed in consultation with families of the disappeared" (A/HRC/30/CRP.2, para. 386-531). In its final report, the Commission of Inquiry on Human Rights in Eritrea concluded that there was reasonable ground to believe that crimes against humanity have been committed in the country, including enforced disappearances. The Commission noted that enforced disappearances continued to occur, but also that many of those subjected to enforced disappearance in the

¹⁶ The Nepal Supreme Court, in a 26 February 2015 Order (069-WS-0037), held that any provisions of the Act that serve to compromise its judicial role are invalid, including the power to grant amnesties. For more information, see the 16 February 2016 OHCHR technical note which also explains that in the absence of steps by the Government to ensure that the enabling law and procedures of the Commission are in compliance with Nepal's international legal obligations, the United Nations is unable to provide support to the institution:

http://www.ohchr.org/Documents/Countries/NP/Nepal_UN%20position_supportTRC_COIDP_Feb2016.pdf

¹⁷ See also the Ombudsperson's 2015 thematic report on missing persons in Ecuador: <http://repositorio.dpe.gob.ec/bitstream/39000/601/1/IT-003-DPE-2015.pdf>

past remained unaccounted for, and that female and child relatives of the disappeared often face various forms of discrimination (see A/HRC/32/47)¹⁸. The Commission made a strong call for accountability.

42. Following its 2014 thematic report on enforced disappearances (A/HRC/25/65, annex IV), the Independent International Commission of Inquiry on the Syrian Arab Republic continued to draw attention to the issue of missing persons in Syria. It recommended that confidence-building measures in the political process take into account the needs and concerns of communities, including the tracking of missing persons (A/HRC/31/68). It also recommended that the international community provide, as a matter of urgency and to build confidence at local level, the creation of a mechanism to register cases of missing persons, investigate their whereabouts, and identify human remains, including those found in mass graves (A/HRC/31/CRP1). Specific attention is needed, including by ensuring full access for humanitarian and human rights actors.

E. Archives

43. Collection, protection and management of relevant information are essential for addressing the issue of missing persons. Archives are crucial to the exercise of individual rights, such as the right to the truth about the circumstances in which violations took place and, in the event of death and disappearance, about the victims' fate.¹⁹ In resolution 60/184, the General Assembly invites States, national institutions and, as appropriate, intergovernmental, international and non-governmental organizations to ensure the development and proper management of archives pertaining to missing persons and unidentified remains in connection with armed conflict, as well as access to those archives in accordance with applicable laws and regulations.

44. In 2015, OHCHR published a Rule of Law Tool for Post-Conflict States on Archives.²⁰ The publication aims to provide guidance to United Nations field missions, transitional administrations and civil society on the management, reform, use and preservation of archives to help guarantee and enforce human rights, particularly the right to the truth. It explores the links between archives and the right to the truth and focuses on the means to strengthen archives through the identification of good practices for the management of different types of records and archives.

45. In September 2014, the Special Rapporteur on the Promotion of Truth, Justice and Guarantees of Non-Recurrence, together with ICRC and Swisspeace, convened in Geneva a two-day workshop on "archives in the context of the right to know". In his report to the thirtieth session of the Human Rights Council (September 2015), the Special Rapporteur subsequently presented an annex with a set of general recommendations for truth commissions and the issue of archives, which are intended to contribute to the development of international standards (A/HRC/30/42).

46. Information collected in the investigation phases of international criminal tribunals can also be valuable for the provision of individual answers concerning the fate and whereabouts of missing persons. In that regard, ICRC reported that access to the archives of the International Criminal Tribunal for the Former Yugoslavia and other organizations working in Kosovo resulted in 134 analytical reports since 2009, which had helped

¹⁸ See also A/HRC/32/CPR.1, as well as A/HRC/29/42 and A/HRC/29/CPR.1.

¹⁹ See "Updated Set of principles for the protection and promotion of human rights through action to combat impunity" (E/CN.4/2005/102/Add.1), principles 3–4.

²⁰ http://www.ohchr.org/Documents/Publications/HR_PUB_14_4_Archives_en.pdf

clarifying the fate and whereabouts of over 100 missing persons. In 2015, ICRC initiated similar research with respect to missing persons in Bosnia and Herzegovina.

V. Missing children

47. In resolution 69/184, the General Assembly requested States to pay the utmost attention to cases of children reported missing in connection with armed conflicts and to take appropriate measures to search for and identify those children and to reunite them with their families.

48. In its submission, the non-governmental organization NGO Ariel Foundation emphasized that the prevention and resolution of cases of missing children requires a holistic approach that addresses various complex factors, including legal and societal. It also highlighted the importance of engaging children and affected families in the evaluation and formulation of responses, and the need to address the lack of comprehensive and disaggregated data and research on missing children.

49. In El Salvador, the National Commission for the Search of Missing Children during the Internal Armed Conflict continued its work to clarify the fate of children whose whereabouts are still unknown. In its submission, El Salvador reported that at the end of 2015, the Commission had registered a total of 275 cases of boys and girls disappeared during the armed conflict. The Commission had investigated 205 cases, achieving the reunion of 25 children with their relatives and a further 9 children currently being processed for reunion. In 17 cases, the investigation confirmed the death of the child. In its submission, Argentina recalled that through the work of the "Abuelas de La Plaza de Mayo" and the National Commission for the Right to Identity (Comisión Nacional por el Derecho a la Identidad), 119 children who had disappeared in the context of the military dictatorship were identified and reunited with their relatives.

VI. Criminal investigation and prosecution

50. Cases of missing persons may involve conduct that amounts to criminal offences, while the commission of enforced disappearance is always a crime. Depending on the circumstances, such conduct may also amount to war crimes or crimes against humanity. States have an obligation, clearly established in international law, to investigate and prosecute such conduct. Moreover, criminal investigations and prosecutions can help victims to realize their right to the truth if the findings of such investigations and prosecutions are made available to interested parties.

51. In order to enable effective investigations and prosecutions, crimes under international law should be incorporated in national criminal law, and necessary investigative and judicial mechanisms should be established. Several States, in their contributions to the present report, highlighted that they had criminalized enforced disappearance in their domestic laws or were in the process of doing so (e.g. Greece, Senegal, and Spain). Niger noted that the lack of a specific crime of enforced disappearance in its domestic law had meant that some cases linked to the conflict with Boko Haram had to be prosecuted on charges of arbitrary arrest and detention instead.

52. It is important to ensure or strengthen the capacity of investigators and prosecutors' offices with respect to files pertaining to missing persons-files. El Salvador, in its contribution to the present report, stated that the Board of the School for Prosecutor Training had been instructed to incorporate and strengthen the curriculum components related to international humanitarian law and investigation techniques regarding enforced disappearances. In Mexico, the National Conference of Attorneys General adopted a

protocol for the search of disappeared persons and the investigation of the crime of enforced disappearance in August 2015. It defines general principles and binding operating procedures for prosecutors, forensic experts and police, responsible for investigating the crime of enforced disappearance. In December 2015, Mexico also created within the Attorney General's office a mechanism of external support for the search and investigation of disappeared migrants, coordinated by its new Unit for investigations on crimes against migrants. The mechanism is in its early stages and started to develop protocols and guidelines for its operation. In Bolivia, the Ministry of Justice, the Office of the Prosecutor and a University (Universidad Mayor de San Andrés) signed an agreement in October 2013 to investigate cases of enforced disappearances that took place between 1964 and 1982. The agreement will be in force until October 2016.

53. In its contribution for the present report, Algeria noted that in 2015 it had amended its Criminal Procedure Code to include a chapter on the protection of witnesses, experts and victims.

VII. Forensic recovery and identification of remains of missing persons

54. The recovery, identification and dignified management of bodies or human remains are essential. New methodologies and scientific advances are important in this regard. In resolution 69/184, the General Assembly invited States, national institutions and, as appropriate, intergovernmental, international and non-governmental organizations to further their engagement in order to follow forensic best practices regarding the prevention and resolution of cases of missing persons.

55. The previous report of the Secretary-General highlighted and emphasized the importance of ensuring that forensic investigations into the missing persons are up to international standards, not only because of the need to ensure the credibility of forensic institutions and practitioners, but also not to further traumatize families. The report recalled several of these international standards and recommendations (see A/69/293, paras. 49-51). In a 2014 resolution (AG/RES.2864), the Organization of American States invited States to support the training of forensic scientists in their countries, together with the implementation of forensic examinations consistent with internationally validated scientific standards and procedures.

56. The ICRC reported that a growing number of forensic institutions and practitioners follow the standards and recommendations on forensic best practices as they apply to preventing and resolving cases of missing persons. Several countries have acquired highly specialized forensic services required for such investigations, including in the fields of forensic anthropology and forensic DNA analysis. In addition to the countries listed in the previous report (A/69/293, para. 52), these also include Canada, Kuwait, and South Africa. The ICRC has also been assisting and helping to build local forensic capacity (Ecuador, Israel and the Occupied Palestinian Territory, Syrian Arab Republic, and Ukraine in addition to the places listed in the previous report, A/69/293, para. 52). Such assistance ranges from technical support and advice and tailored training, to the provision of equipment and tools and the promotion of communication, coordination and cooperation among forensic services for improved prevention and investigation of the missing from armed conflict (and catastrophes), as well as the standardization of forensic procedures applicable to the search, recovery, identification and management of human remains.

57. In 2015, Argentina, with support from ICRC, launched a manual on international best practices in forensic genetics applied to human rights and humanitarian investigations, including for resolving missing persons cases. In its contribution to the present report,

Argentina also referred to its agreement with the Argentine Forensic and Anthropology Team with the aim of implementing the "Latin American Initiative for the Identification of Missing Persons" which started in 2007. It is currently constituted by three non-governmental organizations that apply forensic science to the investigation of human rights violations committed in Latin America: the Guatemalan Foundation for Forensic Anthropology, the Peruvian Team on Forensic Anthropology, and the Argentine team. The system has so far managed to collect 9,800 samples and 370 victims have been identified.

58. In Peru, the ICRC and the Office of the Prosecutor signed an agreement in April of 2015 to design and implement a plan to improve the work of the Medical Legal Institute related to the search of the persons who went missing during the 1980's and the 1990's and support to their families. In Honduras, the ICRC is facilitating a working group on missing migrants for the authorities and civil society organizations to standardize the ante mortem form used by all participants and define a clear division of responsibilities for the search of missing migrants and the accompaniment of the families.

59. In its contribution to the present report, Senegal noted that it hosts the first African private centre for diagnosis and research in molecular medicine (Centre de Diagnostic et de Recherche en Médecine Moléculaire), which also undertakes DNA tests for the identification of missing persons.

VIII. Legal status of missing persons and support to families

60. The suffering endured by families of missing persons is often reinforced by the multiple difficulties that families face as a direct result. Victims and families of the missing should be placed at the centre of all actions concerning the issue of missing persons and they should be enabled to participate in the design of and response to their multi-faceted needs. Their rights to the truth, justice and an effective remedy should inform such responses. In resolution 69/184, States were called upon to take appropriate steps with regard to the legal situation of missing persons and the needs and accompaniment of their family members, with particular attention to the needs of women and children.

A. Understanding the needs of families

61. In cooperation with family associations, National Societies of the Red Cross and Red Crescent Movement, non-governmental organizations, and academic and research institutions, the ICRC continued to assess the needs of families of missing persons, based on the ICRC guidelines for multidisciplinary family needs assessments. By 2015, such assessments were ~~concluded~~—pertaining to Central America (El Salvador, Guatemala, Honduras, Mexico), Colombia, Iraq, Lebanon, Libya, Peru, Senegal, Sri Lanka, Tajikistan, and Uganda were concluded. In some of these locations, the assessment (also) relates to the needs of families of missing migrants.²¹ The aim of the assessments is to ensure a contextualized and comprehensive understanding of the multifaceted needs of families, determine the existing capacity to respond, and the level of additional assistance needed. The ICRC also engages in confidential dialogues with the concerned authorities regarding the identified needs and appropriate recommendations.

²¹ In its contribution for this report, Guatemala drew attention to the plight of families of missing migrants, also referring to the Caravan of Mothers of Missing Migrants (Caravana de Madres de Migrantes Desaparecidos, held in November 2014 in Guatemala) to express concern about the rates of disappearances of migrants in Central America and Mexico.

B. Addressing the needs of families

62. Families of the missing have many needs, including the need to know what happened; the need for recognition and commemoration; the need for economic, financial, psychological and psychosocial support; the need for protection against security threats; and the need for access to justice and effective remedy. Also, as a result of gaps in legislation and administrative obstacles, families often lack access to social benefits and pensions and are prevented from exercising their rights under property and family law. Diversity of needs and the multidimensionality of the impact of the disappearance require a holistic response.

63. In 2013, the ICRC published "Accompanying the families of missing persons: A practical handbook", setting out its approach to addressing the needs of families of the missing. The "accompaniment" approach aims to strengthen the abilities of individuals and families to deal with difficulties related to the disappearance of their relatives and to help them reacquire a healthy social life and emotional well-being. It attempts to address every aspect of the difficulties faced by families by involving professionals from different areas (e.g. forensic, legal, health, social work, economic security, mental health and psychological support) and community members. The response envisages interventions at all levels: families of missing, community, local, and national authorities. The approach is needs-based and participatory, following the premise that families of missing persons know their needs better than anyone else. ICRC has worked with this approach in several contexts, including in Colombia, Mexico and Central America, Peru, and Uganda. Internal evaluations of programmes in Armenia, Georgia, Nagorno-Karabakh, Nepal and Uganda confirmed that the holistic response to the various needs of family members was a key aspect in achieving a positive impact.

C. Legal situation of missing persons

64. Domestic law should clarify the legal situation of missing persons, including through provisions for the person to be declared absent or missing so that the families of missing persons become eligible to social and financial benefits, without forcing them to declare the missing relative dead.

65. Several States have ~~considered~~, either by amending existing domestic legislation or through specific provisional decrees, ~~granting~~ granted victims, including the families of missing persons, specific social and financial benefits. These include pensions for the families of missing soldiers, reduced health care and tuition fees, child allowances, food assistance, loans, and interim relief. In its contribution, Kuwait explained that its National Committee for Missing and Prisoners of War Affairs also established a social services office, which is to provide social and psychological services to the families of the missing, including, inter alia, monthly allowances, priority government housing, and waivers of debt.

IX. Conclusions and recommendations

66. While resolution 69/184 primarily deals with the issue of missing persons in connection with armed conflict, I urge Member States to also consider the issue of missing persons in other contexts, including situations of violence, insecurity, organized crime, disaster and migration.

67. I commend Member States for their efforts in addressing the issue of missing persons as a consequence of armed conflict. ~~Yet~~, I remain alarmed at the reported

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numbers of missing persons and the tremendous suffering that each instance where a person goes missing causes to the direct victim and their families.

68. I urge all Member States to keep this multi-faceted issue high on the agenda and to redouble their efforts to address it, within their own countries, in their regions and at the global level, in a spirit of cooperation. Responses need to be depoliticized, strongly focused on both prevention and accountability, and have the rights, needs and concerns of the missing and members of their families – as well as notably their right to the truth – at the centre.

69. States are encouraged to take steps to assess and understand the many needs of missing persons and their families, including from a human rights perspective. Such an assessment should drive the formulation of appropriate responses, with special consideration for the specific vulnerabilities faced by women, children, migrants, refugees, IDPs and other groups. The approach to addressing the issue of missing persons must not only be needs-based but also participatory and multi-disciplinary.

70. It remains critical that States put in place the appropriate legislative and institutional framework to effectively deal with the issue of missing persons. Such a framework should specifically address the legal and practical difficulties that missing persons and their families experience.

71. I strongly encourage all States that have not yet become party to the International Convention for the Protection of All Persons from Enforced Disappearance to take the necessary measures to do so, to incorporate its provisions into domestic law and to ensure full implementation of those provisions by relevant authorities. I also call on all Member States to lend their full cooperation to the Committee on Enforced Disappearances and the Working Group on Enforced and Involuntary Disappearances.

72. In the aftermath of armed conflict, States should actively engage in processes to address cases of missing persons and minimize their consequences, including by establishing adequate processes to locate, identify and repatriate the missing to their families. In this regard, I also call on all former parties to conflicts currently engaged in such efforts to intensify their efforts and cooperation as time may affect the availability of information.

73. The issue of missing persons must also be considered in the context of peacebuilding and transitional justice processes. Humanitarian efforts to locate, identify and return missing persons, as well as accountability and transitional justice processes, should be mutually reinforcing. Linkages between such efforts should be considered, with full respect of the principles of confidentiality, protection and informed consent.

74. The issue of missing children in connection with armed conflict continues to require greater attention, including through focused research and strengthened collection of comprehensive and disaggregated data.

75. States are encouraged to continue to develop local forensic capacity, in line with applicable forensic best practices and international standards. Building well-trained, well-resourced and independent forensic capacities is essential for ensuring credible investigations into cases of missing persons and the identification of human remains. Regional coordination and cooperation among forensic institutions and practitioners should be promoted and supported.

76. Considering the importance of the collection, protection and management of information for addressing the issue of missing persons, and the realization of victims' right to the truth, I encourage States to ensure the preservation of, and access to,

archives. Such access should be as wide as possible, but consistent with considerations of privacy and protection.

77. Greater efforts are needed to ensure accountability for gross human rights violations or serious violations of international humanitarian law which have resulted in missing persons. Both as a preventive measure and a measure of redress for victims, the importance of ensuring accountability and an effective remedy, including reparations, cannot be overestimated. Where domestic mechanisms are insufficient or inadequate, Member States should ensure that appropriate international fact-finding and accountability mechanisms are created and called upon to intervene. These mechanisms should be provided with adequate resources to ensure that they work promptly and effectively, and their recommendations should be followed up promptly and effectively.

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